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# ODP GRANT AGREEMENT

THE WELSH MINISTERS (1)

KEOLIS AMEY WALES CYMRU LIMITED (2)

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**THIS AGREEMENT** is dated

**2018**

**BETWEEN:**

- (1) **THE WELSH MINISTERS**, whose principal place of business is at Crown Buildings, Cathays Park, Cardiff, United Kingdom CF10 3NQ (the “**Authority**”); and
- (2) **KEOLIS AMEY WALES CYMRU LIMITED** (Company Number: **11391059**), whose registered office is at C/O Amey Rail Maindee Depot, Off Caerleon Road, Newport, United Kingdom NP19 9DZ (the “**ODP**”).

**WHEREAS:**

- (A) The Secretary of State agreed pursuant to an Agency Agreement dated 11 October 2016 (“**Agency Agreement I**”) that the Authority may exercise on his behalf and as his agent, the Secretary of State’s power under the Act to select bidders to be issued with the Invitation to Participate in Dialogue (“**ITPD**”), issue the ITPD to each of those bidders, enter into competitive dialogue with the bidders who respond to the ITPD, proceed to assess and down-select such bidders as part of the procurement process. Accordingly, on 11 October 2016 the Authority invited prospective ODPs to submit outline solution proposals for the provision of the ODP Services.
- (B) The Secretary of State agreed pursuant to an Agency Agreement dated 28 September 2017 (“**Agency Agreement II**”) that the Authority may exercise on his behalf and as his agent, the Secretary of State’s power under the Act to issue an invitation to tender under section 26(3) of the Act (referred to in the procurement process as an Invitation to Submit Final Tenders (“**ITSFT**”). Accordingly, following a competitive dialogue process the Authority issued the ITSFT on 28 September 2017 and invited prospective ODPs to submit final proposals for the provision of the ODP Services.
- (C) The Secretary of State agreed pursuant to an Agency Agreement dated on or about the date of this Agreement (“**Agency Agreement III**”) that the Authority may exercise on his behalf and as his agent, the Secretary of State’s power (inter alia) under section 26(1) the Act to select the person who is to be the ODP (referred to in the Act as the franchisee) in relation to this ODP Grant Agreement from among those who submitted tenders in response to the ITSFT and to award this ODP Grant Agreement.
- (D) On the basis of the ODP’s response to the ITSFT, the Authority selected the ODP as its preferred service provider.
- (E) The Authority wishes to appoint the ODP to provide the ODP Services and expects the ODP, on the terms of this Agreement, actively to seek, in all reasonable business ways, greatly improved performance over the ODP Grant Agreement Term from its employees, its Train Fleet and other assets, and from Network Rail and its other suppliers, so as to

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deliver to the passenger the best railway passenger service that can be obtained from the resources that are available to it.

- (F) The ODP wishes to be appointed as the Authority's operator and development partner for the ODP Services and intends, on the terms of this Agreement, actively to seek, in all reasonable business ways, greatly improved performance over the ODP Grant Agreement Term from its employees, its Train Fleet and other assets, and from Network Rail and its other suppliers, so as to deliver to the passenger the best railway passenger service that can be obtained from the resources that are available to it.
- (G) The following provisions of this Agreement are intended to reflect and give effect to the matters referred to in Recitals (E) and (F) inclusive.

## **1 INTERPRETATION**

1.1 In the ODP Grant Agreement, except to the extent the context otherwise requires:

- (a) words and expressions defined in Part I of the Act have the same meanings when used therein provided that, except to the extent expressly stated, **“railway”** shall not have the wider meaning attributed to it by section 81(2) of the Act;
- (b) words and expressions defined in the Interpretation Act 1978 have the same meanings when used in the ODP Grant Agreement;
- (c) references to **“Parties”** shall mean the Authority and the ODP (and references to a **“Party”** shall mean the Authority or the ODP as the context requires);
- (d) the words **“include”**, **“including”** and **“in particular”** are to be construed without limitation;
- (e) references to any **“person”** include its successors, transferees or assignees;
- (f) the words **“subsidiary”**, **“subsidiary undertaking”** and **“parent undertaking”** each have the same meaning in the ODP Grant Agreement as in section 1162 of the Companies Act 2006;
- (g) references in any of the agreements comprising the ODP Grant Agreement to Recitals, clauses, Schedules, Parts of Schedules, paragraphs of Schedules and Appendices to Schedules are to Recitals, clauses, Schedules, Parts of Schedules, paragraphs of Schedules and Appendices to Schedules of that agreement, unless expressly specified to the contrary, and the Schedules and Appendices form part of the agreement in which they appear;
- (h) references in any Schedule in any of the agreements comprising the ODP Grant Agreement to a Part, paragraph or Appendix are references to a Part, paragraph or

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Appendix of that Schedule (or the relevant Part of a Schedule), unless expressly specified to the contrary;

- (i) headings and references to headings shall be disregarded in construing the ODP Grant Agreement;
- (j) references to any enactment include any subordinate legislation made from time to time under such enactment and are to be construed as references to that enactment as for the time being amended or modified or to any enactment for the time being replacing or amending it and references to any subordinate legislation are to be construed as references to that legislation as for the time being amended or modified or to any legislation for the time being replacing or amending it;
- (k) references to an agreement or any other document shall be construed as referring to that agreement or document as from time to time supplemented, varied, replaced, amended, assigned or novated;
- (l) references to any particular provisions of any agreement or any other document shall be construed to include any other provisions of, or incorporated in, that agreement or other document which the Authority reasonably considers have an equivalent effect or are intended to fulfil the same function;
- (m) amendments to or variations of contracts or arrangements include assignments, novations or other transfers of rights and/or obligations (in whole or in part) under such contracts or arrangements;
- (n) words importing the masculine gender include the feminine and vice-versa, and words in the singular include the plural and vice-versa;
- (o) wherever provision is made for the giving or issuing of any notice, endorsement, consent, approval, waiver, certificate or determination by any person, unless otherwise specified, such notice, endorsement, consent, approval, waiver, certificate or determination shall be in writing and the words “**notify**”, “**endorse**”, “**consent**”, “**approve**”, “**waive**”, “**certify**” or “**determine**” and other cognate expressions shall be construed accordingly;
- (p) references to materials, information, data and other records shall be to materials, information, data and other records whether stored in electronic, written or other form;
- (q) references to the ODP bidding for Train Slots or a Timetable shall mean the final action incumbent on the ODP under the Network Code to confirm to Network Rail its interests in the Train Slots to which that confirmation relates, and “**bid**” shall be construed accordingly;

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- (r) references to the period of validity of any Fare are references to its period of validity excluding any rights of any purchaser thereof to extend such period under the Passenger's Charter, any equivalent document, or the terms and conditions attaching to such Fare (including any applicable conditions of carriage) in the event of the cancellation or delay of any of the railway passenger services for which such Fare is valid;
- (s) references to “**railway passenger services**” are to be construed subject to section 40 of the Railways Act 2005;
- (t) references to the “**provision of railway passenger services**” include the organisation of the relevant train movements and making the necessary arrangements with Network Rail or any other relevant Facility Owner;
- (u) references in lower case letters to terms defined in clause 3 (Definitions) shall be construed, where relevant, as being references to the terms defined as such in a franchise agreement or relevant agreement made under section 30 of the Act or section 6 of the Railways Act 2005 with any other Train Operator;
- (v) references to sums of money being expended by the ODP shall be to such sums exclusive of Value Added Tax;
- (w) the words “**shall not be liable**” are to be construed as meaning that no contravention of the ODP Grant Agreement and no Event of Default shall arise as a result of the occurrence of the matter to which such words relate;
- (x) references to a “**contravention of the ODP Grant Agreement**” or a “**contravention**” (and cognate expressions) are to be construed as meaning a breach of the ODP Grant Agreement;
- (y) wherever provision is made for the ODP to “**procure**” or “**ensure**” the delivery of an obligation under the ODP Grant Agreement, unless otherwise specified, that provision shall be construed as a primary obligation on the ODP to deliver that obligation;
- (z) references to “**profit**” shall be construed as meaning profit before corporation tax, determined in accordance with GAAP; and
- (aa) references to “**process**” or “**processing**” or “**processed**” are to be construed in accordance with the meanings set out in GDPR for the purposes of Schedule 1.5 (*Information about Passengers*) and paragraph 2.1 of Schedule 14.4 (*Designation of Rail Services Assets*).
- 1.2 Where there is a requirement on the ODP to “**fully and effectively co-operate**” with one (1) or more other parties with regard to an objective, that requirement relates to the quality

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of co-operation to be provided by the ODP taking into account and subject to the response of the other parties concerned. It does not indicate an obligation on the ODP beyond co-operation, relating to the funding of detailed design and development of an infrastructure project, actual delivery or subsequent operation (including in each case performance cost and revenue effects). It does indicate that the ODP shall participate actively in relation to the relevant objective including through the application of management time and internal resources, correspondence and attendance at meetings, in each case as the ODP reasonably considers in all of the circumstances to be an appropriate use of its resources and effective to achieve the relevant objective.

## **2 AGREED DOCUMENTS**

2.1 References to documents **“in the agreed terms”** are references to documents initialled by or on behalf of the Authority and the ODP.

2.2 As at the date of this Agreement, the documents **“in the agreed terms”** are as follows:

|        |   |
|--------|---|
| CFD    | Commuter Fares Document;  |
| CSSMP  | Customer Satisfaction Survey Methodology Principles;                        |
| DL     | Depot Lease;  |
| FTFM   | Final Tender Financial Model;   |
| MSSMP  | Mystery Shopper Survey Methodology Principles;                              |
| OM     | Operational Model;  |
| PFDB   | Protected Fares Document B;   |
| PFDC   | Protected Fares Document C;   |
| PFSAMP | Previous Franchisee’s Station Asset Management Plan                         |
| POA    | Power of Attorney;  |
| ROA    | Record of Assumptions;  |
| SIP    | Service Improvement Plan;   |
| SL     | Station Lease; and  |
| TSR    | Train Service Requirement (including TSR1A, TSR1B, TSR1C, TSR2 and TSR 2A). |

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### 3 DEFINITIONS

3.1 In the ODP Grant Agreement, except to the extent the context otherwise requires, the following words and expressions have the following meanings:

|  |  |
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| <b>"16 to 25 Railcard"</b>                             | means a Discount Card issued under the Discount Fare Scheme referred to in paragraph 3 of Schedule 2.5 (Transport, Travel and Other Schemes);  |
| <b>"2010 Nominal Ticket Sales"</b>                     | has the meaning given to it in paragraph 3 of Schedule 5.4 (Regulation of Fares Basket Values);  |
| <b>"2010 Ticket Revenue"</b>                           | has the meaning given to it in paragraph 4 of Schedule 5.4 (Regulation of Fares Basket Values);  |
| <b>"Access Agreement"</b>                              | has the meaning given to the term "access agreement" in Section 83(1) of the Act;  |
| <b>"Achieve"</b>                                       | means, in respect of a Rail Services Milestone or a Rail Services Milestone Deliverable, that such Rail Services Milestone or Rail Services Milestone Deliverable meets or exceeds the relevant Rail Services Milestone Criteria as established by such evidence as the Authority shall reasonably require, and Achieved and Achievement shall be construed accordingly; |
| <b>"ACoRP"</b>   | means the Association of Community Rail Partnerships whose principle place of business is The Old Water Tower, Huddersfield Railway Station, St Georges Square, Huddersfield, HD1 1JF or any successor body whose purpose is to support Community Rail Partnerships;   |
| <b>"Act"</b>   | means the Railways Act 1993 (as modified, amended or replaced by the Transport Act 2000 and/or the Railways Act 2005) and any regulations or orders made thereunder;   |
| <b>"Active Travel and Cycling Policy and Strategy"</b> | means the active travel and cycling policy and strategy developed by the ODP and agreed in accordance with paragraph 6.4 of Part 4 of Schedule 13.3 (Sustainability and Ethical Procurement);  |
| <b>"Actual Consist Data"</b>                           | means information as to the type of individual vehicles of rolling stock in the Train Fleet which are actually used to form a train on any particular Passenger Service and the  |

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manner in which they are configured, which may or may not be the same as the Scheduled Consist Data for the same service;

**"Actual Operating Costs"**

means:

(a) the ODP's total operating expenses for the period being reviewed as stated in its profit and loss account, including any of the following operating expenses that are payable during that period:

(i) amounts payable to the Authority and Network Rail;

(ii) taxation;

(iii) shareholder distributions including dividends;

(iv) interest;

(v) capital expenditure (net of grants received); and

(vi) lease payments in relation to on-balance sheet leased assets,

but excluding any of the following expenses that are payable in that period:

(vii) interest relating to on-balance sheet leased assets;

(viii) depreciation;

(ix) amortisation;

(x) bad debt provisions; and

(b) either:

(i) plus any reduction in the total amount owing by the ODP to creditors over that period; or

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- (ii) less any increase in the total amount owing by the ODP to creditors over that period,

where creditors:

- (A) include any persons owed amounts by the ODP in respect of loans or funding agreements, operating expenses, including the types of expenses set out in paragraphs (a)(i) to (a)(v) inclusive, provisions and deferred income balances; but
- (B) exclude persons owed amounts by the ODP in respect of season ticket liabilities, lease liabilities in relation to on-balance sheet leased assets and liabilities in relation to grants received for the purchase of fixed assets;

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| <b>"Actual Passenger Demand"</b>            | has the meaning given to it in paragraph 1.1 of Schedule 1.5 (Information about Passengers);   |
| <b>"Actual Train Mileage"</b>               | means the actual train mileage operated during each Reporting Period by each train used in the provision of the Passenger Services (excluding, any actual train mileage operated as a result of positioning or other movements of rolling stock vehicles outside the Timetable); |
| <b>"Actuary"</b>                            | has the meaning given to it in the Pension Trust;  |
| <b>"Additional Expenditure"</b>             | has the meaning given to it in paragraph 1.1 of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCI Scheme);  |
| <b>"Additional Infrastructure Services"</b> | those services referred to in Part C of Appendix 2 (Scope) of Schedule 3B which may be instructed by the Authority to be undertaken by the ODP in accordance with and pursuant to Part C of Appendix 5 to Schedule 3B and any Package Order;                                     |



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| <b>"Administration Fee"</b>                    |                   | has the meaning given to it in clause 8.6 (Change of Control and Facilitation Fee);  |
| <b>"Advance Purchase Train-specific Fares"</b> |                   | has the meaning given to it under the Ticketing and Settlement Agreement;  |
| <b>"Affected Party"</b>                        |                   | has the meaning given to it in paragraph 6.3 of Schedule 12 (Financial Covenants and Bonds);   |
| <b>"Affiliate"</b>                             |                   | means, in respect of any person, any person by which that person is Controlled or which is Controlled by that person, or any person which is Controlled by any other Affiliate of that person and for the purpose of this definition Network Rail or NR shall not be construed as being an affiliate of the Authority;   |
| <b>"Agreed Form Deed of Novation"</b>          |                   | means the deed of novation to be entered into between the ODP and the relevant RS Lessor in respect of the Protected Rolling Stock Leases, in accordance with clause 5.6(j), paragraph 2.6(a) of Schedule 1.6, and paragraph 6.7 of Schedule 10.2, and substantially in the form as set out at Appendix 1 to Schedule 10.2;  |
| <b>"Agreement"</b>                             |                   | means clauses 1 to 20 and Schedules 1 to 18 including any Appendices as varied from time to time;  |
| <b>"Aggregated Change"</b>                     | <b>Qualifying</b> | <p>means two (2) or more Changes which:</p> <ul style="list-style-type: none"> <li>(a) are notified or agreed (in the case of a Change which is a Variation pursuant to paragraph 1.1 of Schedule 9.3 (Variations to the ODP Grant Agreement and Incentivising Beneficial Changes)); and/or</li> <li>(b) a Party has become aware of (in the case of any other kind of Change),</li> </ul> <p>in a ODP Year (the "Aggregation Year") which individually do not exceed the Threshold Amount for the Aggregation Year taken alone but do exceed it when taken together. For the avoidance of doubt, where the Changes arise in different ODP Years, for the purposes of determining whether in aggregate they exceed the Threshold Amount:</p> |

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- (i) the net present value of the adjustment in Rail Services Payments in respect of each Change shall be calculated in accordance with the process described in the definition of a Qualifying Change; and
  - (ii) there will be an Aggregated Qualifying Change where the aggregate of the net present values of those Changes exceeds the Threshold Amount for the Aggregation Year;

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| <b>"Alternative NRPS"</b>               | has the meaning given to it in paragraph 2.6 of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCI Scheme);  |
| <b>"Ancillary Service"</b>              | means any service specified in paragraph 7 of Part 1 (Rail Services) of Schedule 1.1 (Rail Services and Service Development);  |
| <b>"Annual Audited Accounts"</b>        | means the accounts of the ODP which: <ul style="list-style-type: none"><li>(a) comply with paragraph 9.5(b) of Schedule 11.2 (Management Information); and</li><li>(b) are delivered to the Authority by the ODP in accordance with paragraph 9.4(c) of Schedule 11.2 (Management Information) and certified by the ODP's auditors as true and fair;</li></ul> |
| <b>"Annual Benchmark"</b>               | means a Benchmark used for the purposes of annual calculations as set out in Schedule 7.1, Schedule 7.2, Schedule 7.3, Schedule 7.4 and Schedule 7.5;  |
| <b>"Annual Business Plan"</b>           | means the plan to be provided by the ODP to the Authority in accordance with paragraph 10.2 of Schedule 11.2 (Management Information);   |
| <b>"Annual Cancellations Benchmark"</b> | means for each ODP Year, each of the benchmarks specified in the Annual Cancellations Benchmark Table for that ODP Year provided that where a ODP Year is shorter than thirteen (13) Reporting Periods then the Annual Cancellations Benchmark for that ODP Year shall be as   |

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determined pursuant to paragraph 20.1(a) of Schedule 7.1 (Performance Benchmarks);

**"Annual Financial Statements"** means the final draft financial statements of the ODP which:

(a) comply with paragraph 9.5(b) of Schedule 11.2; (Management Information); and

(b) are delivered to the Authority by the ODP in accordance with paragraph 9.4(b) of Schedule 11.2 (Management Information);

**"Annual Rail Services Management Accounts"** means the Annual Management Accounts in respect of Rail Services;

**"Annual Rail Services Payment"** means, in relation to any ODP Year, the amount determined in accordance with Appendix 1 (Annual Rail Services Payments) to Schedule 8.1 (Rail Services Payments);

**"Annual Rail Services Payment Components"** means the values of "FXD", "VCRPI", "VCAWE", "PRPI" and "RRPI" specified for each ODP Year in the table set out in Appendix 2 (Figures for Calculation of Annual Rail Services Payments) to Schedule 8.1 (Rail Services Payments);

**"Annual Management Accounts"** means the management accounts of the ODP which:

(a) comply with paragraph 9.5(a) of Schedule 11.2 (Management Information); and

(b) are delivered to the Authority by the ODP in accordance with paragraph 9.4(a) of Schedule 11.2 (Management Information);

**"Annual Season Ticket"** means a Season Ticket Fare which is valid in Standard Class Accommodation from (and including) the day on which it first comes into effect until (but excluding) the day which falls twelve (12) months after such day;

**"Applicable Crowded Train"** means a Crowded Service that is scheduled to operate during a Crowded Period;

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| <b>“Apprentice”</b>                      | means a formal arrangement for a person aged sixteen (16) or over to earn a wage and work alongside experienced staff to gain job-specific skills through a recognised and approved apprenticeship scheme including but not limited to the Apprenticeship Matching Service;   |
| <b>“Apprentice Rate”</b>                 | means the national minimum wage rate as applicable to Apprentices;  |
| <b>“Apprenticeship Matching Service”</b> | means the apprenticeship matching service organised by Careers Wales;   |
| <b>"Approved CCI Scheme"</b>             | means a CCI Scheme approved by the Authority in accordance with paragraph 18.4 of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCI Scheme);   |
| <b>“Arts Council of Wales”</b>           | means the Arts Council of Wales, registered charity number 1034245;   |
| <b>"ATOC"</b>                            | means the Association of Train Operating Companies including any of its successors and assigns;   |
| <b>“Authority Dependencies”</b>          | means the dependencies to be provided, or procured, by the Authority listed in Appendix 1 ( <i>Authority Dependencies</i> ) to Schedule 18.2;   |
| <b>“Authority’s Representative”</b>      | means a person appointed from time to time by the Authority to fulfil certain duties, including to manage the ODP Grant Agreement on behalf of the Authority and to monitor the ODP’s performance of its obligations under the ODP Grant Agreement;   |
| <b>"Average Weekly Earnings"</b>         | means the United Kingdom average weekly earnings measure excluding bonuses as published from time to time by the Office for National Statistics or, if such measure shall cease to be published or if, in the reasonable opinion of the Authority, there is a material change in the basis of such measure, such other alternative index as the Authority may, after consultation with the ODP, determine to be appropriate in the circumstances; |

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| <b>“BAME”</b>   | means black, Asian and minority ethnic;  |
| <b>"Bank"</b>   | means a person which has a permission under Part 4A of the Financial Services and Markets Act 2000 to carry on the regulated activity of accepting deposits thereunder and which is reasonably acceptable to the Authority;  |
| <b>"Bank Holiday"</b>   | means any day other than a Saturday or Sunday on which banks in the City of London or Cardiff are not open for business;   |
| <b>"Benchmark"</b>  | means any of the Ticketless Travel Benchmarks, Service Quality Standards, NRPS Benchmark, CSS Benchmark or MSS Benchmark, CVL Possessions, Short Formation Benchmark, and PTL Benchmark (as the context may require);  |
| <b>"BCP"</b>  | see Business Continuity Plan;  |
| <b>"BES 6001 Responsible Sourcing of Construction Products"</b> | means the British standard concerning “Responsible Sourcing of Construction Products”;   |
| <b>"Better Jobs Closer to Home"</b>                             | means the “Better Jobs Closer to Home” pilot project, designed to create employment and training hubs in areas of high economic deprivation, referred to in Taking Wales Forward;  |
| <b>"Bid Profit Stream"</b>                                      | means the estimated total operating profit of the ODP from the date that the Change of Control (pursuant to clause 8 (Change of Control)) is to occur until the Expiry Date as shown in the profit and loss forecast in the Initial Business Plan (without taking into account any Annual Business Plan) calculated in real terms as at the date of the Change of Control and applying the prevailing discount rate per annum (in real terms) stated in HM Treasury's "Green Book Appraisal Guidelines" (such rate being three point five percent (3.5%) per annum (in real terms) as at the date of the ODP Grant Agreement); |
| <b>“Board”</b>  | means the British Railways Board;  |
| <b>"Bond Provider"</b>  | means any person or persons who may provide or be an obligor under a Performance Bond, Asset Maintenance   |

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Performance Bond, or Season Ticket Bond from time to time and who shall, unless the Authority otherwise agrees, be:

- (a) a Bank;
- (b) an insurance company; or
- (c) in each case with the Relevant Credit Rating;

**"Bond Year"**

means the period beginning on the Start Date and ending on 31 March 2019 and any subsequent period of thirteen (13) Reporting Periods beginning on the day after the end of the preceding Bond Year provided that:

- (a) the ODP and the Authority may agree to vary the Reporting Period in which a Bond Year ends from time to time; and
- (b) the last Bond Year shall expire on the expiry of the Rail Services Term and may be a period of less than thirteen (13) Reporting Periods;

**"Borders Business Unit"**

means the English Services management and reporting unit created by the ODP for the purposes of the management and reporting responsibilities set out in paragraph 4 of Part 2 of Schedule 6.1;

**"Brand"**

has the meaning given to it in paragraph 10.1 of Schedule 1.4 (Passenger Facing Obligations);

**"Brand Guidelines"**

has the meaning given to it in paragraph 10.1 of Schedule 1.4 (Passenger Facing Obligations);

**"Brand Licence"**

means any licence between:

- (a) the Authority (or any company wholly owned by the Authority) and the ODP; or
- (b) the Secretary of State (or any company wholly owned by the Secretary of State) and the ODP,

in each case in respect of any registered or unregistered trade marks;

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| <b>“Breakage Costs”</b>   | means the actual losses, costs, liabilities or expenses suffered by the ODP following the issue of a Termination For Convenience Notice, CVL Asset Notice or Infrastructure Manager Notice by the Authority calculated in accordance with the Breakage Costs Principles provided always such liabilities shall include the net book value of assets invested by the ODP to meet its obligations under the ODP Grant Agreement and aligned to the bid assumptions in the Final Tender Financial Model and Record of Assumptions; |
| <b>"Breakage Costs Principles"</b>  | has the meaning given to it in paragraph 8 of Schedule 10.2 (Events of Default and Termination Events);   |
| <b>“British Transport Police”</b>   | means the British Transport Police Authority and the British Transport Police Force created pursuant to Section 18 and Section 20 of the Railways and Transport Safety Act 2003 (or any successor or successors to its statutory policing functions);   |
| <b>“Buildings Research Establishment Environmental Assessment Method” or “BREEAM”</b> | means the internationally recognised environmental assessment method and rating system for buildings developed by Building Research Establishment Limited or any other standard which is generally recognised as having replaced it;  |
| <b>“Business Action Plan”</b>   | means an action plan produced by the ODP in relation to the delivery of any aspect of the ODP Services (including in respect of any outcome anticipated by its Business Plan, in accordance with paragraph 10.2 of Schedule 11.2 (Management Information));   |
| <b>“Business Continuity Plan” or “BCP”</b>  | means a business continuity and disaster recovery plan (including a Force Majeure Events recovery plan) required to be produced, maintained and implemented by the ODP in accordance with the requirements of paragraph 4 of Schedule 10.3 (Force Majeure and Business Continuity);   |
| <b>“Business Plan”</b>  | means the Initial Business Plan or any Annual Business Plan, as the context requires, to be delivered in accordance with paragraphs 10.1 and 10.2(c) of Schedule 11.2 (Management Information);   |

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| <b>“Business Wales”</b>               | means the Welsh Government’s service, which supports the sustainable growth of SMEs across Wales by offering access to information, guidance and business support;   |
| <b>“Cadw”</b>                         | means the Welsh Government’s historic environment service working for an accessible and well-protected historic environment for Wales;   |
| <b>“Cancellation”</b>                 | means a Passenger Service: <ul style="list-style-type: none"> <li>(a) which is included in the Enforcement Plan of the Day and which is cancelled for reasons attributed to the ODP pursuant to its Track Access Agreement; or</li> <li>(b) which is included in the Enforcement Plan of the Day and which operates less than fifty percent (50%) of its scheduled mileage (as prescribed in the Enforcement Plan of the Day) for reasons attributed to the ODP pursuant to its Track Access Agreement;</li> </ul> |
| <b>“Cancellations Figures”</b>        | means the number of: <ul style="list-style-type: none"> <li>(a) Cancellations and Partial Cancellations; and</li> <li>(b) Network Rail Cancellations and Network Rail Partial Cancellations,</li> </ul> <p>in each case, relating to the Passenger Services operated in each Reporting Period;</p>   |
| <b>“Cancelled Stop”</b>               | means in relation to a Train scheduled in the Timetable to stop to set down passengers at a Station, the Train failing to stop at such Station, as recorded by Network Rail and/or the Infrastructure Manager;   |
| <b>“Capacity Mitigation Proposal”</b> | has the meaning given to it in paragraph 15.1 of Part 2 (Service Development) of Schedule 1.1 (Rail Services and Service Development);   |
| <b>“Capital Expenditure”</b>          | has the meaning given to it in paragraph 3.4 of Schedule 9.3 (Variations to the ODP Grant Agreement and Incentivising Beneficial Changes);   |



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| <b>“Carbon Reduction Targets”</b>                        | means the carbon reduction targets to be met by the ODP as set out at Part 2 Appendix 2 of Schedule 13.3;  |
| <b>“Careers Wales”</b>                                   | means Career Choices Dewis Gyrfa Ltd, registered company number 07442837, a wholly owned subsidiary of the Welsh Government;   |
| <b>“Cascaded Rolling Stock”</b>                          | has the meaning given to it in paragraph 3.1 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);  |
| <b>“CaSL” or “Cancellation and Significant Lateness”</b> | means the cancellation and significant lateness measure as produced and/or published by Network Rail;  |
| <b>“CaSL Figures”</b>                                    | means the moving annual average percentage published by Network Rail in respect of CaSL, rounded to one (1) decimal place;   |
| <b>“CCI Amount”</b>                                      | means the sum of [REDACTED] (indexed by the Retail Prices Index in the same way as variable costs are indexed in Schedule 8.2 (Profit Share Mechanism) per CCI Period (reduced pro-rata in respect of any ODP Year within a CCI Period of less than three hundred and sixty five (365) days) as adjusted in accordance with paragraph 18.8(a) of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCI Scheme); |
| <b>“CCI Period”</b>                                      | means each ODP Year commencing from ODP Year 5;  |
| <b>“CCI Scheme”</b>                                      | has the meaning given in paragraph 18.1 of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCI Scheme);   |
| <b>“CCI Scheme Cost”</b>                                 | means in respect of any CCI Scheme, the total cost to the ODP of developing and implementing that CCI Scheme;  |
| <b>“CCI Scheme Margin”</b>                               | means five percent (5%) of the applicable CCI Scheme Costs;  |
| <b>“CCI Scheme Revenue”</b>                              | means in respect of any CCI Scheme, the revenue earned by the ODP from that CCI Scheme;  |

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| <b>“CCI Scheme Shortfall”</b>        | means, in relation to a CCI Scheme, the amount (if any) by which the CCI Scheme Revenue is less than the aggregate of the CCI Scheme Costs and the CCI Scheme Margin;   |
| <b>“CCI Underspend”</b>              | has the meaning given in paragraph 18.6 of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCI Scheme);  |
| <b>“Central Government Body”</b>     | <p>means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <ul style="list-style-type: none"> <li>(a) Government Department;</li> <li>(b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</li> <li>(c) Non-Ministerial Department; or</li> <li>(d) Executive Agency;</li> </ul> |
| <b>“CEEQUAL”</b>                     | means an evidence-based sustainability assessment, rating and awards scheme for civil engineering, infrastructure, landscaping and works in public spaces;  |
| <b>“Certificate of Commencement”</b> | means the certificate to be issued by the Authority pursuant to the Conditions Precedent Agreement;   |
| <b>“Certificate of Completion”</b>   | has the meaning given to it in paragraph 1.3 (b) of Schedule 14.6 (Residual Value Mechanism);   |
| <b>“Change”</b>                      | <p>means if and whenever any of the following occurs:</p> <ul style="list-style-type: none"> <li>(a) [REDACTED]</li> <li>(b) a Charge Variation;</li> <li>(c) a Change of Law (excluding any Change of Law to the extent that it results in an adjustment to the Rail Services Payments pursuant to Schedule 8.3 (Track Access Adjustments and Station Charge Adjustments));</li> </ul>   |

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- (d) a change to the Train Service Requirement previously in force pursuant to the issue of an amended or new Train Service Requirement in accordance with paragraph 16.5 of Schedule 1.1 (Rail Services and Service Development);
  - (e) the ODP is required to take any action pursuant to paragraphs 19.1(a) and/or paragraph 19.1(b) of Schedule 1.1 (Rail Services and Service Development);
  - (f) the Authority effects an amendment to a Discount Fare Scheme, introduces a new Discount Fare Scheme or ceases to approve a Discount Fare Scheme for the purposes of Section 28 of the Act;
  - (g) the Authority approves an amendment or proposed amendment to an Inter-Operator Scheme, as referred to in paragraph 4.5 of Schedule 2.5 (Transport, Travel and Other Schemes) to the extent and only to the extent that the ODP makes a saving as a consequence of such amendment or proposed amendment;
  - (h) the imposition, subject to the provisions of paragraph 2.6 of Schedule 4 (Accessibility and Inclusivity), of any increased access charges in respect of EA Requirements at ODP Access Stations;
  - (i) the Authority exercises its power pursuant to paragraph 5 of Schedule 5.7 (Changes to Fares and Fares Regulation) to alter the obligations of and restrictions on the ODP under Schedule 5 (Fares and Smart Ticketing);
  - (j) the ODP is obliged to charge Value Added Tax on a Fare or there is an increase or decrease in the rate of Value Added Tax which it must charge on such Fare, in either case due to a change in the Value Added Tax treatment of the provision of Passenger Services;

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- (k) the exercise by the Authority of its rights pursuant to paragraph 1.7 (*Charging Review*) of Schedule 7.1 (*Operational Performance*);
  - (l) NOT USED;
  - (m) [REDACTED] [REDACTED]
  - (n) NOT USED;
  - (o) a Variation to the terms of the ODP Grant Agreement pursuant to paragraph 1.1 of Schedule 9.3 (*Variations to the ODP Grant Agreement and Incentivising Beneficial Changes*);
  - (p) the Start Date is a date that is later than 02:00 on 14 October 2018 for reasons solely attributable to any act or omission by the Authority including the exercise of its right to amend the Start Date pursuant to clause 5.3 except where:
    - (i) the Authority exercises its rights pursuant to Clause 4.2 or 4.3 of the Conditions Precedent Agreement to alter such Start Date; or
    - (ii) the relevant acts or omissions of the Authority arise as a result of or in connection with any failure by the ODP to satisfy any of the conditions precedent set out in the Conditions Precedent Agreement;
  - (q) the Expiry Date is a date that is later than 01:59 on 16 October 2033 in consequence of the Authority exercising its right to amend the Start Date pursuant to clause 5.3;
  - (r) the circumstances set out in paragraph 1.5 of Schedule 2.2 (*Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases*) occur;
  - (s) NOT USED;

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- (t) NOT USED;
  - (u) NOT USED;
  - (v) any two or more of the foregoing that the Authority groups together in accordance with any procedures issued by it pursuant to paragraph 1.4 of Schedule 9.3 (Variations to the ODP Grant Agreement and Incentivising Beneficial Changes) occur;

**“Change of Control”**

has the meaning given to it in clause 8.1 (Change of Control);

**“Change of Law”**

means the coming into effect after the date of the ODP Grant Agreement of:

- (a) Legislation; or
- (b) any applicable judgment of a court of Law which changes a binding precedent,

the terms of which apply only to the railway industry, a particular section of the railway industry or the provision of services to the railway industry and not to other transport modes or to industries other than the railway industry, and without limitation:

- (i) excluding any changes in Taxation;
- (ii) excluding any changes which were foreseeable at the date of the ODP Grant Agreement, and for this purpose, but without limitation, there shall be regarded as foreseeable any Legislation which on the date of the ODP Grant Agreement has been published:
  - (A) in a draft parliamentary bill as part of a government departmental consultation paper;
  - (B) in a parliamentary bill;
  - (C) in a draft statutory instrument; or

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- (D) as a proposal in the Official Journal of the European Union except to the extent that such proposal is intended to apply solely within member states other than the United Kingdom,

to the extent that the same is subsequently enacted in substantially the same form as the form in which it was previously so published. In relation to the application of this sub paragraph (ii), each TSI shall be considered separately;

Change of Law (1) includes any Legislation, which only applies to the railway industry, which is made under the Health and Safety at Work etc. Act 1974 and which is not excluded under (i) and (ii) (a **“Specifically Included Change of Law”**), but (2) excludes any Legislation (other than a Specifically Included Change of Law) which is made with the intention or effect of specifically applying to (or disapplying in relation to) the railway industry any other Legislation which does not apply only to the railway industry;

**“Charge Variation”**

means a variation:

- (a) to a Relevant Agreement; and
- (b) which is effected as a result of a Charging Review (including any variation in connection with an Incremental Output Statement Charge);

**“Charging Review”**

means:

- (a) the exercise by the ORR of its powers under:
  - (i) Part 7 of Schedule 7 of the Track Access Agreement to which the ODP is a Party on the Start Date or any Replacement Agreement which is or is deemed to be a Relevant Agreement in accordance with the definition of that term;
  - (ii) Condition F12.4 (Review of Long Term Charge) of the Station Access Conditions

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in relation to any station which is not an Independent Station; or

(iii) Condition 42.5 of the Independent Station Access Conditions in relation to any station which is an Independent Station or a Station;

(b) the following by the ORR of the procedure in Schedule 4A of the Act;

(c) the exercise by the ORR of any of its powers or the following of any other procedure, which, in the Authority's reasonable opinion:

(i) has an equivalent effect to; or

(ii) is intended to fulfil the same function as,

any of the powers referred to in paragraphs (a) or (b) in relation to any Relevant Agreement provided that, without limitation, the exercise by ORR of any of its approval rights under Condition F12 of the Station Access Conditions shall not be considered to have an equivalent effect to or fulfil the same function as any of the powers referred to in paragraphs (a) or (b). For this purpose, Relevant Agreement includes any Relevant Agreement which is not the subject of any previous Charging Review; or

(d) any amendment to a Relevant Agreement, or entry into a new Relevant Agreement which is approved by the ORR to the extent that it relates to an Incremental Output Statement Charge or a scheme to which that charge relates;

**“Charter Service”**

means a railway passenger service, whether operated on the same routes as the Passenger Services or not:

(a) which is not reflected in the Timetable;

(b) which does not conform to the pattern of railway passenger services normally provided by the ODP;

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- (c) for which the advance booking or booking arrangements for seats on the relevant service are, in the reasonable opinion of the Authority, materially different from those generally applicable to the Passenger Services;
  - (d) for which tickets are available on a restricted basis or on terms and conditions which, in the reasonable opinion of the Authority, are materially different from those generally applicable to the Passenger Services; and/or
  - (e) for which the departure time, journey time and calling pattern are, in the reasonable opinion of the Authority, materially different from those of the Passenger Services,

and which, in the opinion of the Authority, is not a railway passenger service provided by the ODP as part of the Passenger Services;

**“Child Price”**

means, in relation to any Fare, the amount charged or chargeable to a person under the age of 16 in respect of such Fare;

**“Claw Back Period”**

means the period commencing on the CVL Revised Expiry Date or the TFC Termination Date (as applicable) and expiring on the date on which the Performance Bond expires;

**“Climate Change Strategy for Wales”**

means the Climate Change Strategy for Wales dated October 2010;

**“Closed Scheme Employees”**

has the meaning given to it in paragraph 3.2 of Schedule 16 (Pensions);

**“Closure”**

means a discontinuance or closure under Part 4 of the Railways Act 2005 of any of the Passenger Services or of any network on which the Passenger Services may be operated or of any of the Stations or of any part of such network or Station;



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| <b>“CO2e”</b>  | means CO2 equivalent including other greenhouse emissions;  |
| <b>“Code of Practice”</b>  | means the code of practice for protecting the interests of users of railway passenger services or station services who have disabilities, as prepared, revised from time to time (with the approval of the Disabled Persons Transport Advisory Committee) and published by the Secretary of State pursuant to Section 71B of the Act and which is available at <a href="https://www.gov.uk/government/publications/accessible-railway-stations-design-standards">https://www.gov.uk/government/publications/accessible-railway-stations-design-standards</a> (or such other applicable web address that is adopted by the Authority from time to time); |
| <b>“Code of Practice for Cancellations and Missed Station Stops”</b> | means the code of practice as set out in Appendix 3 to Schedule 7.1;  |
| <b>“Collateral Agreement”</b>  | means an agreement which is required to be entered into by the ODP with Network Rail or any other entity as a condition to any Access Agreement of which the ODP is the beneficiary;  |
| <b>“Commercial Return”</b>   | means where the CCI Scheme Revenue equals or exceeds the aggregate of the CCI Scheme Costs and the CCI Scheme Margin;   |
| <b>“Committed Obligations”</b>                                       | means any of the ODP’s obligations listed in Part 1 (Committed Obligations) of Schedule 6.2 (Committed Obligations);  |
| <b>“Committed Obligation Pre-Condition”</b>                          | has the meaning given to it in paragraph 7.1 of Part 2 (Special Terms related to Committed Obligations) of Schedule 6.2 (Committed Obligations);  |
| <b>“Communications Platforms”</b>                                    | means the ODP’s website and other online channels operated by the ODP;  |
| <b>“Community Rail Partnership”</b>                                  | means any not for profit organisation of the same name that has an interest in the development of responsive and good quality railway passenger services;   |

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| <b>“Community Rail Report”</b>            | has the meaning given to it in paragraph 2.6 of Schedule 13.1 (Rail Industry Initiatives);   |
| <b>“Community Rail Route”</b>             | means any route in respect of which the Authority determines that any relevant Community Rail Partnership has an interest;   |
| <b>“Community Rail Strategy”</b>          | means the Community Rail Development Strategy published in November 2004 and which provides a broad framework within which rural community routes can be put on an improved financial footing. The Community Rail Development Strategy may be updated from time to time;   |
| <b>“Commuter Fare”</b>                    | means a fare contained in the Commuter Fares Document;   |
| <b>“Commuter Fares Basket”</b>            | <p>means the grouping of Commuter Fares:</p> <ul style="list-style-type: none"> <li>(a) determined by the Authority pursuant to Schedule 5.3 (Allocation of Fares to Fares Baskets);</li> <li>(b) for the purposes of regulating aggregate Prices or Child Prices, as the case may be, in accordance with Schedule 5.4 (Regulation of Fares Basket Values);</li> <li>(c) amended by the Authority from time to time in accordance with Schedule 5.7 (Changes to Fares and Fares Regulation); and</li> </ul> <p>set out in the Commuter Fares Document;</p> |
| <b>“Commuter Fares Document” or “CFD”</b> | means the document in the agreed terms marked CFD as the same may be amended from time to time in accordance with Schedule 5.7 (Changes to Fares and Fares Regulation);  |
| <b>“Compulsory Inter-available Flow”</b>  | has the meaning given to it in the Ticketing and Settlement Agreement;   |
| <b>“Computer System”</b>                  | means computer hardware and computer software, including licensed third party software and data protocols;   |

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| <b>“Concept Design”</b>                       | has the meaning given to it in Appendix 1 of Schedule 3B (Infrastructure Services and ODP Infrastructure Works);   |
| <b>“Conditions Precedent Agreement”</b>       | means the agreement between the Authority and the ODP of even date herewith specifying certain conditions to be satisfied or waived by the Authority prior to the issue of a Certificate of Commencement;  |
| <b>“Confidential Information”</b>             | has the meaning given to it in paragraph 1 of Schedule 17 (Confidentiality and Freedom of Information);  |
| <b>“Connection”</b>                           | means a connection (however described) between any of the Passenger Services provided by the ODP and any other railway passenger service provided by it or any other Train Operator or any bus, ferry or shipping service and cognate phrases shall be construed accordingly;  |
| <b>“Connection Agreement”</b>                 | means any agreement entered into by the ODP and Network Rail on or before the Start Date relating to the connection of a Depot to the relevant part of the network;  |
| <b>“Construction Demolition Sector Plan”</b>  | means the Construction and Demolition Sector Plan dated November 2012;   |
| <b>“Construction Wales Innovation Centre”</b> | means the CITB funded training centre based within the University of Wales;  |
| <b>“Contingency Plan”</b>                     | has the meaning given to it in paragraph 1.1(a)(iv) of Schedule 10.3 (Force Majeure and Business Continuity);  |
| <b>“Continuation Document”</b>                | means any ODP Grant Agreement, direct award, interim ODP Grant Agreement or other arrangement pursuant to which the ODP is required to provide services for the carriage of passengers by railway which is entered into by the ODP in respect of some or all of the same Passenger Services by way of direct or indirect continuation of the arrangement currently in place under the ODP Grant Agreement; |
| <b>“Contractualised Revenue Line”</b>         | means the amounts provided under Table 1 of Appendix 1 to Schedule 8.4;  |
| <b>“Contract Manager”</b>                     | means a person appointed from time to time by the ODP to fulfil certain duties including to manage the ODP Grant   |

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Agreement on behalf of the ODP and to facilitate the performance by the ODP of its obligations under the ODP Grant Agreement;

**“Control”**

means, in respect of a person, that another person (whether alone or with others and whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, contract or otherwise):

- (a) has the power to appoint and/or remove all or the majority of the members of the board of directors or other governing body of that person or of any other person which Controls that person;
- (b) controls or has the power to control the affairs and policies of that person or of any other person which Controls that person;
- (c) is the parent undertaking of that person or of any other person which Controls that person; or
- (d) possesses or is, or will be at a future date, entitled to acquire:
  - (i) thirty percent (30%) or more of the share capital or issued share capital of, or of the voting power in, that person or any other person which Controls that person;
  - (ii) such part of the issued share capital of that person or any other person which controls that person as would, if the whole of the income of such person were distributed, entitle him or her to receive thirty percent (30%) or more of the amount so distributed; or
  - (iii) such rights as would, in the event of the winding-up of that person or any other person which controls that person or in any other circumstances, entitle him or her to receive thirty percent (30%) or

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more of the assets of such person which would then be available for distribution,

and **“Controlled”** shall be construed accordingly;

- “Controlled Emission Toilet” or “CET”** means a toilet fitted on a Rolling Stock Unit and which retains effluent in retention tanks such that effluent is not discharged on the rail tracks;
- “Core Valley Lines” or “CVL”** means the routes referred to in paragraph 2.1(b) of Schedule 1.1 (Rail Services and Service Development);
- “Count Equipment”** means any load-weigh, infrared, CCTV or other type of equipment as may from time to time be installed on any train in the Train Fleet for the purposes of (amongst other things) passenger counting, including that specified in paragraph 3 of Schedule 1.5 (Information about Passengers);
- “Creating”** has the meaning given to it in the Ticketing and Settlement Agreement and cognate expressions shall be construed accordingly;
- “Critical Service Level”** means, in relation to a Benchmark for any Reporting Period, the number set out in the relevant column of the Short Formation Benchmark Table and the PTL Benchmark Table (as the case may be) and in the row of the applicable table for that Reporting Period;
- “CRM Data”** means Personal Data (including any or all of name, address, e-mail address and ticket purchasing history, credit and debit card details) collected by or on behalf of the ODP relating to persons travelling on or purchasing tickets for travel on the Passenger Services or other services for the carriage of passengers by railway;
- “CRM Data Processor”** means any Data Processor who, from time to time, is processing or has processed CRM Data on behalf of the ODP;
- “CRM Obligations”** has the meaning given to it in paragraph 4.5 of Schedule 1.5 (Information about Passengers);

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| <b>“CRM System”</b>   | means any system (whether a Computer System or otherwise) for the collection of CRM Data and/or onto which CRM Data is input, processed and/or held as such system may be amended or altered from time to time;  |
| <b>“Cross Border Forum”</b>   | means proposed meetings established by the Secretary of State and the Authority to discuss issues relating to Rail Services in Wales with key stakeholders including, MPs, combined authorities and local authorities;   |
| <b>“Crowded Dates”</b>  | means the dates as defined in Column 3 of Table 1 in Appendix 2 of Schedule 1.1;   |
| <b>“Crowded Period”</b>   | means the period of time set out in Column 3 of Table 1 in Appendix 2 of Schedule 1.1;   |
| <b>“Crowded Service”</b>  | means each Passenger Service listed in Column 2 of Table 1 in Appendix 2 of Schedule 1.1;  |
| <b>“Crowd Mitigation Plan”</b>  | means a crowd mitigation plan provided by the ODP in accordance with Appendix 2 of Schedule 1.1 which may include alterations to the Train Plan, including changes to the timing or frequency of Passenger Services and/or the rolling stock assigned to those Passenger Services (any such alterations shall be subject to agreement by the Authority prior to implementation); |
| <b>“Crowding Peak Period”</b>   | means, in relation to any Passenger Service during a Weekday, the period between 07:00 and 09:30 (inclusive) and the period between 16:30 and 19:00 (inclusive);   |
| <b>“CRP Amount”</b>   | has the meaning given to it in paragraph 3.8 of Schedule 13.1 (Rail Industry Initiatives);   |
| <b>“Current ODP Year”</b>   | has the meaning given to it in paragraph 1.5 of Schedule 8.2 (Profit Share Mechanism);   |
| <b>“Customer, Staff and Stakeholder Engagement Strategy” or “CSSES”</b> | means the Customer, Staff and Stakeholder Engagement Strategy to be approved by the Authority in accordance with paragraph 16.1 of Schedule 7.2 and any replacement Customer, Staff and Stakeholder Engagement Strategy revised in accordance with paragraph 16.2 of Schedule 7.2  |

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|   | (National Rail Passenger Surveys, Customer Report and CCI Scheme);   |
| <b>“Customer Report”</b>  | means a report in the format and providing the information specified in the Customer, Staff and Stakeholder Engagement Strategy published in accordance with paragraph 16 of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCI Scheme); |
| <b>“Customer Satisfaction Survey” or “CSS”</b>                  | means the survey to be performed by the ODP in accordance with paragraph 5 of Schedule 7.2;  |
| <b>“Customer Satisfaction Survey Methodology” or “CSSM”</b>     | means the methodology to be adopted by the ODP in conducting the Customer Satisfaction Survey as set out in paragraph 5.1(b) of Schedule 7.2;  |
| <b>“CVL Asset”</b>  | means the land, property, buildings and other assets and infrastructure demised by the CVL Asset Lease from time to time and shall mean each individual asset as the context shall require;  |
| <b>“CVL Asset Lease”</b>  | means the lease in respect of the CVL Assets to be entered into between the lessor and the ODP in accordance with Schedule 3A (Infrastructure Manager Services), and as amended from time to time under the CVL Asset Lease;                                 |
| <b>“CVL Asset Notice”</b>                                       | has the meaning given to it in clause 5.4;   |
| <b>“CVL Asset Notice Protected Rolling Stock Fixed Payment”</b> | means the net present value rental termination payment as calculated under the relevant lease;   |
| <b>“CVL Asset Transfer”</b>                                     | means the transfer of the CVL Asset from Network Rail to the Authority and the lease of the CVL Asset from the Authority to the ODP;   |
| <b>“CVL Asset Transfer Date”</b>                                | the date on which the CVL Asset transfers to Authority ownership and the infrastructure manager role shifts from Network Rail to the ODP;  |
| <b>“CVL Protected Period”</b>                                   | means the period commencing on the CVL Revised Expiry Date and expiring on the earlier of: <ul style="list-style-type: none"> <li>(a) the expiry date of the Protected Rolling Stock Leases; and</li> </ul>  |

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|  | (b) the date that is fifteen (15) calendar years from the Start Date;   |
| <b>“CVL PTL Performance Payment”</b>           | has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Operational Performance);   |
| <b>“CVL Rail Services”</b>                     | means the rail services on the Core Valley Lines;   |
| <b>“CVL Revised Expiry Date”</b>               | means on the date that is seven (7) calendar years from the Start Date;   |
| <b>“CVL Rolling Stock”</b>                     | means the specific rolling stock assigned to the CVL Service Type as set out in Column 4 of Appendix 1 to Schedule 1.6 and in Tables 2D and 2E of Appendix 2 to Schedule 1.6;   |
| <b>“CVL Services”</b>                          | means: <ul style="list-style-type: none"> <li>(a) the CVL Rail Services;</li> <li>(b) the Infrastructure Services; and</li> <li>(c) the Infrastructure Manager Services;</li> </ul>   |
| <b>“CVL Track Access Performance Schedule”</b> | means a performance monitoring mechanism, whether incorporated in a track access agreement or not, which has been approved by the Authority and performs a function equivalent to Schedule 8 of the Track Access Agreement including, as a minimum: <ul style="list-style-type: none"> <li>(a) monitoring and recording the arrival time of each train at each Monitoring Point;</li> <li>(b) comparing such data against the relevant Timetable; and</li> <li>(c) attributing a weighting to each Monitoring Point.</li> </ul> |
| <b>“CVL Transformation”</b>                    | has the meaning given to it in Appendix 1 of Schedule 3B (Infrastructure Services and ODP Infrastructure Works);  |
| <b>“Data Controller”</b>                       | has the same meaning as in GDPR;  |
| <b>“Data Processor”</b>                        | has the same meaning as in GDPR;  |



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**“Data Protection Requirements”**

means:

- (a) the Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and any legislation amending, supplementing or replacing the GDPR including but not limited to the Data Protection Bill (once enacted);
- (b) the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (*SI 2000/2699*), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (*SI 2426/2003*);
- (c) any other legislation in force from time to time in the United Kingdom relating to privacy and/or the processing of the Data; and
- (d) any statutory code of practice issued from time to time by the Information Commissioner’s Office or a relevant Central Government Body in relation to such legislation;

**“Data Site Information”**

has the meaning given to it in paragraph 3.5 of Schedule 15.1 (Reletting Provisions);

**“Data Subject”**

has the same meaning as in GDPR;

**“Dataset”**

means the data specified in Appendix 1 (Environmental Information) to Schedule 11.2 (Management Information) as the same may be amended from time to time by the Authority (acting reasonably);

**“Deemed Minutes Late”**

is the deemed minutes late at that Monitoring Point on that day allocated to the ODP, derived from the following formula:

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DML = TC x CM

where:

TC is the number of Cancelled Stops recorded at that Monitoring Point on that day for which the ODP is allocated responsibility in accordance with paragraph 5.12 to the Schedule 8 of the Track Access Agreement; and

CM is the Cancellation Minutes for that Service Group set out in Column J of Appendix 1 of the Track Access Agreement;

**“Deferral Notice”**

has the meaning given to it in clause 5.4;

**“Delay”**

means where a Rail Services Milestone is not Achieved by the relevant Planned Rail Services Milestone Delivery Date;

**“Delay Repay”**

means the compensation to be paid by the ODP to passengers for delays to Passenger Services as set out in paragraph 6.2 of Schedule 1.4;

**“Delayed Cascade Mitigation Plan”**

has the meaning given to it in paragraph 3.8 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);

**“Departure Station”**

has the meaning given to it in paragraph 2.2(b) of Appendix 2 (Accessible Transport Arrangements) to Schedule 4 (Accessibility and Inclusivity);

**“Depot”**

means a depot in respect of which the ODP has entered into a Depot Lease;

**“Depot Access Conditions”**

has the meaning given to it in the relevant Access Agreement to which it relates;

**“Depot Lease”**

means:

- (a) any lease of a depot to which the ODP is a party as at the Start Date; or
- (b) any other lease of a depot in relation to which the ODP becomes the Facility Owner at any time during the Rail Services Term;

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| <b>“Derivative Output”</b>  | means Intellectual Property Rights that are derived from or generated by the RPC Database or the Preliminary Database when querying such database (which includes, but is not limited to, the format of all reports and analysis);  |
| <b>“Designated CO Primary Rail Services Assets”</b>               | has the meaning given to it in paragraph 10.1 of Part 2 (Special Terms related to Committed Obligations) of Schedule 6.2 (Committed Obligations);   |
| <b>“Designated Employer”</b>                                      | has the meaning given to it in the Pension Trust;   |
| <b>“Destination Station”</b>                                      | has the meaning given to it in paragraph 2.2(b) of Appendix 2 (Accessible Transport Arrangements) to Schedule 4 (Accessibility and Inclusivity);  |
| <b>“Direct Agreement”</b>   | means any agreement made, or to be made, from time to time between the Authority and the counterparty of a Key Contract in relation to such Key Contract, including any agreement entered into by the Authority under Schedule 14.3 (Key Contracts);  |
| <b>“Disabled People’s Protection Policy”</b>                      | means the ODP’s policy for the protection of persons with disabilities which the ODP is required to establish and review from time to time in accordance with the conditions of its Licences in respect of the operation of railway passenger services and/or stations;   |
| <b>“Disabled Person”</b>  | is a reference to a person who has a disability as defined in the EA;   |
| <b>“Disabled Persons Transport Advisory Committee” or “DPTAC”</b> | means the committee with that name established under Section 125 of the Transport Act 1985 and its statutory successors;  |
| <b>“Discount Card”</b>  | has the meaning given to it in the Ticketing and Settlement Agreement;  |
| <b>“Discount Fare Scheme”</b>                                     | means each of the schemes listed at paragraph 3 of Appendix 1 (List of Transport, Travel and Other Schemes) to Schedule 2.5 (Transport, Travel and Other Schemes) in each case until such time as a scheme may cease to be approved by the Authority or by the Secretary of State for the purposes of section 28 of the Act and any new |

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schemes introduced for the purpose of and in accordance with section 28 of the Act;

**“Dispute Resolution Rules”**

means the procedures for the resolution of disputes known as “The Railway Industry Dispute Resolution Rules”, as amended from time to time in accordance with the terms thereof. The rules are available at <http://accessdisputesrail.org/RIDR/RIDR%20Rules.pdf> (or such other applicable web address that is adopted by the Railway Industry Dispute Resolution Committee from time to time);

**“Disputed Cancellation”**

means a Passenger Service:

- (a) which is included in the Enforcement Plan of the Day and which is cancelled; or
- (b) which is included in the Enforcement Plan of the Day and which operates less than fifty percent (50%) of its scheduled mileage (as prescribed in the Enforcement Plan of the Day),

in either case, in circumstances where attribution of responsibility for the same is, at the relevant time, in dispute between Network Rail and the ODP pursuant to the Track Access Agreement;

**“Disputed Partial Cancellation”**

means a Passenger Service which is included in the Enforcement Plan of the Day and which:

- (a) misses a stop; or
- (b) completes fifty percent (50%) or more, but less than one hundred percent (100%) of its scheduled journey as prescribed in the Enforcement Plan of the Day,

in either case, in circumstances where attribution of responsibility for the same is, at the relevant time, in dispute between Network Rail and the ODP pursuant to the Track Access Agreement;

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| <b>“Disputes Secretary”</b>          | means the person appointed as disputes secretary from time to time in accordance with the Dispute Resolution Rules;   |
| <b>“DOTAS”</b>                       | has the meaning given to it in paragraph 6.3 of Schedule 12 (Financial Covenants and Bonds);  |
| <b>“Draft Implementation Plan”</b>   | means the plan to be provided by the ODP to the Authority in accordance with paragraph 1 of Schedule 18.1;  |
| <b>“EA”</b>                          | means the Equality Act 2010;  |
| <b>“EA Claim”</b>                    | has the meaning given to it in paragraph 3.1 of Schedule 4 (Accessibility and Inclusivity);   |
| <b>“EA Requirements”</b>             | means the duties of a provider of services under Sections 20(3), 20(5) and Sections 20(9)(a) and 20(9)(b) in relation to Section 20(4), of the EA;  |
| <b>“Emergency Events”</b>            | has the meaning given to it in paragraph 1(e) of Schedule 10.3 (Force Majeure and Business Continuity);   |
| <b>“EMV”</b>                         | means contactless payment cards that conform to the international standards issued by EMVCo (owned by American Express, Discover, JCB, MasterCard, UnionPay and Visa) which manages, maintains and enhances the EMV1 integrated circuit card specifications;  |
| <b>“Enforcement Plan of the Day”</b> | <p>means the Plan of the Day except for any:</p> <ul style="list-style-type: none"> <li>(a) additions to such Plan of the Day of any railway passenger services which are not included in the Timetable;</li> <li>(b) omissions from such Plan of the Day of any Passenger Services included in the Timetable; and/or</li> <li>(c) rescheduling in such Plan of the Day of any Passenger Services from their scheduling in the Timetable,</li> </ul> <p>in each case:</p> |

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- (i) as proposed by the ODP in breach of its obligations in paragraph 4 of Schedule 1.2 (Operating Obligations); or
  - (ii) as agreed by the ODP in breach of its obligations in paragraph 3 of Schedule 1.2 (Operating Obligations);

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| <b>“England-only Service”</b>                  | means a railway passenger service which is procured as part of this ODP Grant Agreement but which operates solely in England and does not make any scheduled calls in Wales;                                    |
| <b>“English Services”</b>                      | means that part of a Welsh service which is not a Welsh component of a Welsh service or a Wales-only service and which is specified in or delivered through the ODP Grant Agreement                             |
|  | English services includes England-only services;  |
| <b>“English Station”</b>                       | means a station in England at which a station stop is scheduled in the Train Plan;  |
| <b>“Environmental Information Regulations”</b> | means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or any Central Government Body in relation to such Regulations; |
| <b>“Environmental Management Plan”</b>         | has the meaning given to it in paragraph 3.4 of Part 4 of Schedule 13.3;  |
| <b>“Equivalent Fare”</b>                       | has the meaning given to it in paragraph 6.1 of Schedule 5.7 (Changes to Fares and Fares Regulation);   |
| <b>“Equivalent Flow”</b>                       | has the meaning given to it in paragraph 6.1(b) of Schedule 5.7 (Changes to Fares and Fares Regulation);  |
| <b>“ERDF”</b>                                  | means the European Regional Development Fund;   |
| <b>“ERTMS”</b>                                 | means the European Rail Traffic Management System;  |

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| <b>“ERTMS Programme”</b>         | means the Network Rail cross rail industry programme for delivering the national implementation of ERTMS;  |
| <b>“Escrow Documents”</b>        | means those documents and other items referred to in paragraph 1.1 of Schedule 9.2 (Identity of the Final Tender Financial Model);   |
| <b>“Estimated Profit Stream”</b> | <p>means estimated total operating profit of the ODP from the date that the Change of Control (pursuant to clause 8 (Change of Control and Facilitation Fee)) is to occur until the Expiry Date as reasonably determined by the Authority. In reasonably determining the Estimated Profit Stream the Authority shall:</p> <ul style="list-style-type: none"> <li>(a) take into account all relevant circumstances and have due regard to the Final Tender Financial Model, the profit and loss forecast in the Initial Business Plan and the most recent Annual Business Plan and the assumptions in the Record of Assumptions;</li> <li>(b) use the accounting policies and standards set out in the Record of Assumptions and applied through the Final Tender Financial Model;</li> <li>(c) estimate profit: <ul style="list-style-type: none"> <li>(i) before taking into account: <ul style="list-style-type: none"> <li>(A) interest, finance income and finance charges (other than finance items recognised in respect of retirement benefits) and dividends and other distributions of profit;</li> <li>(B) any taxation on profits including corporation tax;</li> <li>(C) shares of the profit of any Affiliate of the ODP, except dividends received in cash;</li> </ul> </li> </ul> </li> </ul> |

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(D) non cash entries in respect of the ODP Services Section and any other pension schemes to the extent connected with the Rail Services, excluding accruals or prepayments of any normal pension contributions due; and

(ii) after taking into account:

(A) Rail Services Payments;

(B) all extraordinary and exceptional items, as defined under GAAP;

(C) the ODP's normal pension contributions in relation to the ODP Services Section and any other pension schemes to the extent connected with the Rail Services;

(D) any payments to Affiliates of the ODP (including management fees and royalty fees) except to the extent that such payments exceed the amount determined in accordance with the formula set out in paragraph 1.2(a)(v) of the definition of Relevant Profit in paragraph 1.2 of Schedule 8.2 (Profit Share Mechanism); and

(E) any sums capitalised in relation to maintenance expenditure on rolling stock or other capital equipment; and



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- (d) calculate amounts in real terms as at the date of the Change of Control and apply the prevailing discount rate per annum (in real terms) stated in HM Treasury's "**Green Book Appraisal Guidelines**" (such rate being as at the date of the ODP Grant Agreement three point five percent (3.5%) per annum (in real terms));
- "Estimated Revisions"** has the meaning given to it in paragraph 10.3 of Schedule 9.1 (Financial and Other Consequences of Change);
- "Evening Peak"** means, in relation to any Passenger Service, the period between 1600 and 1859 (inclusive) during a Weekday or such other continuous three hour period between 1200 and 2359 (inclusive) as the Authority may specify from time to time;
- "Event of Default"** means any of the events set out in paragraph 1 of Schedule 10.2 (Events of Default and Termination Events);
- "Exceptional Items"** means those items listed as Appendix 2 (*Exceptional Items*) to Schedule 18.2;
- "Excluded Data"** has the meaning given to it in paragraph 15.1(a)(i) of Schedule 11.2 (Management Information);
- "Existing Expenditure"** has the meaning given to it in paragraph 11.2(a) of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCI Scheme);
- "Expiry Date"** means the later of:
- (a) 01:59 on 16 October 2033; or
  - (b) any such later date that is specified by the Authority pursuant to clause 5.3 (Duration of the ODP Grant Agreement); or
  - (c) any such later date to which the ODP Grant Agreement is continued in accordance with clause 5.2 (Duration of the ODP Grant Agreement);

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| <b>“Extended Stage”</b>    | <b>Initial Reporting</b> | means the Reporting Periods within the period from the first Reporting Period of the Rail Services Term to the twenty sixth (26 <sup>th</sup> ) Reporting Period of the Rail Services Term;   |
| <b>“Facilitation Fee”</b>  |                          | has the meaning given to it in clause 8.4 (Change of Control and Facilitation Fee));  |
| <b>“Facility Owner”</b>    |                          | has the meaning given to the term facility owner in Section 17(6) of the Act;   |
| <b>“Fair Trade Nation”</b> |                          | means that status obtained by Wales following its achievement of the “Fair Trade National Milestones”;  |
| <b>“Fare”</b>              |                          | means: <ul style="list-style-type: none"> <li>(a) the right, exercisable against one or more Train Operators, subject to any applicable rights or restrictions and the payment of the relevant price, to make one or more journeys on the network or to carry on such a journey an item of luggage or an animal (where this right does not arise under the relevant conditions of carriage except on the payment of a fee) and, where applicable, to obtain goods or services from a person; and</li> <li>(b) for the purposes only of Schedule 5.3 (Allocation of Fares to Fares Baskets) to Schedule 5.8 (Fares Regulation Information and Monitoring) (inclusive) and the definitions of Commuter Fare, Protected Fare, Return Fare, Single Fare, Protected Weekly Season Ticket, Protected Return Fare and paragraph (b) of the definition of Season Ticket Fare, a Fare as defined under paragraph (a) that is:</li> <li>(c) valid for a journey or journeys on the Passenger Services included in the Timetable or other railway passenger services which are required to be included in another relevant Train Operator’s passenger timetable;</li> <li>(d) sold under the Travelcard Agreement; or</li> </ul> |

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|   | (e) | a Cross London Ticket (as defined in the Through Ticketing (Non Travelcard) Agreement);  |
|   | (f) | sold under the Pay As You Go Agreement utilising TTL smart media as defined in such agreement;   |
| <b>“Fare Year”</b>                                  |     | means the period from 1 January in any year to 31 December in the same year;   |
| <b>“Fares Basket”</b>                               |     | means the Commuter Fares Basket, the Protected Fares Basket B or the Protected Fares Basket C;   |
| <b>“Fares Flex Objectives”</b>                      |     | has the meaning given to it in paragraph 9.1 of Schedule 5.7 (Changes to Fares and Fares Regulation);  |
| <b>“Fares Flex Proposal”</b>                        |     | has the meaning given to it in paragraph 9.2 of Schedule 5.7 (Changes to Fares and Fares Regulation);  |
| <b>“Fares Document”</b>                             |     | means any of the Commuter Fares Document and the Protected Fares Document;   |
| <b>“Fares Setting Round”</b>                        |     | has the meaning given to it in the Ticketing and Settlement Agreement;   |
| <b>“Final ODP Year”</b>                             |     | means the ODP Year ending on the last day of the Rail Services Term;   |
| <b>“Final Tender Financial Model”<br/>or “FTFM”</b> |     | means the ODP’s financial model in the agreed terms marked FTFM provided to the Authority on the date of the ODP Grant Agreement in accordance with Schedule 9.2 (Identity of the Final Tender Financial Model) including: <ul style="list-style-type: none"> <li>(a) the financial model in respect of Rail Services;</li> <li>(b) Operational Models;</li> <li>(c) Record of Assumptions;</li> <li>(d) CVL Concept Design costing model;</li> <li>(e) Infrastructure maintenance model;</li> <li>(f) operating manuals; and</li> <li>(g) any other supplementary materials;</li> </ul> |

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| <b>“Financial Action Plan”</b>                  | means any action plan produced by the ODP pursuant to paragraph 9.2(d)(vii) of Schedule 11.2 (Management Information), where the level of its financial performance specified in the Management Accounts is materially worse than forecast by the ODP in its current Business Plan;  |
| <b>“Financial Conduct Authority”</b>            | means the UK Financial Conduct Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS and with company registered number 01920623 or such other regulatory body which may succeed or replace it from time to time;  |
| <b>“Financial Formats” or “FF”</b>              | means the ODP’s financial formats in the agreed terms marked FF;   |
| <b>“Financial Ratios”</b>                       | means the Rail Service financial ratios specified in paragraph 2 of Schedule 12 (Financial Covenants and Bonds);   |
| <b>“First Additional Expenditure Year”</b>      | has the meaning given to it in paragraph 1.1 of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCI Scheme);  |
| <b>“First Profit Share Threshold” or “FPST”</b> | has the meaning given to it in paragraph 1.1(a) of Schedule 8.2 (Profit Share Mechanism);  |
| <b>“Fleet Fitment and Mobilisation Costs”</b>   | means costs associated with the installation, maintenance and operation of ERTMS on the ODP’s train fleets. This includes the capital and operational costs of the ERTMS equipment fitted to train fleets, installation and test activities, approvals, maintenance activities and maintenance equipment, staff training and training equipment excluding costs covered by Network Rail; |
| <b>“Flow”</b>                                   | has the meaning given to it in the Ticketing and Settlement Agreement;   |
| <b>“Force Majeure Event”</b>                    | means any of the events described as such in paragraph 1 of Schedule 10.3 (Force Majeure and Business Continuity) where the conditions specified in paragraph 2 of Schedule 10.3 (Force Majeure and Business Continuity) are satisfied;  |

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| <b>“Forecast Modified Revenue”</b>                 | means, in relation to any Reporting Period, the items specified in the definition of Modified Revenue, as most recently forecast for that Reporting Period pursuant to paragraph 9.3(a) of Schedule 11.2 (Management Information);  |
| <b>“Forecast Operating Costs”</b>                  | means, in relation to any Reporting Period, the items specified in the definition of Actual Operating Costs, as most recently forecast for that Reporting Period pursuant to paragraph 9.3 of Schedule 11.2 (Management Information) adjusted for any movement in creditors arising from deemed PCS Facility borrowing pursuant to Clause 18 of the Funding Deed;   |
| <b>“Forecast Passenger Demand”</b>                 | means the forecast prepared by the ODP pursuant to paragraph 12.2 of Part 2 (Service Development) of Schedule 1.1 (Rail Services and Service Development) in respect of: <ul style="list-style-type: none"> <li>(a) the number of passengers travelling in each class of accommodation: <ul style="list-style-type: none"> <li>(i) on each Passenger Service;</li> <li>(ii) on each Route; and/or</li> <li>(iii) at any station or between any stations; and</li> </ul> </li> <li>(b) the times of day, week or year at which passengers travel,</li> </ul> <p>for the period in respect of which the next Timetable is to apply;</p> |
| <b>“Fourth Profit Share Threshold” or “FthPST”</b> | has the meaning given to it in paragraph 1.1(d) of 8.2 (Profit Share Mechanism);  |
| <b>“Freedom of Information Act” or “FOIA”</b>      | means the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant Central Government Body in relation to the Freedom of Information Act 2000;  |
| <b>“Full Time Equivalent Job”</b>                  | means a permanent paid job which is expected to exist for at least twelve (12) months. It is to be based on minimum   |

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of thirty (30) hours per week. Where the post involves working less than thirty (30) hours per week (subject to a minimum of sixteen (16) hours per week) then the hours worked may be divided by thirty (30) to give the proportion of a Full Time Equivalent Job safeguarded or provided. This does not include jobs which have been relocated;

**“Funding Deed”**

means the deed made between the Authority, the ODP and the Guarantor dated on or about the date of the ODP Grant Agreement specifying arrangements relating to the funding for the ODP by the Parent and giving rights to the Authority in relation to such funding;

**“Future Generations Act”**

means the Well-being of Future Generations (Wales) Act 2015;

**“FXD”**

has the meaning given to it in Appendix 1 (Annual Rail Services Payments) to Schedule 8.1 (Rail Services Payments);

**“GAAP”**

means generally accepted accounting principles in the United Kingdom, as derived from and including the accounting requirements of the Companies Act 2006, ‘Financial Reporting Standards 100, 101 and 102’, abstracts issued by the Urgent Issues Task Force of the Accounting Standards Board and, where appropriate, International Financial Reporting Standards and the listing rules of the Financial Conduct Authority, in each case, as amended from time to time;

**“GDPR”**

means the Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and any legislation amending, supplementing or replacing the GDPR including but not limited to the Data Protection Bill (once enacted);

**“General Anti-Abuse Rule”**

has the meaning given to it in paragraph 6.3 of Schedule 12 (Financial Covenants and Bonds);

**“Good Industry Practice”**

means using the standards, practices, methods and procedures and exercising that degree of skill, care, prudence, efficiency, foresight and timeliness as would be

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reasonably and ordinarily be expected from an service provider, manager, operator or other person engaged in the supply of similar services as under this ODP Grant Agreement;

- “Graduate Scheme”** means a training or employment schemes open to applicants with a recently acquired degree-level higher education or equivalent skills and experience;
- “Green Growth Wales Paper”** means the Welsh Government prospectus for green growth Wales;
- “Grey Assets”** means any structures and locations on or close to the boundary of the “Station” and “Network” (both as such terms are defined under the relevant Station Lease) where the ODP or Network Rail consider (acting reasonably) that clarification is required as to whether or not the same forms part of the Station (for example, certain hybrid structures such as bridges, viaducts, embankments and any supporting structures);
- “Gross Revenue”** means, in relation to any period and any Fare, the gross revenue to the ODP (or any relevant predecessor of the ODP) attributable to such Fare over the relevant period, excluding any applicable Value Added Tax, costs, commissions or other expenses which may be paid or incurred in connection with such Fare;
- “Guarantor”** has the meaning given to such term under the Funding Deed;
- “Halifax Abuse Principle”** has the meaning given to it in paragraph 6.3 of Schedule 12 (Financial Covenants and Bonds);
- “Handover Package”** means a package containing the information and objects specified in Appendix 1 (Form of Handover Package) to Schedule 15.3 (Handover Package) and such other information and objects as the Authority may reasonably specify from time to time;
- “Hot Standby”** means any rolling stock vehicle specified in the Train Plan which:

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- (a) is operationally ready to provide the Passenger Services in the Timetable;
  - (b) is not already assigned to the delivery of any Passenger Service in the Timetable; and
  - (c) will only be used to deliver such Passenger Services if:
    - (i) a rolling stock vehicle scheduled to deliver such Passenger Services is unable to so deliver; and
    - (ii) Actual Passenger Demand could only be met by the deployment in service of such rolling stock vehicle;

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| <b>“HS2 Project”</b>                           | means the project for the construction and development of a proposed high speed railway from London to Birmingham and the North known as “HS2” or “High Speed Two” and all related infrastructure works; |
| <b>“Identified Special Event”</b>              | means the Special Events identified in paragraph 4.13 of Schedule 1.2;   |
| <b>“IFRS”</b>                                  | means International Financial Reporting Standards;   |
| <b>“Implementation Plan”</b>                   | means the plan to be developed and provided by the ODP to the Authority in accordance with paragraph 2 of Schedule 18.1;   |
| <b>“Incremental Output Statement Charge”</b>   | means the charge to which that description is commonly given, first introduced into Relevant Agreements in April 2001;   |
| <b>“Independent Station”</b>                   | has the meaning given to it in paragraph 2.7 of Schedule 8.3 (Track Access Adjustments and Station Charge Adjustments);  |
| <b>“Independent Station Access Conditions”</b> | has the meaning given to it in the Access Agreement to which it relates;   |



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| <b>“Individual Station Charge Adjustment”</b>     | has the meaning given to it in paragraph 2.2 of Schedule 8.3 (Track Access Adjustments and Station Charge Adjustments);  |
| <b>“Industrial Action”</b>                        | means any concerted action taken in connection with the employment of those persons listed in paragraphs 1(f)(i) to 1(f)(vi) of Schedule 10.3 (Force Majeure and Business Continuity) (whether or not that action involves any breach of such employees’ conditions of employment, and including any action taken in furtherance of a dispute, or with a view to improving the terms of employment of the relevant employees or by way of support for any other person) subject always, in the case of any unofficial industrial action, to the ODP being able to demonstrate the occurrence of such unofficial industrial action to the reasonable satisfaction of the Authority; |
| <b>“Industry Schemes”</b>                         | has the meaning given to it in paragraph 4 of Schedule 13.1 (Rail Industry Initiatives);   |
| <b>“Information Commissioner”</b>                 | means the United Kingdom’s supervisory authority responsible for monitoring the application of GDPR and as appointed pursuant to Chapter VI GDPR;  |
| <b>“InfraCo”</b>                                  | means AMEY KEOLIS INFRASTRUCTURE / SEILWAITH AMEY KEOLIS LIMITED (Company number 11389544) whose registered address is at The Sherard Building, Edmund Halley Road, Oxford, United Kingdom, OX4 4DQ;   |
| <b>“InfraCo Sub-Contract”</b>                     | means any sub-contract between the ODP and InfraCo relating to the sub-contracting of certain of the ODP’s obligations under this Agreement, including Infrastructure Management Services, Infrastructure Services and ODP Infrastructure Works;   |
| <b>“Infrastructure Delivery Partner” or “IDP”</b> | means the partners selected to deliver construction civil engineering works and infrastructure maintenance in respect of the Core Valley Lines;  |
| <b>“Infrastructure Manager”</b>                   | has the meaning given to it in Appendix 1 to Schedule 3B (Infrastructure Services and ODP Infrastructure Works);   |

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| <b>“Infrastructure Manager In-Life Reporting Template”</b> | means the report to be provided by the ODP in accordance with paragraph 1.7 of Schedule 9.1;  |
| <b>“Infrastructure Manager Notice”</b>                     | has the meaning given to it in Schedule 3A.3;   |
| <b>“Infrastructure Manager Services”</b>                   | has the meaning given to it in Schedule 3A (Infrastructure Manager Services);   |
| <b>“Infrastructure Services”</b>                           | has the meaning given to it in Schedule 3B (Infrastructure Services and ODP Infrastructure Works);  |
| <b>“Infrastructure Manager Services Payments”</b>          | means those payments due to the ODP in respect of Infrastructure Manager Services as calculated in accordance with Schedule 8.5;  |
| <b>“Infrastructure Manager Termination”</b>                | means the removal of Infrastructure Manager Services from the ODP Services following the issue of an Infrastructure Manager Notice in accordance with this Agreement;   |
| <b>“Infrastructure Works”</b>                              | has the meaning given to it in Appendix 1 to Schedule 3B;   |
| <b>“In-Life Reporting Template”</b>                        | means the In-Life Reporting Template to be developed by the ODP in accordance with paragraph 1.7 of Schedule 9.1;   |
| <b>“Initial Business Plan”</b>                             | means the business plan to be provided by the ODP to the Authority as described in paragraph 10.1 of Schedule 11.2 (Management Information);  |
| <b>“Initial Dataset”</b>                                   | has the meaning given in paragraph 15.1(b) of Schedule 11.2 (Management Information);   |
| <b>“Initial Innovation Strategy” or “IIS”</b>              | means the Initial Innovation Strategy in the agreed terms marked IIS as updated from time to time in accordance with paragraph 1 of Schedule 13.2 (Innovation Obligations);   |
| <b>“Initial Performance Bond”</b>                          | means the performance bond issued or to be issued on or prior to the date of this Agreement by a Bond Provider to the Authority which complies with the requirements of paragraph 4.2 of Schedule 12 (Financial Covenants and Bonds); |

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| <b>“Initial Permanent Fare”</b>                      | has the meaning given to it in the Ticketing and Settlement Agreement;  |
| <b>“Initial Reporting Stage”</b>                     | means the Reporting Periods falling within the period from the first (1 <sup>st</sup> ) Reporting Period to the seventh (7 <sup>th</sup> ) Reporting Period of the first ODP Year;  |
| <b>“Initial Skills Plan and Skills Gap Analysis”</b> | has the meaning given to it in paragraph 1.2 of Part 3 of Schedule 13.3;  |
| <b>“Initial Special Event Planning Calendar”</b>     | shall be the Special Event Planning Calendar setting out the Special Events for the calendar commencing from the Start Date;  |
| <b>“Initial Sustainable Development Plan”</b>        | means the plan set out at Appendix 1 to Part 1 Schedule 13.3 (Sustainability and Ethical Procurement);  |
| <b>“Intellectual Property Rights”</b>                | means all intellectual and industrial property rights of any kind including (without limitation) patents, supplementary protection certificates, rights in Know-How, registered trade marks, registered designs, unregistered design rights, unregistered trade marks, rights to prevent passing off or unfair competition and copyright (whether in drawings, plans, specifications, designs and computer software or otherwise), database rights, topography rights, any rights in any invention, discovery or process, and applications for and rights to apply for any of the foregoing, in each case in the United Kingdom and all other countries in the world and together with all renewals, extensions, continuations, divisions, reissues, re-examinations and substitutions; |
| <b>“Interest Rate”</b>                               | means a rate equivalent to two percent (2%) per annum above the base lending rate published by Royal Bank of Scotland plc (or such other bank as the Authority may, after consultation with the ODP, determine from time to time) during any period in which an amount payable under the ODP Grant Agreement remains unpaid;  |
| <b>“Inter ODP Affiliate Payment”</b>                 | means any payment to or from an Affiliate performing Rail Services to another Affiliate, which is identified as a cost in the Rail Services Management Accounts;  |

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| <b>“Inter-Operator Scheme”</b>                          | means each of the schemes listed at paragraph 4 of Appendix 1 (List of Transport, Travel and Other Schemes) to Schedule 2.5 (Transport, Travel and Other Schemes);   |
| <b>“International Labour Organisation”</b>              | means the International Labour Organisation, an agency of the United Nations;  |
| <b>“International Organisation for Standardisation”</b> | means the international standard setting body known as “ISO” or any such successor body;   |
| <b>“Investigation”</b>                                  | means the investigation referred to in the Pensions Regulator’s letter of 10 November 2017 to The Rail Delivery Group;   |
| <b>“Investment Asset”</b>                               | means the Rail Services Assets designated as such pursuant to paragraph 2.2 of Schedule 14.4 (Designation of Rail Services Assets);  |
| <b>“Invitation to Submit Final Tender” or “ITSFT”</b>   | means the Invitation to Submit Final Tender issued by the Authority on 28 September 2017 as part of the procurement process pursuant to which the ODP Grant Agreement was entered into;  |
| <b>“ITSFT Bid Submission”</b>                           | means the ODP’s tendered submission dated 21 December 2017 in respect of the Authority’s Invitation to Submit Final Tender;  |
| <b>“ISO14001:2004”</b>                                  | means the standard that is set by the International Organisation for Standardisation which specifies requirements for an environmental management system to enable an organization to develop and implement a policy and objectives which takes into account legal requirements and other requirements to which the organization subscribes, and information about significant environmental aspects or any equivalent standard which is generally recognised as having replaced it; |
| <b>“ISO50001:2011”</b>                                  | means the standard that is set by the International Organisation for Standardisation which specifies requirements for establishing, implementing, maintaining and improving an energy management system, whose purpose is to enable an organization to follow a systematic approach in achieving continual improvement of energy   |

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performance, including energy efficiency, energy use and consumption or any equivalent standard which is generally recognised as having replaced it;

**“ISO50001 Energy Review”**

means the Energy Review as defined in paragraph 4.4.3 of ISO50001:2011, or any same or similar review from an equivalent standard which is generally recognised as having replaced it;

**“ISO55001:2014”**

means the standard that is produced by the International Organisation for Standardisation which specifies requirements for an asset management system within the context of the organisation or any equivalent standard which is generally recognised as having replaced it;

**“ISO 22301”**

means the standard that is set by the International Organisation for Standardisation which specifies requirements for the development, implementation, operation, monitoring, review and maintenance of a business continuity planning process, or any equivalent standard which is generally recognised as having replaced it;

**“ITSO”**

means (as the context may require) both:

- (a) the non profit distributing organisation run by its members for the benefit of members and users of smartcards, supported by the Department for Transport (“**DfT**”); and
- (b) the common specification such non profit distributing organisation has created to enable the use of interoperable smartcards in transport and other areas;

**“ITSO Certified Smartmedia”**

means the contactless smartcards, devices or other media designed to hold fare and travel information with the monetary or other value encoded which have been fully certified by ITSO;

**“ITSO Equipment”**

means all of the equipment and services required to be provided for the purposes of ITSO ticketing;

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**“Key Contacts List”**

means the list which contains the name, address, home, office and mobile telephone numbers, and a brief description of the person’s role and responsibilities in the business in respect of:

- (a) all directors (statutory or otherwise);
- (b) all managers with responsibility for a department/function within the ODP’s business;
- (c) all managers in the operations, commercial, personnel and public affairs departments or in each case their nearest equivalents;

**“Key Contract”**

means:

- (a) each agreement and contract listed in Appendix 1 (List of Key Contracts) to Schedule 14.3 (Key Contracts) as at the date of the ODP Grant Agreement; and
- (b) any other agreement, contract, licence or other arrangement to which the ODP is a party or under which the ODP is the beneficiary from time to time which is designated as such pursuant to Schedule 14.3 (Key Contracts),

but excluding any such agreement, contract, licence or other arrangement which ceases, in accordance with the terms of the ODP Grant Agreement, to be designated as a Key Contract;

**“Key Personnel”**

means those persons identified by the ODP in accordance with paragraph 3.1 of Schedule 11.2 (Management Information) and “Key Person” shall be construed accordingly;

**“Know-How”**

means formulae, methods, plans, inventions, discoveries, improvements, processes, performance methodologies, techniques, specifications, technical information, tests, results, reports, component lists, manuals and instructions;

**“Law”**

includes any enactment, subordinate legislation, rule, regulation, order, directive or other provision, including

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those of the European Community, and any judicial or administrative interpretation or application thereof, which has, in each case, the force of law in the United Kingdom or any part of it (including the Act, the Transport Act, the Transport Safety Act 2003 and the Railways Act 2005);

**“Lead Operator”** has the meaning given to it in the Ticketing and Settlement Agreement;

**“Legislation”** means any enactment or subordinate legislation, rule, regulation, order, directive or other provision including those of the European Community, which has, in each case, the force of Law in the United Kingdom or any part of it, but excluding any order under Section 1 of the Transport and Works Act 1992;

**“Licences”** means such licences and/or statements of national regulatory provisions granted or to be granted under applicable law as the ODP may be required from time to time to hold under the Act or under the Railway (Licensing of Railway Undertakings) Regulations 2005 in order to provide or operate the ODP Services;

**“LIFT Programme”** means the Welsh Government programme which supports the Welsh Government’s Tackling Poverty agenda and aims to provide five thousand (5,000) training and employment opportunities for people living in households where no-one is in work;

**“Light Maintenance Service”** means any service specified in paragraph 6 of Part 1 (Rail Services) of Schedule 1.1 (Rail Services and Service Development) which may be provided by the ODP at the Depots and Stations;

**“Living Wage”** means an hourly rate which is calculated independently (and updated annually) by the Living Wage Foundation, or such other body as may replace the Living Wage Foundation from time to time, according to the basic cost of living in the United Kingdom;

**“Local Authority”** means:

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- (a) in England, a county council, a district council, a unitary authority, a passenger transport executive, a London borough council, the common council of the City of London, or a council which is established under the Local Government Act 1992 and which is either an authority responsible for expenditure on public passenger transport services within the meaning of Section 88 of the Transport Act 1985 or a local authority for the purposes of Section 93 of the Transport Act 1985;
  - (b) in Wales, a county council, a district council or a council which is established under the Local Government Act 1972 or the Local Government (Wales) Act 1994;
  - (c) in Scotland, the Strathclyde Passenger Transport Executive, or a district council or a unitary authority which is established under the Local Government (Scotland) Act 1973 or the Local Government, etc. (Scotland) Act 1994;
  - (d) in London, the Mayor of London and Transport for London established under the Greater London Authority Act 1999;
  - (e) a combined authority created pursuant to the Local Democracy, Economic Development and Construction Act 2009;
  - (f) any local enterprise partnership;
  - (g) any other body or council replacing any of the above from time to time; and
  - (h) any other body or instrument of local or regional government specified by the Authority from time to time;

**“Local Suppliers”**

means a supplier of good or services operating or based within Wales or the area served by the Rail Services;



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| <b>“Lock-up Period”</b>        | has the meaning given to it in paragraph 3.2 of Schedule 12 (Financial Covenants and Bonds);  |
| <b>“London Station”</b>        | means any station served by the Railway Passenger Services in the Zones and any Zone to or from which a passenger may travel from or to such station;   |
| <b>“Long Distance/Express”</b> | means the Service Type assigned to specific rolling stock vehicles as set out in Appendix 1 to Schedule 1.6;  |
| <b>“Long Term Charge”</b>      | has the meaning given to it in the Station Access Conditions;   |
| <b>“Lowest Available Fare”</b> | means the lowest value Fare for a required journey available to a passenger at the date and time of purchase and such calculation of the value of the Fare shall include any discount cards or other discounts which may be available to the passenger purchasing the Fare;   |
| <b>“Maintenance Contract”</b>  | means any contract or arrangement to which the ODP is a party, which includes the carrying out for the ODP of any maintenance work (including light maintenance services) or service provision in respect of rolling stock vehicles used by the ODP in the provision of the Passenger Services or for the enforcement of warranties or other rights against a manufacturer in respect of any such rolling stock vehicles; |
| <b>“Major Flow Operator”</b>   | has the meaning given to it in the Ticketing and Settlement Agreement;  |
| <b>“Managed Station”</b>       | means any station used in connection with the provision of the ODP Services where Network Rail is the Facility Owner or becomes the Facility Owner during the Rail Services Term;   |
| <b>“Managed Station Area”</b>  | means the premises comprising part or parts of a Managed Station to be occupied by the ODP on or after the Start Date and to be used for or in connection with the provision of the Rail Services;  |
| <b>“Management Accounts”</b>   | means, in relation to any Reporting Period, the ODP’s management accounts which:  |

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|  | (a) comply with paragraph 9.5(a) of Schedule 11.2 (Management Information); and  |
|  | (b) are required to be delivered to the Authority by the ODP in accordance with paragraphs 9.2(a) and 9.2(b) of Schedule 11.2 (Management Information);  |
| <b>“Mandatory Modification”</b>                | means a modification or addition to any rolling stock vehicle which is required to be made under any applicable Law or any directive of the Rail Safety and Standards Board or any government authority;                             |
| <b>“Marks”</b>                                 | means such trade marks as the ODP may apply to any Primary Rail Services Asset or other asset used by it under a Key Contract, which are applied on the expiry of the Rail Services Term and are not the subject of a Brand Licence; |
| <b>“Marketing and Communications Plan”</b>     | has the meaning given to it in paragraph 10.7 of Schedule 1.4 (Passenger Facing Obligations);  |
| <b>“Marketing and Communications Services”</b> | means the services to be carried out by the ODP to implement the Marketing and Communications Strategy as set out in the Marketing and Communications Plan;  |
| <b>“Marketing and Communications Strategy”</b> | means the marketing and communications strategy set out in Appendix 2 to Schedule 1.4 (Passenger Facing Obligations);  |
| <b>“Minimum Marketing Spend Amount”</b>        | means the amount to be spent by the ODP on marketing in accordance with paragraph 8 of Schedule 8.4 and as set out in Appendix 2 to Schedule 8.4 (Minimum Marketing Spend Amount);   |
| <b>“Minimum Requirement Introduction Date”</b> | means the date by which a Service Type shall comply with the relevant Rolling Stock Minimum Requirement, as set out in the Columns headed “Minimum Requirement Introduction Date” of Tables 2A to 2E of Appendix 2 to Schedule 1.6;  |
| <b>“Minimum Wi-Fi Services”</b>                | has the meaning given to it in paragraph 4.4 of Schedule 1.4 (Passenger Facing Obligations);   |

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| <b>“Minister of the Crown”</b>  | has the meaning given to it in Section 8(1) of the Minister of the Crown Act 1975;   |
| <b>“Minor Works”</b>            | has the meaning given to it in paragraph 2.7(a) of Schedule 4 (Accessibility and Inclusivity);   |
| <b>“Minor Works’ Budget”</b>    | <p>means [REDACTED] for each ODP Year allocated by the ODP for the purpose of facilitating Minor Works at Stations to improve accessibility of the Stations to persons with disabilities, save that:</p> <p>(a) for any ODP Year which is shorter than twelve (12) months, the amount shall be reduced pro rata; and</p> <p>(b) for each ODP Year after the first ODP Year, the amount shall be subject to adjustment as follows:</p> <p style="text-align: center;"><b>Minor Works’ Budget x RPI</b></p> <p><b>where:</b></p> <p><b>RPI</b> has the meaning given to it in Appendix 1 (Annual Rail Services Payments) to Schedule 8.1 (Rail Services Payments);</p> |
| <b>“Minor Works’ Programme”</b> | means the ODP’s programme of Minor Works at Stations to improve accessibility of the Stations to persons with disabilities, developed prior to the start of each ODP Year pursuant to paragraph 2.7(b) of Schedule 4 (Accessibility and Inclusivity);  |
| <b>“Minutes Delay”</b>          | means the minutes of delay to the Passenger Services that are attributed to the ODP or Network Rail (as the case may be) pursuant to the Track Access Agreement and disregarding any minutes of delay that are imputed to Passenger Services that were cancelled;  |
| <b>“Minutes Late”</b>           | means, in relation to a day and a Monitoring Point, the lateness at that Monitoring Point, calculated in accordance with paragraph 2 of the Track Access Agreement;  |

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| <b>“Missed Station Stop Figures”</b>    | means the number of Total Station Stops Missed (as defined in paragraph 1 of Schedule 7.1 (Operational Performance)) in that Reporting Period;  |
| <b>“Mobile Communications Services”</b> | means the wireless internet service which shall as a minimum provide the Minimum Wi-Fi Service;   |
| <b>“Mobilisation”</b>                   | means the period commencing on the date of this Agreement and ending on the Start Date;   |
| <b>“Modified Revenue”</b>               | means: <ul style="list-style-type: none"> <li>(a) the sum of: <ul style="list-style-type: none"> <li>(i) the ODP’s total Rail Services revenue for the period being reviewed as stated in its Rail Services management accounting profit and loss account: <ul style="list-style-type: none"> <li>(A) including any amounts receivable from the Authority, Network Rail and any interest; but</li> <li>(B) excluding the proportion of income recognised in the profit and loss account in relation to grants received in respect of capital expenditure; and</li> </ul> </li> <li>(ii) the opening cash balance for the period being reviewed excluding: <ul style="list-style-type: none"> <li>(A) any cash held for the exclusive purpose of the provision of the Performance Bond; and</li> <li>(B) the amount equivalent to: <ul style="list-style-type: none"> <li>1) any cash that is held pursuant to any restrictive terms under any agreement and that, consequently, cannot be used for general operating purposes;</li> </ul> </li> </ul> </li> </ul> </li> </ul> |

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- 2) any cash capable of being drawn down but not actually received,

including, in both cases, under any loan or funding agreement or arrangements (including the Funding Deed) entered into with an Affiliate of the ODP; and

- (C) the amount of the opening season ticket liabilities which relate to Passenger Services yet to be delivered; and

(b) either:

- (i) plus any reduction in total debtors over that period; or
- (ii) less any increase in total debtors over that period,

where total debtors exclude any bad debts provision or write off and any capital-related debtors;

**“Monitoring Point”**

means, in relation to a direction of a Passenger Service, a point listed in Column N of Appendix 1 to Schedule 8 of the Track Access Agreement as a point to be used for recording lateness of Trains in accordance with paragraph 2 of the Track Access Agreement, and each such Monitoring Point shall be treated as a separate Monitoring Point notwithstanding that it may also be a Monitoring Point for the same Passenger Service in the opposite direction and/or for other Passenger Services;

**“Monthly Season Ticket”**

means a Season Ticket Fare which is valid in Standard Class Accommodation from (and including) the day it first comes into effect until (but excluding) the day which falls one (1) month after such day;

**“Morning Peak”**

means, in relation to any Passenger Service, the period between 0700 and 0959 (inclusive) during a Weekday or

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such other continuous three hour period between 0600 and 1159 as the Authority may specify from time to time;

**“Mystery Shopper Survey” or “MSS”**

means the survey to be performed by the ODP in accordance with paragraph 8 of Schedule 7.2;

**“Mystery Shopper Survey Methodology” or “MSSM”**

means the methodology to be adopted by the ODP in conducting the Customer Satisfaction Survey as set out in paragraph 8.1(b) of Schedule 7.2;

**“National Community Rail Steering Group”**

means the National Community Rail Steering Group administered by the Department of Transport, or any successor organisation;

**“National Joint ROSCO Project”**

means the joint project between Angel Trains Limited, Eversholt Rail (UK) Limited and Porterbrook Leasing Company Limited funded by Network Rail, for implementing ERTMS first in class designs to existing rolling stock which will operate over the routes where ERTMS will be rolled out;

**“National Rail Enquiry Scheme”**

means the telephone information scheme run by ATOC, providing information to customers regarding rail journeys throughout the country;

**“National Rail Passenger Survey”**

means a passenger satisfaction survey in respect of the Rail Services to be carried out by the Passengers’ Council as described in paragraph 2 of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCI Scheme) and shall include any Alternative NRPS as referred to in paragraph 2.6 of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCI Scheme);

**“National Rail Timetable”**

means the passenger timetable published by Network Rail (currently twice per annum) specifying the timings and stopping patterns of all passenger railway services in Great Britain;

**“Natura 2000”**

means any Special Area of Conservation (“SAC”) as defined under the Conservation (Natural Habitats &c.) Regulations 1994 and the Offshore Marine Conservation (Natural Habitats &c.) Regulations 2007, and any Special Protection Area (“SPA”) as defined under the EC Birds

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|  | Directive (EC Directive 2009/147/EC) and any other site afforded the same protection as SACs and SPAs by the Authority;   |
| <b>“Network Change”</b>                            | has the meaning given to it in the Network Code;  |
| <b>“Network Change Compensation Claims”</b>        | has the meaning given to it in paragraph 11.2(a)(i) of Schedule 13.1 (Rail Industry Initiatives);   |
| <b>“Network Code”</b>                              | means the document known as the Network Code and formerly known as the Railtrack Track Access Conditions 1995 (as subsequently replaced or amended from time to time) or any equivalent code or agreement applying to Network Rail or NR;   |
| <b>“Network Rail” or “NR”</b>                      | means in respect of: <ul style="list-style-type: none"> <li>(a) the network or any relevant facility: <ul style="list-style-type: none"> <li>(i) Network Rail Infrastructure Limited, a company registered in England with registered number 02904587 whose registered office is 1 Eversholt Street, London NW1 2DN; and</li> <li>(ii) any successor in title to the network or any relevant railway facility; or</li> </ul> </li> <li>(b) any new or other sections of network or any relevant new or other railway facilities, the owner (if different);</li> </ul> |
| <b>“Network Rail’s Traction Electricity Rules”</b> | means the document entitled “ <i>Traction Electricity Rules</i> ” as published by the ORR;  |
| <b>“Network Rail Cancellation”</b>                 | means a Passenger Service: <ul style="list-style-type: none"> <li>(a) which is included in the Enforcement Plan of the Day and which is cancelled; or</li> <li>(b) which is included in the Enforcement Plan of the Day and which operates less than fifty percent (50%) of its scheduled mileage (as prescribed in the Enforcement Plan of the Day),</li> </ul>  |

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in either case in circumstances where responsibility for the same is attributed to Network Rail pursuant to the Track Access Agreement;

**“Network Rail Data”**

means any information, data and materials that may be provided to the Authority by NR that relates to the ODP and which the Authority decides (in its absolute discretion) to add to the RPC Database;

**“Network Rail ERTMS Implementation Plan” or “ERTMSP”**

means Network Rail’s plan for the implementation of the ERTMS Programme;

**“Network Rail Fixture Asset”**

means a tangible asset annotated as such in Column 4 of the table in Appendix 1 (List of the RV Assets) to Schedule 14.6 (Residual Value Mechanism) which is:

- (a) funded by the ODP and affixed to a Station or Depot (as the case may be) such that it is regarded as a fixture to and part of such Station or Depot (as the case may be); and
- (b) designated as a Primary Rail Services Assets in accordance with paragraph 2.1 of Schedule 14.4 (Designation of Rail Services Assets) such that it can be transferred as the unencumbered property of the ODP to a Successor Operator at the applicable value specified in Column 2 of the table in Appendix 1 (List of the RV Assets) to Schedule 14.6 (Residual Value Mechanism) (as such value may be amended during the Rail Services Term in accordance with the provisions of paragraphs 1.4 or 1.6 of Schedule 14.6 (Residual Value Mechanism));

**“Network Rail Partial Cancellation”**

means a Passenger Service which is included in the Enforcement Plan of the Day and which:

- (a) misses a stop;
- (b) completes fifty percent (50%) or more, but less than one hundred percent (100%) of its scheduled



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journey as prescribed in the Enforcement Plan of the Day,

in circumstances where responsibility for the same is attributed to Network Rail pursuant to the Track Access Agreement;

**“Network Rail Strategic Business Plan”** means the strategic business plan for England & Wales published by Network Rail from time to time;

**“New CVL Rolling Stock”** means the CVL Rolling Stock with a lease end date of 16 October 2033 in Column 3 of Appendix 1 to Schedule 1.6;

**“New Full Time Equivalent Job”** means a Full Time Equivalent Job which did not exist prior to the Start Date;

**“New Insurance Arrangements”** has the meaning given to it in paragraph 2.4(b) of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);

**“New Station”** means:

- (a) a station not served by railway passenger services as at February 2003, but which has since that time been, or is subsequently, served by railway passenger services which have been, or are subsequently to be, included in the Timetable or in another relevant Train Operator’s timetable; and/or
- (b) if the Authority requires, a station, other than a Station, at which, with the consent of the Authority (whether by amendment to the ODP Grant Agreement or otherwise) railway passenger services operated by the ODP call;

**“Non Fares Basket Fare”** means a Fare that is designated as such by the Authority pursuant to paragraph 2.1 of Schedule 5.3 (Allocation of Fares to Fares Baskets) and which has not been de-designated as such pursuant to paragraph 1.1 of Schedule 5.7 (Changes to Fares and Fares Regulation);

**“North Wales and Mersey Dee Rail Task Force”** means the multi-organisational body including Local Authorities and other stakeholders concerned with Rail Services in the North Wales and the Mersey Dee areas.

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| <b>“Notified Fault”</b>                 | has the meaning given to such term in paragraph 9.1 of Schedule 1.4 (Passenger Facing Obligations);  |
| <b>“NRPS Benchmark”</b>                 | means in relation to any ODP Year, each of the benchmarks relating to each NRPS Measure as set out in the relevant Columns of the NRPS Benchmark Table;  |
| <b>“NRPS Benchmark Table”</b>           | means the table(s) set out in Appendix 1 (NRPS Benchmark Table) to Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCI Scheme);   |
| <b>“NRPS Measure”</b>                   | means each of the factors set out in the Passenger Survey Methodology and grouped as “Stations”, “Trains” and “Customer Services”;   |
| <b>“Occasion of Tax Non-Compliance”</b> | has the meaning given to it in paragraph 6.3 of Schedule 12 (Financial Covenants and Bonds);   |
| <b>“ODP Access Station”</b>             | means any station at which the Passenger Services call (other than any Station);   |
| <b>“ODP ERTMS Plan”</b>                 | means the ODP’s plan to deliver all activities for the implementation of the ERTMS Programme for which the ODP is responsible as further described in paragraph 11.1 of Schedule 13.1 (Rail Industry Initiatives);   |
| <b>“ODP Crowd Management Report”</b>    | means the report to be produced by the ODP in accordance with paragraph 1.2 of Appendix 2 of Schedule 1.1;   |
| <b>“ODP Grant Agreement”</b>            | means this Agreement and the Conditions Precedent Agreement which together constitute a single agreement and which is the “ODP Grant Agreement” for the purposes of the Act which has been entered into between the Authority and the ODP;   |
| <b>“ODP Grant Agreement Term”</b>       | means the period commencing on the date of this Agreement and ending on the Expiry Date or, if earlier, the date of termination of the ODP Grant Agreement pursuant to Clauses 4.2(b) or 4.3(b) of the Conditions Precedent Agreement or Schedule 10 (Remedies, Events of Default and Termination Events); |

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| <b>“ODP Infrastructure Manager Representative”</b> | means an ODP Services Employee who has a senior responsibility for the delivery of the Infrastructure Manager Services;   |
| <b>“ODP Infrastructure Works”</b>                  | has the meaning given to it in Appendix 1 of Schedule 3B;   |
| <b>“ODP Owned RV Asset”</b>                        | <p>means each of the assets listed in Column 1 of the table set out in Appendix 1 (List of the RV Assets) to Schedule 14.6 (Residual Value Mechanism) which:</p> <ul style="list-style-type: none"> <li>(a) are not annotated in Column 4 of such table as Network Rail Fixture Assets; and</li> <li>(b) are designated as Primary Rail Services Assets in accordance with paragraph 2.1(h) of Schedule 14.4 (Designation of Rail Services Assets) such that they can be transferred to a Successor Operator at the applicable value specified in Column 2 of the table in Appendix 1 (List of the RV Assets) to Schedule 14.6 (Residual Value Mechanism) (as such value may be amended during the Rail Services Term in accordance with the provisions of paragraphs 1.4 or 1.6 of Schedule 14.6 (Residual Value Mechanism));</li> </ul> |
| <b>“ODP Services”</b>                              | means the services being provided under this ODP Grant Agreement including the Rail Services, Infrastructure Services, ODP Infrastructure Works and Infrastructure Manager Services as amended from time to time where agreed by the Parties in writing in accordance with this Agreement;  |
| <b>“ODP Services Documents”</b>                    | <p>means:</p> <ul style="list-style-type: none"> <li>(a) this Agreement;</li> <li>(b) the Conditions Precedent Agreement;</li> <li>(c) the Funding Deed;</li> <li>(d) the Train Services Requirement; and</li> <li>(e) any other agreement signed by the ODP at the time of the award of the ODP Services which is in the possession of the Authority and which is</li> </ul>   |

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notified by the Authority to the ODP as being required for publication;

**“ODP Services Employee”**

means:

- (a) any employee of the ODP from time to time; and
- (b) any other person who is an employee of any of its Affiliates or is an employee of any party to whom the ODP Services or services which are in support of or ancillary to the ODP Services have been subcontracted (at any tier) or delegated by the ODP; and
- (c) in the case of (a) or (b) whose contract of employment would (subject to the exercise of such person’s right to object to the transfer) be transferred to a Successor Operator following the expiry of the Rail Services Term by virtue of the operation of Law (including the Transfer of Undertakings (Protection of Employment) Regulations 2006) or in respect of whom liabilities arising from a contract of employment or employment relationship may be so transferred;

**“ODP Services Payment”**

means the total amount payable by the Authority to the ODP under the ODP Grant Agreement for the ODP Services including (but not limited to) Rail Services Payments, Infrastructure Manager Services Payments and payments for Infrastructure Services in accordance with Schedule 3B (Infrastructure Services and ODP Infrastructure Works);

**“ODP Services Performance Meeting”**

means a meeting between the Authority and the ODP to be held in accordance with paragraph 1 of Schedule 11.1 (ODP Services Performance Meetings);

**“ODP Services Sections”**

has the meaning given to it in paragraph 2 of Schedule 16 (Pensions);

**“ODP Services Section Rules”**

has the meaning given to it in paragraph 4.2 of Schedule 16 (Pensions);

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| <b>“ODP Sub-Contracts”</b>          | means the Infraco Sub-Contract and the OpCo Sub-Contract;   |
| <b>“ODP Sub-Contractors”</b>        | means InfraCo and OpCo;   |
| <b>“ODP Year”</b>                   | means any period of twelve (12) months during the Rail Services Term, beginning on 1 April and ending on 31 March, except that the first and last ODP Years may be for a period of less than twelve (12) months and the first ODP Year shall begin on the Start Date and the last ODP Year shall end on the last day of the Rail Services Term; |
| <b>“Off-Peak Passenger Service”</b> | means a Passenger Service that is not a Morning Peak service or an Evening Peak service;  |
| <b>“OpCo”</b>                       | means KEOLIS AMEY OPERATIONS / GWEITHREDIADAU KEOLIS AMEY LIMITED (Company number 11389531) whose registered address is at Evergreen Building North, 160 Euston Road, London, United Kingdom, NW1 2DX;  |
| <b>“OpCo Sub-Contract”</b>          | means the sub-contract between the ODP and OpCo relating to the sub-contracting of certain of the ODP’s obligations under this Agreement, including Rail Services;  |
| <b>“Open Travel Data”</b>           | has the meaning given to it in paragraph 9 of Schedule 1.5;   |
| <b>“Operating Assets”</b>           | means all assets (including any Intellectual Property Rights or intangible assets) employed by the ODP in the performance of the ODP’s obligations (including any infrastructure Services and Infrastructure Works) under the ODP Grant Agreement (excluding, for the avoidance of doubt, the CVL Assets);                                      |
| <b>“Operational Model” or “OM”</b>  | means the following models in the agreed terms marked <b>OM</b> : <ul style="list-style-type: none"> <li>(a) revenue model;</li> <li>(b) the performance model;</li> <li>(c) the crowding model;</li> <li>(d) the rolling stock model;</li> </ul>   |

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|                                     | (e) the staff model; and   |
|                                     | (f) any other relevant models that have generated input to the Final Tender Financial Model;   |
| <b>“Original Rolling Stock”</b>     | has the meaning given to it in paragraph 2.1(a) of Schedule 1.6 (The Rolling Stock);   |
| <b>“ORR”</b>                        | means the Office of Rail and Road established by Section 15 of the Railways and Transport Safety Act 2003 and having duties and obligations as set out in the Act;   |
| <b>“Package Order”</b>              | has the meaning given to it in Appendix 1 of Schedule 3B (Infrastructure Services and ODP Infrastructure Works);   |
| <b>“Parent”</b>                     | means: <ul style="list-style-type: none"> <li>(a) Keolis S.A., (Company Number: 552 111 809) whose registered office is at: 20-22 rue Le Peletier, 75009 Paris, France; and</li> <li>(b) Amey UK PLC (Company Number: 4736639) whose registered office is at: The Sherard Building, Edmund Halley Road, Oxford, OX4 4DQ;</li> </ul>  |
| <b>“Partial Cancellation”</b>       | means a Passenger Service which is included in the Enforcement Plan of the Day and which: <ul style="list-style-type: none"> <li>(a) misses a stop; or</li> <li>(b) completes fifty percent (50%) or more, but less than one hundred percent (100%) of its scheduled journey as prescribed in the Enforcement Plan of the Day,</li> </ul> <p>in each case, for reasons which are attributed to the ODP pursuant to its Track Access Agreement;</p> |
| <b>“Partial Termination”</b>        | means the removal of any or all of the CVL Services from the ODP Services following a Partial Termination Notice;  |
| <b>“Partial Termination Notice”</b> | means a notice from the Authority to the ODP terminating the requirement of the ODP to perform any or all of the CVL Services, following an Event of Default or a Termination  |

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Event in accordance with Schedule 10.2 (Events of Default and Termination Events);

**“Participating Employer”**

has the meaning given to it in the Pension Trust;

**“Passenger Assistance”**

means the passenger assistance service provided by train operating companies and referred to by the ORR as “Passenger Assist”, as such service may be further described by the ORR from time to time at:<http://orr.gov.uk/info-for-passengers/passengers-with-disabilities> (or such other applicable web address that is adopted by the ORR for these purposes from time to time);

**“Passenger Carrying Capacity”**

means:

- (a) for the purposes of calculating short formations in accordance with paragraph 4 of Schedule 7.1, the number of vehicles for that train service as set out in the Train Plan and, for any light rail vehicles deployed on CVL, an equivalent number of vehicles per unit (“A”) should be calculated as follows:  $A = \text{Length of unit (in metres)} \div 17\text{m}$  (rounded to the nearest whole number); and
- (b) otherwise, the sum of the Seating and Standing Capacity identified for the rolling stock vehicle or units identified within the rolling stock specification contained in Schedule 1.6;

**“Passenger Change Date”**

means a date upon which significant changes may be made to the Timetable in accordance with or by virtue of the Network Code;

**“Passenger Demand”**

means the predicted levels of passengers as recorded in the Final Tender Financial Model;

**“Passenger Seating Capacity”**

means the sum of the Seating Capacity identified for the rolling stock vehicle or Rolling Stock Unit within the rolling stock specification contained in Schedule 1.6;

**“Passenger Services”**

means the ODP’s railway passenger services as specified in any Timetable and/or Plan of the Day including those railway passenger services which the ODP may delegate or subcontract or otherwise secure through any other

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|   | person from time to time in accordance with the ODP Grant Agreement;   |
| <b>“Passenger Survey Methodology”</b>   | has the meaning given to it in paragraph 2.4 of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCI Scheme);  |
| <b>“Passenger’s Charter”</b>            | means the ODP’s service commitments to its passengers as published and amended or replaced from time to time with the prior written consent of the Authority in accordance with paragraph 5 of Schedule 1.4 (Passenger Facing Obligations);  |
| <b>“Passenger’s Charter Principles”</b> | means the document as set out in Appendix 1 to Schedule 1.4;   |
| <b>“Passengers’ Council”</b>            | means the passengers’ council established under Section 19 of the Railways Act 2005 (as amended by The Passengers’ Council (Non-Railway Functions) Order 2010). The Passengers’ Council shall be generally known as “Transport Focus” from 30 March 2015;  |
| <b>“Passenger Revenue”</b>              | means the gross revenue (without any deduction for operating costs or charges except for commission charged to revenue in the normal course of business) of the ODP, as stated in the Rail Services Management Accounts and statements submitted to the Authority in accordance with Schedule 11 (ODP Services Performance Meetings and Management Information), relating to: <ul style="list-style-type: none"> <li>(a) the sale of tickets of any type for the carriage of passengers by railway (including revenue allocated to the ODP through the Ticketing and Settlement Agreement or otherwise);</li> <li>(b) in relation to Schedule 4 (Rules of the Route, Rules of the Plan and Restrictions of Use) to the Track Access Agreement; <ul style="list-style-type: none"> <li>(i) the revenue loss compensation element of any payments to the ODP by Network Rail; and</li> </ul> </li> </ul> |



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- (ii) the revenue element of any payments to the ODP by Network Rail or a “Competent Authority” in compensation for a “Competent Authority Restriction of Use” (as such terms are defined in Schedule 4 to the Track Access Agreement) relating to the sale of tickets of any type for the carriage of passengers by railway (including revenue allocated to the ODP through the Ticketing and Settlement Agreement or otherwise);
  - (c) the sum of all Network Rail Performance Sums and Sustained Poor Performance payments as provided for under Schedule 8 (Performance Regime) of the Track Access Agreement;
  - (d) the revenue element of any payments to the ODP by Network Rail under Condition G (Network Change) of the Network Code relating to the sale of tickets of any type for the carriage of passengers by railway (including revenue allocated to the ODP through the Ticketing and Settlement Agreement or otherwise);
  - (e) the sale of any Discount Card; and
  - (f) the imposition of any penalty upon any person making a journey on the Passenger Services without a ticket which is valid for such journey;

but shall not include any revenue from car parks, retail commission or Rail Services Payment;

**“Passenger Time Lost Delay”  
or “PTL”**

has the meaning given to it in paragraph 1 of Schedule 7.1 (Operational Performance);

**“Pay As You Go Agreement”**

means an agreement dated 16 October 2009 between Transport Trading Limited and train operators operating in London enabling joint ticketing and the acceptance of each other’s tickets using smartmedia technology under the name “Pay as You Go”;

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| <b>“PAYG Off-Peak Fare”</b>    | means a Fare which is a Permanent Fare and which entitles the purchaser to make a single journey under the Pay As You Go Agreement in Standard Class Accommodation between and within the PAYG Zones for which the fare is valid, at any time on Saturdays and Sundays and at such times as the ODP may designate on Mondays to Fridays (where such Fare need not be valid between 6:30am and 9:30am or between 4.00pm and 7.00pm but must be valid at all other times) and which may take into account the different directions of travel; |
| <b>“PAYG Peak Fare”</b>        | means a Fare which is a Permanent Fare and which entitles the purchaser to make a single journey under the Pay As You Go Agreement in Standard Class Accommodation between and within the PAYG Zones for which the fare is valid, at any time;  |
| <b>“PAYG Zone”</b>             | means the Stations within the “PAYG Area” (as such is defined in the PAYG Agreement) or otherwise included in part 1 (PAYG Acceptance) of schedule 3 (Operation of PAYG) of the Pay As You Go Agreement (as such is amended from time to time);   |
| <b>“Payment Date”</b>          | means the date for the payment of ODP Services Payments in accordance with paragraph 2.3 of Schedule 8.1 (Rail Services Payments);  |
| <b>“Peak”</b>                  | means the Morning Peak and the Evening Peak;  |
| <b>“Pension Trust”</b>         | means the pension trust governing the Railways Pension Scheme;  |
| <b>“Pensions Committee”</b>    | has the meaning given to it in the Railways Pension Scheme;   |
| <b>“Percentage Allocation”</b> | has the meaning given to it in the Ticketing and Settlement Agreement;  |
| <b>“Performance Bond”</b>      | means the Initial Performance Bond and any Replacement Performance Bond, which in each case, shall comply with the requirements of paragraph 4.2 of Schedule 12 (Financial Covenants and Bonds);  |

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| <b>“Performance Strategy Plan”</b>                     | has the meaning given to it in the Network Code;  |
| <b>“Permanent Fare”</b>                                | has the meaning given to it in the Ticketing and Settlement Agreement;  |
| <b>“Permitted Aggregate Increase” or “PAI”</b>         | has the meaning given to it in paragraph 4.2 of Schedule 5.4 (Regulation of Fares Basket Values);   |
| <b>“Permitted Individual Increase” or “PII”</b>        | has the meaning given to it in paragraph 2.2 of Schedule 5.5 (Regulation of Individual Fares);  |
| <b>“Person-week”</b>                                   | means the equivalent of one person working a minimum of thirty (30) hours per week (where the post involves working less than thirty (30) hours per week (subject to a minimum of sixteen (16) hours per week) then the hours worked may be divided by thirty (30) to give the proportion of a Person-week provided);       |
| <b>“Personal Data”</b>                                 | has the same meaning as in GDPR and includes Special Category Personal Data as defined therein;   |
| <b>“Plan of the Day”</b>                               | means, in relation to each day during the Rail Services Term, the Passenger Services scheduled to be operated on that day through specification in the Timetable or as notified to the ODP by Network Rail from time to time prior to 2200 on the previous day;   |
| <b>“Planned CVL Asset Transfer Date”</b>               | means 20 September 2019 being the date on which the CVL Asset Transfer is intended to occur;  |
| <b>“Planned CVL Asset Transfer Longstop Date”</b>      | means one (1) month following the Planned CVL Asset Transfer Date (or such date as may be amended in accordance with Clause 5.5(b)(i));   |
| <b>“Planned Delivery Date”</b>                         | has the meaning given to such term in paragraph 1.4 of Schedule 14.6 (Residual Value Mechanism);  |
| <b>“Planned Rail Services Milestone Delivery Date”</b> | means the date by which each Rail Services Milestone is planned to be Achieved by the ODP such dates identified as “Planned Rail Services Milestone Delivery Dates” in the Rail Services Milestone Tables at Appendix 3 to Schedule 18.2 and as such dates may be extended in accordance with paragraph 4 of Schedule 18.2; |

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| <b>“Planned Train Mileage”</b>                     | means the aggregate train mileage planned during each Reporting Period by each train used in the provision of the Passenger Services (excluding, any train mileage planned as a result of positioning or other movements of rolling stock vehicles outside the Timetable); |
| <b>“Polluter Pays Principle”</b>                   | means the principle according to which the polluter should pay for measures to reduce pollution according to the extent of either the damage done to society or the exceeding of an acceptable level (standard) of pollution;  |
| <b>“Pontypridd HQ”</b>                             | has the meaning given to it in paragraph 10.3 of Part 3 of Schedule 13.3;  |
| <b>“Post-CVL Asset Transfer”</b>                   | means the period of time commencing on the date of the CVL Asset Transfer and ending on the Expiry Date;   |
| <b>“Power of Attorney” or “POA”</b>                | means the power of attorney granted by the ODP in favour of the Authority in the agreed terms marked POA;  |
| <b>“PPM” or “Public Performance Measure”</b>       | means the public performance measure as produced and/or published by Network Rail;   |
| <b>“PPM Figures”</b>                               | means the moving annual average percentage published by Network Rail in respect of PPM, rounded to one (1) decimal place;  |
| <b>“Pre-CVL Asset Transfer”</b>                    | means the period of time commencing on the date of this Agreement and ending on the date of the CVL Asset Transfer;  |
| <b>“Preceding thirteen (13) Reporting Periods”</b> | has the meaning given to it in paragraph 2.1 of Schedule 12 (Financial Covenants and Bonds);   |
| <b>“Preceding Year Ticket Price”</b>               | has the meaning given to it in paragraph 2.1 of Schedule 5.5 (Regulation of Individual Fares);   |
| <b>“Preliminary Database”</b>                      | means such database as may reasonably be put in place by the Authority prior to making any RPC Database available to the ODP, as part of the development of the RPC Database;  |
| <b>“Preliminary Design and Discovery Phase”</b>    | has the meaning given to it in Schedule 3B (Infrastructure Services and ODP Infrastructure Works)  |

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| <b>“Previous Franchise Agreement”</b>                                   | means any franchise agreement under which services equivalent to the Rail Services (or a material proportion thereof) were provided by a Train Operator on or about the day prior to the Start Date;   |
| <b>“Previous Franchisee”</b>  | means Arriva Trains Limited with company number 3166214 and registered office 1 Admiral Way, Doxford International Business Park, Sunderland, Tyne & Wear, SR3 3XP and Arriva Trains Wales/Trenau Arriva Cymru Limited with company number 4337645 and registered office Haywood House North, Dumfries Place, Cardiff, CF10 3GA;   |
| <b>“Previous Franchisee’s Station Asset Management Plan” or “PSAMP”</b> | means the document in the agreed terms marked PSAMP;   |
| <b>“Price”</b>  | means, in respect of any Fare, the price of such Fare before the deduction of any applicable discount to which a purchaser may be entitled, as notified to RSP in accordance with Schedule 5 (Fares and Smart Ticketing) to the Ticketing and Settlement Agreement;  |
| <b>“Primary Rail Services Assets”</b>                                   | <p>means:</p> <ul style="list-style-type: none"> <li>(a) the property, rights and liabilities of the ODP listed in Appendix 1 (List of Primary Rail Services Assets) to Schedule 14.4 (Designation of Rail Services Assets); and</li> <li>(b) any other property, rights and liabilities of the ODP which is or are designated as such pursuant to Schedule 14.4 (Designation of Rail Services Assets),</li> </ul> <p>but excluding such property, rights or liabilities as may, in accordance with the terms of the ODP Grant Agreement, cease to be so designated;</p> |
| <b>“Principal Services”</b>   | <b>Infrastructure</b> means those services referred to in Part A of Appendix 2 (Scope) of Schedule 3B which are to be carried out by the ODP in accordance with the Conditions of Contract for Infrastructure Services;  |

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| <b>“Principles of Inclusive Design”</b>                      | means planning, designing, building and managing places, while having due regard and a proportionate response to stakeholder views obtained through consultation or otherwise, so that they work better for everybody and reflect the diversity of the people who use them as embodied in the document published by the Commission for Architecture and the Built Environment in 2006 with the title <i>“The Principles of Inclusive Design”</i> (as revised from time to time); |
| <b>“Prior Train Operator”</b>                                | has the meaning given to it in paragraph 3.1 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);  |
| <b>“PRM TSI”</b>   | means the EU’s Regulation (EU) No 1300/2014 of 18 November 2014 (as amended from time to time) on the technical specifications for interoperability relating to accessibility of the European Union’s rail system for persons with disabilities and persons with reduced mobility;   |
| <b>“Process for the Acceptance of Document Deliverables”</b> | means the process for the Authority to accept documents to be delivered by the ODP to the Authority as set out in Appendix 1 to Schedule 18.3;   |
| <b>“Profit Share Components”</b>                             | has the meaning ascribed to it in paragraph 1.1(a) of Schedule 9.1 (Financial and Other Consequences of Change);   |
| <b>“Projected Revenue”</b>                                   | means the revenue in any Fare Year which is projected to be attributable to any Fare, determined in accordance with paragraph 3 of Schedule 5.4 (Regulation of Fares Basket Values);   |
| <b>“Property Lease”</b>                                      | means any Depot Lease, any lease in respect of a Managed Station Area, any lease in respect of Shared Facilities or any Station Lease and any agreement or lease of a similar or equivalent nature (whether in respect of any such facility or otherwise) which the ODP may enter into with a person who has an interest in a network or a railway facility which is to be used for or in connection with the  |

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provision or operation of the ODP Services, including the CVL Asset Lease (once granted);

**“Protected Employee”**

means a Relevant Employee whose contract of employment transfers to the ODP or a Subcontractor pursuant to the Transfer Regulations on or phased with the Transfer Date or the CVL Asset Transfer Date (as such terms are respectively defined in the Supplemental Agreement) and who remains wholly or mainly employed in the provision of the ODP Services;

**“Protected Fare”**

means a Protected Return Fare or a Protected Weekly Season Ticket;

**“Protected Fares Basket B”**

means the grouping of Protected Fares:

- (a) determined by the Authority pursuant to paragraph 1.2(b) of Schedule 5.3 (Allocation of Fares to Fares Baskets);
- (b) for the purposes of regulating their aggregate Prices or Child Prices, as the case may be, in accordance with Schedule 5.4 (Regulation of Fares Basket Values);
- (c) amended by the Authority from time to time in accordance with Schedule 5.7 (Changes to Fares and Fares Regulations); and
- (d) set out in the Protected Fares Document as being Protected Fares to be allocated by the Authority to the Protected Fares Basket B pursuant to paragraph 1.2(b) of Schedule 5.3 (Allocation of Fares to Fares Baskets);

**“Protected Fares Basket C”**

means the grouping of Protected Fares:

- (a) determined by the Authority pursuant to paragraph 1.2(c) of Schedule 5.3 (Allocation of Fares to Fares Baskets);
- (b) for the purposes of regulating their aggregate Prices or Child Prices, as the case may be, in

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accordance with Schedule 5.4 (Regulation of Fares Basket Values);

(c) amended by the Authority from time to time in accordance with Schedule 5.7 (Changes to Fares and Fares Regulations); and

(d) set out in the Protected Fares Document as being Protected Fares to be allocated by the Authority to the Protected Fares Basket C pursuant to paragraph 1.2(e) of Schedule 5.3 (Allocation of Fares to Fares Baskets);

**“Protected Fares Document” or “PFD”** means together the Protected Fares Document B and the Protected Fares Document C;

**“Protected Fares Document B” or “PFDB”** means the document in the agreed terms marked PFDB, as the same may be amended from time to time in accordance with Schedule 5.7 (Changes to Fares and Fares Regulations);

**“Protected Fares Document C” or “PFDC”** means the document in the agreed terms marked PFDC, as the same may be amended from time to time in accordance with Schedule 5.7 (Changes to Fares and Fares Regulations);

**“Protected Proposal”** has the meaning given to it in paragraph 2 of Schedule 9.3 (Variations to the ODP Grant Agreement and Incentivising Beneficial Changes);

**“Protected Return Fare”** means in respect of a Fare for a Flow:

(a) for which there was a Saver Return Fare in February 2003, a Return Fare for each such Flow in respect of which the ODP is entitled or obliged from time to time to set the Price or Child Price under the Ticketing and Settlement Agreement, subject to the following additional rights and restrictions:

(i) it shall be valid for no less than one (1) month;



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(ii) it shall be valid all day on a Saturday or Sunday and from no later than 1030 on any other day;

(iii) it need not be valid for any journey:

(A) beginning between 1500 and 1900 on any day other than a Saturday or Sunday;

(B) where such journey begins from a London Station or any station between any London Station and Reading station, Watford station, Luton station, or Stevenage station (inclusively); and

(C) which is in a direction away from London; or

(b) for which there was no Saver Return Fare in February 2003, a Return Fare for each such Flow in respect of which the ODP is entitled or obliged from time to time to set the Price or Child Price under the Ticketing and Settlement Agreement,

except in each case to the extent that a Return Fare for any such Flow is a Commuter Fare;

**“Protected Rolling Stock”**

means the Rolling Stock Units in respect of the WCB Services with a lease end date of 16 October 2033 as set out in Appendix 1 to Schedule 1.6 (The Composition of the Train Fleet);

**“Protected Rolling Stock Leases”**

means the Rolling Stock Leases in respect of the Protected Rolling Stock;

**“Protected Weekly Season Ticket”**

means a Weekly Season Ticket for any Flow for which there was a weekly season ticket in the fares manuals and systems of the RSP in February 2003 and in respect of which the ODP is entitled or obliged, from time to time, to set the Price or Child Price of under the Ticketing and

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|   | Settlement Agreement except to the extent that a Weekly Season Ticket for any such Flow is a Commuter Fare;   |
| <b>“PRPI”</b>   | has the meaning given to such term in Appendix 1 (Annual Rail Services Payments) to Schedule 8.1 (Rail Services Payments);  |
| <b>“PTL”</b>  | see Passenger Time Lost Delay;  |
| <b>“PTL Performance Sum”</b>                            | means each of the WCB PTL Performance Payment and CVL PTL Performance Payment determined pursuant to paragraph 7.2 of Schedule 7.1 (Operational Performance);   |
| <b>“PTL Figures”</b>                                    | means the moving annual average percentage published by Network Rail in respect of Passenger Time Lost Delay, rounded to one (1) decimal place;   |
| <b>“Public Authority”</b>                               | means any UK national, European Union, state or local government, any political subdivision thereof or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or other similar entity and includes the Network Rail, RSSB and ORR;                   |
| <b>“Public Impact of Implementation Plan” or “PIIP”</b> | has the meaning given to it in paragraph 11.4 of Schedule 1.1;  |
| <b>“Public Sector Operator”</b>                         | means any person (other than a ODP or Rail Services operator in relation to the services provided or operated under its ODP Grant Agreement) who provides railway passenger services or operates any station or light maintenance depot pursuant to or under Section 30 of the Act or Section 6 of the Railways Act 2005; |
| <b>“Qualifications Wales”</b>                           | is the regulator of non-degree qualifications and the qualifications systems in Wales established by the Qualifications Wales Act 2015;   |
| <b>“Qualifying Change”</b>                              | means a Change which: <ul style="list-style-type: none"> <li>(a) results in adjustments in Rail Services Payments and/or Infrastructure Manager Services Payments in accordance with Schedule 9 (Changes and Variations), over the remaining life</li> </ul>  |

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of the ODP Grant Agreement that have a net present value as at the date of the Change in excess of the relevant Threshold Amount for the ODP Year during which the relevant Change arises. For the purposes of ascertaining a net present value of the amount of any adjustment in any Rail Services Payment and/or Infrastructure Manager Services Payment, the amount of the adjustment shall be discounted at the prevailing discount rate per annum (in real terms) stated in HM Treasury's "Green Book Appraisal Guidelines", counting back from the date of receipt of that adjusted Rail Services Payment and/or Infrastructure Manager Services Payment to the date of the Change. As at the date of the ODP Grant Agreement that rate is three point five percent (3.5%); or

(b) the ODP Grant Agreement expressly provides shall be a Qualifying Change;

**"Qualifying Change Proposal"** has the meaning given to it in paragraph 1 of Appendix 2 to Schedule 9.1 (Changes and Variations);

**"Quarterly Season Ticket"** means a Season Ticket Fare which is valid in Standard Class Accommodation from (and including) the day it first comes into effect until (but excluding) the day which falls three (3) months after such day;

**"Rail Industry Sustainable Development Principles"** means the principles which were published by the Rail Safety and Standards Board in February 2009 as amended from time to time;

**"Rail Safety and Standards Board" or "RSSB"** means Rail Safety and Standards Board Limited, a company registered in England with registered number 04655675 whose registered office is at The Helicon, 4<sup>th</sup> Floor, One South Place, London, EC2M 2RB;

**"Rail Safety and Standards Board's Sustainable Development Self-Assessment Framework"** means the RSSB's sustainable development self-assessment tool;

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| <b>“Rail Services”</b>                                   | means the CVL Rail Services and the Wales and Cross-Border Lines Services;   |
| <b>“Rail Services Assets”</b>                            | means the property, rights and liabilities designated as such pursuant to paragraph 1 of Schedule 14.4 (Designation of Rail Services Assets) but excluding such property, rights or liabilities as shall, in accordance with the terms of the ODP Grant Agreement (including for the avoidance of doubt Schedule 3A (Infrastructure Manager Services)), cease to be so designated; |
| <b>“Rail Services Delay Payment Cap”</b>                 | means the total amount payable by the ODP to the Authority in respect of any Rail Services Milestone Delay Payment such amount as set out in Appendix 1 (Rail Services Milestone Delay Payments) to Schedule 18.4;   |
| <b>“Rail Services In-Life Reporting Template”</b>        | means the report to be provided by the ODP in accordance with paragraph 1.7 of Schedule 9.1;   |
| <b>“Rail Services Management Accounts”</b>               | means the Management Accounts in respect of Rail Services;   |
| <b>“Rail Services Milestone”</b>                         | means a rail services milestone identified in Appendix 3 to Schedule 18.2;   |
| <b>“Rail Services Milestone Achievement Certificate”</b> | means the certificate to be issued by the Authority to the ODP upon Achievement of a Rail Services Milestone or a Rail Services Milestone Deliverable (as applicable);   |
| <b>“Rail Services Milestone Criteria”</b>                | means the criteria required to be met for the relevant Rail Services Milestone and/or Rail Services Milestone Deliverable to be Achieved such criteria identified as “Rail Services Milestone Criteria” in the Rail Services Milestone Tables at Appendix 3 to Schedule 18.2 or as set out in the Implementation Plan;   |
| <b>“Rail Services Milestone Delay Payments”</b>          | means the payment in respect of Rail Services Milestones identified in Appendix 1 to Schedule 18.4;  |
| <b>“Rail Services Milestone Deliverable”</b>             | means a deliverable identified as a “Rail Services Milestone Deliverable” in the Rail Services Milestone Tables at Appendix 3 to Schedule 18.2;  |

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| <b>“Rail Services Payment”</b>              | means, in relation to any Reporting Period, the amount determined in accordance with paragraph 1.1 of Schedule 8.1 (Rail Services Payments);  |
| <b>“Rail Services Term”</b>                 | means the period commencing on the Start Date and ending on the Expiry Date or, if earlier, the date of termination of the ODP Grant Agreement pursuant to Schedule 10 (Remedies, Events of Default and Termination Events);  |
| <b>“Rail User Groups”</b>                   | means a representative organisation of passengers normally associated with a specific line or geography;  |
| <b>“Railway Group”</b>                      | means the committee responsible for cross industry co-ordination in respect of rail safety legislation and industry safety standards chaired by the Rail Safety and Standards Board;  |
| <b>“Railway Operational Code”</b>           | has the meaning given to it in Condition H of the Network Code;   |
| <b>“Railway Passenger Services”</b>         | means, for the purposes of Schedule 5 (Fares and Smart Ticketing) only, services for the carriage of passengers by railway which are provided by a person who is bound by the Ticketing and Settlement Agreement, or any part of it, and including the ODP and any other Train Operator from time to time;  |
| <b>“Railways Pension Scheme”</b>            | means the pension scheme established by the Railways Pension Scheme Order 1994 (No. 1433);  |
| <b>“Reconciliation Amount”</b>              | has the meaning given to it in paragraph 10.9 Schedule 9.1 (Financial and Other Consequences of Change);  |
| <b>“Record of Assumptions” or<br/>“ROA”</b> | <p>means a document in the agreed terms marked ROA prepared by the ODP (and/or, where Schedule 9.1 (Financial and Other Consequences of Change) applies) as may be revised in accordance with Schedule 9 (Changes and Variations) providing:</p> <p>(a) detailed assumptions, explanations of assumptions and parameters underlying the Final Tender Financial Model;</p> |

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|                                | (b) details of how ODP Services Payments have been calculated (including by reference to a defined annual profit margin);  |
|                                | (c) a description of the functionality, operation and structure of the Final Tender Financial Model; and   |
|                                | (d) a description of each input cell, its requirements and its inter-relationship with the Final Tender Financial Model;   |
| <b>“Redactions”</b>            | has the meaning given to it in paragraph 10.1 of Schedule 17 (Confidentiality and Freedom of Information);   |
| <b>“Reference Fare”</b>        | has the meaning given to it in paragraph 6.1(a) of Schedule 5.7 (Changes to Fares and Fares Regulation);   |
| <b>“Reference Flow”</b>        | has the meaning given to it in paragraph 6.1(a) of Schedule 5.7 (Changes to Fares and Fares Regulation);   |
| <b>“Reference Revenue”</b>     | means the aggregate Gross Revenue recorded by RSP as attributable to sales of all Commuter Fares or Protected Fares for the period of twelve (12) months which ended 31 March 2010 or such other reference period as the Authority may require pursuant to paragraph 3.1(a) of Schedule 5.7 (Changes to Fares and Fares Regulation); |
| <b>“Regulated Child Price”</b> | means the Child Price that is permitted to be charged by the ODP in respect of any Fare in any Fare Year, determined in accordance with paragraph 2.1 of Schedule 5.5 (Regulation of Individual Fares);  |
| <b>“Regulated Price”</b>       | means the Price that is permitted to be charged by the ODP in respect of any Fare in any Fare Year, determined in accordance with paragraph 2.1 of Schedule 5.5 (Regulation of Individual Fares);  |
| <b>“Regulated Value”</b>       | means the Value of any Fares Basket that is permitted in any Fare Year, determined in accordance with paragraph 4.1 of Schedule 5.4 (Regulation of Fares Basket Values);   |
| <b>“Regulations”</b>           | has the meaning given to it in paragraph 1.2 of Schedule 2.5 (Transport, Travel and Other Schemes);  |

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**“Relevant Agreement”**

means any Property Lease or Access Agreement in relation to any stations or network which may be used from time to time by the ODP in connection with the ODP Services, as replaced or amended from time to time. If and to the extent that:

- (a) following the effective date of any Charge Variation, the ODP enters into any Replacement Agreement;
- (b) the effect of that Charge Variation is reflected in the terms of the Replacement Agreement; and
- (c) the Authority has consented to such Replacement Agreement being entered into and constituting a Replacement Agreement for the purposes of this definition,

then the Replacement Agreement shall be deemed to be a Relevant Agreement;

**“Relevant Credit Rating”**

means a credit rating of:

- (a) A – (or better) by Standard and Poor’s Corporation or Fitch Ratings Limited in respect of long term senior debt; or
- (b) A3 (or better) by Moody’s Investors Service Inc. in respect of long term senior debt; or
- (c) if any credit rating specified in paragraph (a) or (b) ceases to be published or made available or there is a material change in the basis of any such credit rating, such other rating or standard as the Authority may, after consultation with the ODP, determine to be appropriate in the circumstances;

**“Relevant Delay”**

has the meaning given to it in paragraph 3.1 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);

**“Relevant Profit”**

has the meaning given to it in paragraph 1.2 of Schedule 8.2 (Profit Share Mechanism);

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| <b>“Relevant Profit Report”</b>      | has the meaning given to it in paragraph 2.1 of Schedule 8.2 (Profit Share Mechanism);   |
| <b>“Relevant Reporting Period”</b>   | has, for the purposes of paragraph 5.3 of Schedule 12 (Financial Covenants and Bonds) only, the meaning given to it in that paragraph;                                 |
| <b>“Relevant Rolling Stock”</b>      | has the meaning given to it in paragraph 3.1 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);                          |
| <b>“Relevant Tax Authority”</b>      | has the meaning given to it in paragraph 6.3 of Schedule 12 (Financial Covenants and Bonds);   |
| <b>“Relevant Term”</b>               | has the meaning given to it in paragraph 3.1(a) of Schedule 10.1 (Procedure for remedying a Contravention of the ODP Grant Agreement);                                 |
| <b>“Relevant Successor Operator”</b> | has the meaning given to it in paragraph 2.2 of Schedule 14.6 (Residual Value Mechanism);  |
| <b>“Remedial Agreement”</b>          | has the meaning given to it in paragraph 5.1 of Schedule 10.1 (Procedure for remedying a Contravention of the ODP Grant Agreement);                                    |
| <b>“Remedial Plan”</b>               | has the meaning given to it in paragraph 3.1(b) of Schedule 10.1 (Procedure for remedying a Contravention of the ODP Grant Agreement), as does ‘Remedial Plan Period’; |
| <b>“Remedial Plan Notice”</b>        | has the meaning given to it in paragraph 2 of Schedule 10.1 (Procedure for remedying a Contravention of the ODP Grant Agreement);                                      |
| <b>“Remedial Plan Period”</b>        | has the meaning given to it in paragraph 3.1(b) of Schedule 10.1;  |
| <b>“Remedy Period”</b>               | means the period identified in Appendix 1 to Schedule 18.4 ( <i>Table of Rail Services Milestone Delay Payments</i> );   |
| <b>“Replacement Agreement”</b>       | means an agreement entered into as a replacement for any Relevant Agreement;   |



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**“Replacement Performance Bond”**

means any performance bond issued or to be issued following the issue of the Initial Performance Bond by a Bond Provider to the Authority which complies with the requirements of paragraph 4.2 of Schedule 12 (Financial Covenants and Bonds);

**“Reporting Period”**

means:

- (a) for the purposes of the Season Ticket Bond, any consecutive seven (7) day period or any other period, each within a Reporting Period (as defined in paragraph (b)) agreed in accordance with paragraph 5.10 of Schedule 12 (Financial Covenants and Bonds); or
- (b) for all other purposes, a period of twenty eight (28) days, provided that:
  - (i) the first such period during the Rail Services Term shall exclude any days up to but not including the Start Date;
  - (ii) the first and last such period in any Reporting Year may be varied by up to seven (7) days by notice from the Authority to the ODP;
  - (iii) each such period shall start on the day following the last day of the preceding such period; and
  - (iv) the last such period during the Rail Services Term shall end at the end of the ODP Grant Agreement Term;

**“Reporting Year”**

means a period normally commencing on 1 April in each calendar year, comprising thirteen (13) consecutive Reporting Periods;

**“Request for Information”**

means a request for information or an apparent request under the Freedom of Information Act or the Environmental Information Regulations;

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| <b>“Required Improvement”</b>                  | has the meaning given to it in paragraph 1 of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCI Scheme);   |
| <b>“Retail Prices Index”</b>                   | means the retail prices index for the whole economy of the United Kingdom and for all items as published from time to time by the Office for National Statistics as “RPI” or, if such index shall cease to be published or there is, in the reasonable opinion of the Authority, a material change in the basis of the index or if, at any relevant time, there is a delay in the publication of the index, such other retail prices index as the Authority may, after consultation with the ODP, determine to be appropriate in the circumstances; |
| <b>“Revenue Support Adjustment”</b>            | means the amount of revenue support payable to the ODP in accordance with paragraph 3 of Schedule 8.4 (Revenue Support Adjustment);   |
| <b>“Revenue Support Reconciliation Amount”</b> | has the meaning given to it in paragraph 6 of Schedule 8.4;   |
| <b>“Resource Plan”</b>                         | means the Resource Plan as set out in Appendix 1 to Schedule 11.1 (Resource Plan);  |
| <b>“Return Fare”</b>                           | means a Fare which entitles the purchaser to make, without further restrictions as to the time of day for which the Fare is valid, a journey in each direction in Standard Class Accommodation between the stations and/or the zones for which such Fare is valid and which expires no earlier than 0200 hours on the day after the day of the outward journey or, if later, the time the relevant return journey may be completed if commenced before 0200 hours;  |
| <b>“Right Time Figures”</b>                    | means the moving annual average percentage published by Network Rail in respect of the Right Time Measure, rounded to one (1) decimal place;  |
| <b>“Right Time Measure”</b>                    | means the Right Time Measure as produced and/or published by Network Rail and/or the ORR showing the number of Passenger Services (expressed as a percentage of the number of Passenger Services which are scheduled to be provided under the Plan of the Day)  |

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|  | which arrive at their final scheduled destination in the Plan of the Day either early or no more than 59 seconds late;   |
| <b>“Rolling Stock Lease”</b>   | means any agreement for the leasing of rolling stock vehicles to which the ODP is a party as at the Start Date and any agreement of a similar or equivalent nature (including, any agreement or arrangement for the subleasing, hiring, licensing or other use of rolling stock vehicles) to which the ODP is a party from time to time during the Rail Services Term whether in addition to, or replacement or substitution for, in whole or in part, any such agreement; |
| <b>“Rolling Stock Minimum Requirement”</b>                                   | means a minimum requirement of a Service Type, as identified in Column headed “Min Req applies” of Tables 2A to 2E of Appendix 2 to Schedule 1.6;  |
| <b>“Rolling Stock Related Contract”</b>                                      | means any Rolling Stock Lease, Maintenance Contract or Technical Support Contract;   |
| <b>“Rolling Stock Unit”</b>  | means the smallest number of rolling stock vehicles which are normally comprised in a train used by the ODP in the provision of the Passenger Services;  |
| <b>“ROSCO”</b>   | means any company leasing rolling stock vehicles to the ODP under a Rolling Stock Lease;   |
| <b>“Route”</b>   | means any route specified in the Timetable over which the ODP has permission to operate the Passenger Services pursuant to any Track Access Agreement;   |
| <b>“Route Efficiency Benefit Share (REBS) Mechanism” or “REBS Mechanism”</b> | means the route level efficiency benefit sharing mechanism introduced by the ORR in its determination for the control period commencing on 1 April 2014 or any similar arrangement under which the benefits of any outperformance (or downsides of failure to achieve efficiency targets) are to be shared between Network Rail and Train Operators at route level;  |
| <b>“RPC Database”</b>  | means a database to be provided by the Authority pursuant to and on the terms of paragraph 7.1 of Schedule 1.5 (Information about Passengers) containing rail passenger counts information and providing analytical reporting tools  |

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or such other functionality as the Authority may decide from time to time;

**“RPI”** has the meaning given to it in Appendix 1 (Annual Rail Services Payments) to Schedule 8.1 (Rail Services Payments);

**“RPS Contributions”** means the employer contributions required under the schedule of contributions from time to time applicable to each ODP Services Section;

**“RRPI”** has the meaning given to it in Appendix 1 (Annual Rail Services Payments) to Schedule 8.1 (Rail Services Payments);

**“RS Lessor”** means the lessor of the rolling stock under any Protected Rolling Stock Lease;

**“RSSB”** means the Rail Safety and Standards Board;

**“RSP”** means Rail Settlement Plan Limited;

**“RSPS3002”** means the RSP document with reference RSPS3002, version 02.01 re-published on 6 May 2015 which specifies standards for issuing, checking and validating rail products on ITSO Certified Smartmedia and defines the rail specific rules required to ensure interoperability across the rail network (as amended from time to time by ATOC);

**“RV Asset”** means:

- (a) an ODP Owned RV Asset; or
- (b) a Network Rail Fixture Asset;

**“Safety Authorisation”** means the authorisation issued by the ORR under the Safety Regulations authorising the ODP’s safety management system (as defined in those regulations) and the provisions adopted by the ODP to meet the requirements that are necessary to ensure safe design, maintenance and operation of the relevant infrastructure on the Routes;

**“Safety Certificate”** means the certificate issued by the ORR under the Safety Regulations, certifying its acceptance of the ODP’s safety

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management system (as defined in those regulations) and the provisions adopted by the ODP to meet the requirements that are necessary to ensure safe operation on the Routes;

**“Safety Regulations”**

means the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (as amended pursuant to the Railways and Other Guided Transport Systems (Safety) (Amendment) Regulations 2006);

**“Saver Return Fare”**

means a return fare which is shown as a saver fare in the fares manuals and systems of the RSP as at the date of such manuals;

**“Scheduled Consist Data”**

means information as to the type of individual vehicles of rolling stock that have been scheduled by the ODP to form a train in the Train Fleet for any particular Passenger Service and the manner in which they are scheduled to be configured;

**“Scope 1, 2 and 3 Emissions”**

means in respect of each:

Scope 1: these are emissions that arise directly from sources that are owned or controlled by the ODP, for example from fuels used to heat or power premises or power rolling stock or vehicles;

Scope 2: these are the emissions generated by purchased electricity consumed by ODP and its contractors and supply chain; and

Scope 3: these emissions are a consequence of the activities of ODP and its contractors and supply chain but occur from sources not owned or controlled by these organisations. This includes emissions associated with waste, water, business travel, commuting and procurement;

**“Season Ticket Bond”**

means the season ticket bond to be provided to the Authority in respect of the ODP’s liabilities under certain Fares and Season Ticket Fares in the form set out in Appendix 2 (Form of Season Ticket Bond) to Schedule 12 (Financial Covenants and Bonds) and such other bond as

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may replace it from time to time under Schedule 12 (Financial Covenants and Bonds);

**“Season Ticket Fare”**

means:

- (a) for the purposes of Schedule 12 (Financial Covenants and Bonds) and the definition of Season Ticket Bond only, a Fare which entitles the purchaser to make an unlimited number of journeys in any direction during the period for which, and between the stations and/or the zones for which, such Fare is valid; and
- (b) for all other purposes, a Fare which entitles the purchaser to make, without further restriction except as to class of accommodation, an unlimited number of journeys in any direction during the period for which, and between the stations and/or the zones for which, such Fare is valid;

**“Seating Capacity”**

means the total number of seats fitted to a specific rolling stock unit as set out in Appendix 1 to Schedule 1.6;

**“Second Profit Share Threshold” or “SPST”**

has the meaning given to it in paragraph 1.1(b) of Schedule 8.2 (Profit Share Mechanism);

**“Secretary of State”**

means the Secretary of State for Transport whose principal address is 33 Horseferry Road, London, SW1P 4DR;

**“Secure Car Parks Accreditation”**

has the meaning given to it in paragraph 8.5 of Schedule 1.7 (Stations);

**“Secure Car Parks Scheme”**

has the meaning given to it in paragraph 8.5 of Schedule 1.7 (Stations);

**“Secure Stations Accreditation”**

has the meaning given to it in paragraph 8.5 of Schedule 1.7 (Stations);

**“Secure Stations Scheme”**

has the meaning given to it in paragraph 8.5 of Schedule 1.7 (Stations);

**“Security Breach”**

has the meaning given to it in paragraph 6.31(i) of Schedule 1.5 (Information about Passengers);

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| <b>“Security Interest”</b>                 | means any mortgage, pledge, lien, hypothecation, security interest or other charge or encumbrance or any other agreement or arrangement having substantially the same economic effect;  |
| <b>“Sell2Wales”</b>                        | means the Sell2Wales information and procurement portal set up by the Welsh Government;   |
| <b>“Service Code”</b>                      | means each unique code assigned to a Passenger Service in the Model of Inter-Regional Activity and as set out in Column 1 of the Service Codes Table at Appendix 2 to Schedule 1.6;   |
| <b>“Service Group”</b>                     | <p>(a) in respect of the Wales and Cross-Border Lines Services, has the meaning given to it in the Track Access Agreement or as specified by the Authority from time to time; or</p> <p>(b) in respect of CVL Rail Services, has the meaning given to it in the CVL Track Access Performance Schedule or as specified by the Authority from time to time;</p> |
| <b>“Service Improvement”</b>               | means the initiatives which are to be carried out by the ODP as specified in the Service Improvement Plan and in accordance with the terms of this ODP Grant Agreement, as detailed by Part 2 (Special Terms related to Service Improvements) of Schedule 6.3 (Service Improvements);   |
| <b>“Service Improvement Plan”</b>          | means the plan containing Service Improvements to be implemented by the ODP, as amended in accordance with paragraph 7 of Part 2 of Schedule 6.2 and as set out in the agreed terms marked SIP;   |
| <b>“Service Improvement Pre-Condition”</b> | has the meaning given to it in paragraph 5.1 of Part 2 (Special Terms Related To Service Improvements) of Schedule 6.3 (Service Improvements);  |
| <b>“Service Quality Defect”</b>            | means a failure by the ODP to achieve a Service Quality Standard as set out in Schedule 7.3 (Service Quality Regime);   |
| <b>“Service Quality Failure”</b>           | means a failure by the ODP to remedy a Service Quality Defect in the time period set out in the applicable Time to  |

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Fix Service Level as set out in Schedule 7.3 (Service Quality Regime);

**“Service Recovery Plan”**

means, in the event of a prevention or restriction of access to the track or a section of the track (howsoever caused) which results in any Cancellation, Partial Cancellation, and/or any Passenger Service being operated with less Passenger Carrying Capacity than the Passenger Carrying Capacity specified for such Passenger Service in the Train Plan, a plan implemented by the ODP:

- (a) to minimise the disruption arising from such prevention or restriction of access by operating, during such period of disruption, the best possible level of service given such disruption, including by:
  - (i) keeping service intervals to reasonable durations;
  - (ii) keeping extended journey times to reasonable durations; and
  - (iii) managing any resulting overcrowding;
- (b) to:
  - (i) return the level of service to that level specified in the Timetable as soon as reasonably practicable; and
  - (ii) prior to the attainment of the level of service specified in paragraph (b)(i) operate any reduced level of service agreed with Network Rail for the purpose of minimising such disruption pursuant to paragraph (a);
- (c) in accordance with the principles of service recovery set out in the ATOC **“Approved Code of Practice: Contingency Planning for Train Service Recovery – Service Recovery 2013”** or



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any document of a similar or equivalent nature;  
and

(d) where the particulars of such plan in relation to the requirements of paragraphs (a) and (b) have been:

(i) agreed at an initial and, where required, subsequent telephone conference between the ODP, Network Rail and any other affected Train Operator; and

(ii) on each occasion, recorded in an official control log by the relevant Region Control Manager of Network Rail,

and prevention or restriction of access to the track or a section of the track has the meaning given to that term in paragraph 1(a)(i) of Schedule 10.3 (Force Majeure and Business Continuity);

**“Service Type”**

means the service type assigned to a rolling stock vehicle as set out in Appendix 1 to Schedule 1.6 and more particularly described as:

(a) CVL Rolling Stock;

(b) Long Distance/Express;

(c) Sprinter/Rural; and

(d) Suburban;

**“Settlement Proposal”**

has the meaning given to it in paragraph 3.2 of Schedule 4 (Accessibility and Inclusivity);

**“Shared Facilities”**

means those facilities in respect of which the ODP and Network Rail carry out their respective activities concurrently;

**“Short Formation Figures”**

means the number of Passenger Services in any Reporting Period formed with less Passenger Carrying Capacity than specified in the Train Plan;

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**“Significant Alterations”**

shall, in relation to any proposed new or amended Timetable, include alterations from the then current Timetable which result in, or are likely to result in:

- (a) the addition or removal of railway passenger services;
- (b) changes to stopping patterns or destinations or origin;
- (c) changes of timings for first/last trains by more than 10 minutes;
- (d) changes to clockface (or near clockface) service patterns (meaning the provision of railway passenger services at a specified time or times relative to the hour); and/or
- (e) significant changes to journey times and/or key connections at the Stations or at other stations at which relevant railway passenger services call by more than 10 minutes;

**“Single Fare”**

means a Fare which entitles the purchaser to make, without further restrictions as to the time of day for which the Fare is valid, on any one (1) day, one (1) journey in Standard Class Accommodation between the stations and/or the zones for which the Fare is valid;

**“SKA Rating Standard”**

means the recognised environmental assessment tool known as “*SKA Rating*” for sustainable fit outs published by the Royal Institute of Chartered Surveyors;

**“Skills and Leadership Strategy”**

means the skills and leadership strategy of the ODP required to be implemented pursuant to paragraph 2 of Part 3 to Schedule 13.3;

**“Small and Medium-sized Enterprises” or “SMEs”**

means any individual micro, small or medium sized enterprise meeting the requirements set out in EU Recommendation 2003/36 and broadly falling into one of three categories, based on a combination of:

- (a) the number of employees; and
- (b) either its turnover or its balance sheet total;

The three categories are:

| <b>Company category</b> | <b>Employees</b> | <b>Turnover</b> | <b>or</b> | <b>Balance sheet total</b> |
|-------------------------|------------------|-----------------|-----------|----------------------------|
| Medium                  | <250             | ≤ €50m          |           | ≤ €43m                     |
| Small                   | <50              | ≤ €10m          |           | ≤ €10m                     |
| Micro                   | <10              | ≤ €2m           |           | ≤ €2m                      |

**“SME”** means an organisation defined as a Small or Medium Size Enterprise in accordance with Commission Recommendation (2003/361/EC) of 6 May 2003;

**“South Wales Metro”** means the project to create a new transport system in South East Wales centered around Cardiff and including the Core Valley Lines to provide faster, more frequent and joined-up trains, buses and light rail services;

**“South Wales Metro Station”** means a Station specified within Appendix 6 to Schedule 1.7;

**“South Wales Valleys”** means the following unitary authorities:

- (a) Merthyr Tydfil;
- (b) Blaenau Gwent;
- (c) Caerphilly;
- (d) Rhondda Cynon Taf; and
- (e) Torfaen;

**“Spares”** means parts and components of rolling stock vehicles which are available for the purpose of carrying out maintenance services on rolling stock vehicles;

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| <b>“Special Events”</b>                                      | means those events that are likely to cause material additional demand, revenue, cost or requirements for Rail Service over and above that might be expected on any other similar day without such any event and shall include those Identified Special Events;   |
| <b>“Special Event Classification”</b>                        | means the classification to be given to each Special Event in accordance with paragraph 4.11 of Schedule 1.2;   |
| <b>“Special Event Planning Calendar”</b>                     | means the calendar of Special Events to be provided by the ODP to the Authority in accordance with paragraphs 4.4 to 4.8 of Schedule 1.2;   |
| <b>“Special Event Management Plan”</b>                       | means the plan to be developed and implemented by the ODP for each Special Event as set out in paragraphs 4.8 to 4.10 of Schedule 1.2;  |
| <b>“Specifically Included Change of Law”</b>                 | has the meaning given to it in the definition of Change of Law;   |
| <b>“Specification of Apprenticeship Standards for Wales”</b> | means the standards for apprenticeship published from time to time by the Welsh Government;   |
| <b>“Specimen Scheme”</b>                                     | means the schemes as set out in the Service Improvement Plan;   |
| <b>“Sprinter/Rural”</b>                                      | means the Service Type assigned to specific rolling stock vehicles as set out in Appendix 1 to Schedule 1.6;  |
| <b>“Stakeholder”</b>   | means those third parties with an interest in the Rail Services delivery including, but not limited, to: <ul style="list-style-type: none"> <li>(a) trade unions;</li> <li>(b) Rail User Groups;</li> <li>(c) Welsh Language Commission;</li> <li>(d) Disability Wales;</li> <li>(e) third sector enterprises;</li> <li>(f) British Transport Police;</li> <li>(g) TrawsCymru;</li> </ul> |

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- (h) Wales Council for Voluntary Action;
  - (i) the Passengers' Council; and
  - (j) any relevant Local Authority and organisations who can reasonably be considered to have a legitimate and proper interest in the Passenger Services including Community Rail Partnerships representing Community Rail Routes designated as such by the Authority;

**“Standard Class  
Accommodation”**

means, in respect of any train or service, accommodation which is available to the purchaser of any Fare which, taking into account any rights or restrictions relating to that Fare (other than restrictions relating to accommodation on that train or service), entitles such purchaser to make a journey on that train or service (provided that any accommodation on such train which may have been reserved by such purchaser shall be deemed to have been made so available if, had it not been so reserved, it would have been available for use by such purchaser);

**“Standing Capacity”**

means the maximum standing capacity for a specific rolling stock unit as set out in Appendix 1 to Schedule 1.6;

**“Start Date”**

means the time and date stated in the Certificate of Commencement as being the time at and date on which the ODP is to commence operating the Rail Services, which shall either be:

- (a) 02:00 on 14 October 2018; or
- (b) such later time and date as may be notified to the ODP by the Authority pursuant to:
  - (i) Clause 4.2(a) of the Conditions Precedent Agreement; or
  - (ii) Clause 4.3(a) of the Conditions Precedent Agreement;

**“Start Date Transfer Scheme”**

has the meaning given to it in Clause 7.1 of the Conditions Precedent Agreement;

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| <b>“Station”</b>   | means: <ul style="list-style-type: none"> <li>(a) any station in respect of which the ODP has entered into a Station Lease; or</li> <li>(b) any New Station at which the ODP becomes the Facility Owner;</li> </ul>  |
| <b>“Station Access Conditions”</b>                               | has the meaning given to it in the relevant Access Agreement to which it relates;  |
| <b>“Station Alliance Board”</b>                                  | has the meaning given to it in paragraph 5.7 of Schedule 1.7 (Stations);   |
| <b>“Station Asset Management Plan”</b>                           | means the plan created by the ODP pursuant to paragraph 1 of Schedule 1.7 (Stations) and as amended from time to time in accordance with the provisions of Schedule 1.7 (Stations);  |
| <b>“Station Asset Management Plan Accreditation”</b>             | the certification of the ODP’s station asset management organisation and systems for Stations as complying with the requirements of ISO55001:2014 (or such other reasonably equivalent standard as may be approved in writing by the Authority from time to time in place of ISO55001:2014);   |
| <b>“Station Asset Management Plan Accreditation Certificate”</b> | has the meaning given to it in paragraph 1.11(b) of Schedule 1.7 (Stations);   |
| <b>“Station Change”</b>  | has the meaning given to the term “Proposal for Change” under the Station Access Conditions;   |
| <b>“Station Charge Adjustment”</b>                               | means: <ul style="list-style-type: none"> <li>(a) any adjustment to payments under an Access Agreement determined in accordance with paragraph 2 of Schedule 8.3 (Track Access Adjustments and Station Charge Adjustments); and</li> <li>(b) following the CVL Asset Transfer, any access charges paid by OpCo to the Infrastructure Manager pursuant to the terms of any Track Access Agreement relating to the CVL;</li> </ul> |

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| <b>“Station Condition Survey Report”</b>                          | means the survey of the condition of the Stations to be carried out by the ODP in accordance with paragraph 2.2 of Schedule 1.7 (Stations) in order to assess to what extent the requirements under the Previous Franchisee’s Station Asset Management Plan have been met; |
| <b>“Station Improvement Plan”</b>                                 | means the plan as set out in Appendix 3 to Schedule 1.7 as amended in accordance with paragraph 2 of Schedule 1.7;   |
| <b>“Station Lease”</b>  | means: <ul style="list-style-type: none"> <li>(a) any lease of a station that the ODP is a party to as at the Start Date; or</li> <li>(b) a lease of any other station to which the ODP becomes the Facility Owner at any time during the Rail Services Term;</li> </ul>   |
| <b>“Station Service”</b>  | means any service specified in paragraph 5 of Part 1 (Rail Services) of Schedule 1.1 (Rail Services and Service Development) which may be provided by the ODP at the Stations;   |
| <b>“Station Social and Commercial Development Plan” or “SCDP”</b> | means the ODP’s station social and commercial development plan, as such plan may be updated in accordance with the provisions of paragraph 5 of Schedule 1.7 (Stations);   |
| <b>“Station Sublease”</b>   | means a lease or sub lease of premises comprising part or parts of a Station exclusively occupied by another Train Operator;   |
| <b>“Stored Credit Balance”</b>                                    | means any monetary amount held by the ODP which a passenger can apply at a future date to the purchase of a Fare (and stored in any medium);   |
| <b>“Subcontractor”</b>  | has the meaning given to it in paragraph 7.3 (b) of Schedule 1.5 (Information about Passengers);   |
| <b>“Suburban”</b>   | means the Service Type assigned to specific rolling stock vehicles as set out in Appendix 1 to Schedule 1.6;   |

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| <b>“Successor Operator”</b>                                    | means an entity succeeding or intended by the Authority to succeed (and whose identity is notified to the ODP by the Authority) the ODP in the provision of operating all or any of the ODP Services including, where the context so admits, the ODP where it is to continue to provide or operate the ODP Services following termination of the ODP Grant Agreement;   |
| <b>“Successor Operator Timetable”</b>                          | has the meaning given to it in paragraph 2.2(a) of Schedule 14.1 (Maintenance of Rail Services);  |
| <b>“Suicide Prevention Strategy”</b>                           | means the ‘From Crisis to Care’ strategy document for the period from 2016 to 2019 (as amended or replaced from time to time) published by the British Transport Police;  |
| <b>“Suicide Prevention Duty Holders’ Group’s 9 Point Plan”</b> | means the best practice plan established and published by the “cross-industry suicide prevention group”, setting out nine (9) deliverables aimed at suicide reduction (as amended or replaced from time to time);   |
| <b>“Supplemental Agreement”</b>                                | means a supplemental agreement between the ODP and a Successor Operator to be entered into pursuant to a Transfer Scheme, being substantially in the form of Appendix 2 (Form of Supplemental Agreement) to Schedule 15.4 (Provisions Applying on and after Termination), but subject to such amendments as the Authority may reasonably make thereto as a result of any change of circumstances (including any Change of Law) affecting such supplemental agreement between the date of the ODP Grant Agreement and the date on which the relevant Transfer Scheme is made and subject further to paragraph 3.2 of Schedule 15.4 (Provisions Applying on and after Termination); |
| <b>“Sustainable Development Manager”</b>                       | means the role described in paragraph 3 of Part 1 of Schedule 13.3;   |
| <b>“Sustainable Development Plan”</b>                          | means the plan set out at paragraph 4.1 of Part 1 of Schedule 13.3;   |
| <b>“Sustainable Development Strategy”</b>                      | means the ODP’s strategy for sustainable development as agreed or determined pursuant to paragraph 4.2(b) of Part 1 of Schedule 13.3, including as a minimum: the matters   |



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listed in paragraph 4.2(a), key aims, resources, risks and details of how sustainable development will be embedded in the governance of the ODP and investment decisions (as revised from time to time);

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| <b>“Table of Rail Services Milestone Delay Payments”</b> | means the table set out in Appendix 1 to Schedule 18.4 ( <i>Table of Rail Services Milestone Delay Payments</i> );  |
| <b>“Taking Wales Forward”</b>                            | means the Welsh Government’s programme for government dated 4 November 2016;  |
| <b>“Target Passenger Demand”</b>                         | means the higher of Actual Passenger Demand and Forecast Passenger Demand or any other level of passenger demand specified by the Authority not being greater than the higher of Actual Passenger Demand or Forecast Passenger Demand;        |
| <b>“Taxation”</b>  | means any kind of tax, duty, levy or other charge whether or not similar to any in force at the date of the ODP Grant Agreement and whether imposed by a local, governmental or other competent authority in the United Kingdom or elsewhere; |
| <b>“TDR Amendment”</b>                                   | has the meaning given to it in paragraph 12.8 of Part 2 (Service Development) of Schedule 1.1 (Rail Services and Service Development);  |
| <b>“Technical Support Contract”</b>                      | means a contract for technical support to which the ODP is a party, relating to the rolling stock vehicles used in the provision of the Passenger Services;   |
| <b>“Tendering/Reletting Process”</b>                     | means either of the processes described in paragraph 1.1 and 1.2 of Schedule 15.1 (Reletting Provisions);   |
| <b>“Termination Event”</b>                               | has the meaning given to it in paragraph 2 of Schedule 10.2 (Events of Default and Termination Events);   |
| <b>“Termination For Convenience Notice”</b>              | means a notice from the Authority to the ODP terminating the ODP Grant Agreement in accordance with Schedule 10.2 (Events of Default and Termination Events);   |
| <b>“Termination Notice”</b>                              | means a notice from the Authority to the ODP terminating the ODP Grant Agreement following an Event of Default or   |

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|   | a Termination Event in accordance with Schedule 10.2 (Events of Default and Termination Events);  |
| <b>“TFC Protected Period”</b>                         | means the period commencing on the TFC Termination Date and expiring on the earlier of: <ul style="list-style-type: none"> <li>(a) the expiry date of the Protected Rolling Stock Leases; and</li> <li>(b) the date that is fifteen (15) calendar years from the Start Date;</li> </ul> |
| <b>“TFC Protected Rolling Stock Fixed Payment”</b>    | means the net present value rental termination payment as calculated under the relevant lease;  |
| <b>“TFC Termination Date”</b>                         | means on the termination date specified in the Termination For Convenience Notice;  |
| <b>“Third Party Data”</b>                             | means any information, data and materials that may be provided to the Authority by any third party that relates to the ODP and which the Authority decides (in its absolute discretion) to add to the RPC Database;   |
| <b>“Third Profit Share Threshold” or “TPST”</b>       | has the meaning given to it in paragraph 1.1(e) of 8.2 (Profit Share Mechanism);  |
| <b>“Third Sector Enterprises”</b>                     | means for-profit or not-for-profit businesses trading for social or environmental purposes;   |
| <b>“Threshold Amount”</b>                             | has the meaning given to it in Appendix 1 (Definition of Threshold Amount) to Schedule 9.1 (Financial and Other Consequences of Change);  |
| <b>“Through Ticketing (Non-Travelcard) Agreement”</b> | means the agreement of that name referred to in paragraph 4.1(e) of Appendix 1 (List of Transport, Travel and Other Schemes) to Schedule 2.5 (Transport, Travel and Other Schemes);   |
| <b>“Ticketing and Settlement Agreement”</b>           | means the Ticketing and Settlement Agreement dated 23 July 1995 between RSP, the ODP and the other Train Operators named therein, as amended from time to time with the approval of the Secretary of State;   |

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**“Ticketless Travel Payment Adjustment”**

means a payment adjustment made to the Rail Services Payment as determined in accordance with paragraph 4 of Schedule 7.4;

**“Timetable”**

means the timetable which reflects the working timetable issued by Network Rail at the conclusion of its timetable development process, containing the departure and arrival times of:

- (a) all Passenger Services which call at Stations and/or ODP Access Stations; and
- (b) principal Connections at those stations and other stations;

**“Timetable Development Rights”**

means all or any of the rights of the ODP under any Track Access Agreement to:

- (a) operate Passenger Services and ancillary movements by virtue of that Track Access Agreement;
- (b) deliver any required notification and/or declaration to Network Rail in respect of its intention to exercise any rights;
- (c) make or refrain from making any bids for Train Slots, in each case before any relevant priority dates provided for in, and in accordance with, the Network Code;
- (d) surrender any Train Slots allocated to the ODP by Network Rail in accordance with the Network Code;
- (e) object to, make representations, appeal or withhold consent in respect of any actual or proposed act or omission by Network Rail; and
- (f) seek from Network Rail additional benefits as a condition to granting any consent to any actual or proposed act or omission by Network Rail;

**“Timetable Planning Rules”**

has the meaning given to it in the Network Code;

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| <b>“Timetabled Services”</b>                                     | means a particular Passenger Service characterised by the day of the week (including Saturday and Sunday), time of day, origin station and destination and calling pattern which is scheduled to operate;   |
| <b>“Timetabling and Train Planning Compliance Investigation”</b> | has the meaning set out in paragraph 2.1 of Schedule 1.2 (Operating Obligations);   |
| <b>“Total Actual Operating Costs”</b>                            | means the sum of the Actual Operating Costs for the relevant Reporting Period and each of the twelve (12) preceding Reporting Periods during the Rail Services Term (or the sum of the Actual Operating Costs for the relevant Reporting Period and all of the Reporting Periods that have elapsed since the Start Date where insufficient Reporting Periods have elapsed to enable the former calculation to be made); |
| <b>“Total Forecast Modified Revenue”</b>                         | means the sum of the Forecast Modified Revenue for each of the thirteen (13) Reporting Periods following the relevant Reporting Period (or, where there are less than thirteen (13) Reporting Periods remaining in the Rail Services Term, the remaining Reporting Periods);  |
| <b>“Total Forecast Operating Cost”</b>                           | means the sum of the Forecast Operating Cost for each of the thirteen (13) Reporting Periods following the relevant Reporting Period (or, where there are less than thirteen (13) Reporting Periods remaining in the Rail Services Term, the remaining Reporting Periods);  |
| <b>“Total Modified Revenue”</b>                                  | means the sum of the Modified Revenue for the relevant Reporting Period and each of the twelve (12) preceding Reporting Periods during the Rail Services Term (or the sum of the Modified Revenue for the relevant Reporting Period and all of the Reporting Periods that have elapsed since the Start Date where insufficient Reporting Periods have elapsed to enable the former calculation to be made);             |
| <b>“Towards Zero Waste Strategy”</b>                             | means Wales’ overarching waste strategy document dated 1 February 2016;   |
| [REDACTED]   | [REDACTED]  |

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| <b>“Track Access Adjustment”</b>            | <p>means:</p> <ul style="list-style-type: none"> <li>(a) any adjustment to payments under a Track Access Agreement determined in accordance with paragraph 1 of Schedule 8.3 (Track Access Adjustments and Station Charge Adjustments); and</li> <li>(b) following the CVL Asset Transfer, any access charges paid by OpCo to the Infrastructure Manager pursuant to the terms of any Track Access Agreement relating to the CVL;</li> </ul> |
| <b>“Track Access Agreement”</b>             | <p>means each Access Agreement between Network Rail (and/or the Infrastructure Manager, where applicable) and the ODP (and/or OpCo, where applicable) which permits the ODP (and/or OpCo, where applicable) to provide the Passenger Services on track operated by Network Rail (and/or the Infrastructure Manager);</p>   |
| <b>“Train Fleet”</b>                        | <p>means:</p> <ul style="list-style-type: none"> <li>(a) the rolling stock vehicles described in or required by Schedule 1.6 (The Rolling Stock); and</li> <li>(b) any other rolling stock vehicles the Authority consents to in accordance with paragraph 3 of Schedule 1.6 (The Rolling Stock);</li> </ul>   |
| <b>“Train Mileage”</b>                      | <p>means Actual Train Mileage and Planned Train Mileage and “Train Miles” shall be construed accordingly;</p>  |
| <b>“Train Operator”</b>                     | <p>means the operator of railway passenger services pursuant to a franchise agreement to which the Secretary of State is a party or a Public Sector Operator;</p>  |
| <b>“Train Plan” or “TP”</b>                 | <p>has the meaning given to it in paragraph 10 of Part 2 (Service Development) of Schedule 1.1 (Rail Services and Development);</p>  |
| <b>“Train Service Requirement” or “TSR”</b> | <p>means the train service requirement more particularly described in paragraph 9 of Part 2 (Service Development) of Schedule 1.1 (Rail Services and Service Development) as such train service requirement may subsequently be</p>  |

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amended or replaced in accordance with Schedule 1.1 (Rail Services and Service Development);

**“Train Slots”**

has the meaning given to it in the Network Code;

**“Transfer Scheme”**

means a transfer scheme made by the Authority under Section 12 and Schedule 2 of the Railways Act 2005 (or equivalent statutory provision) pursuant to paragraph 3.1 of Schedule 15.4 (Provisions Applying on and after Termination), being substantially in the form of Appendix 1 (Form of Transfer Scheme) to Schedule 15.4 (Provisions Applying on and after Termination), but subject to such amendments as the Authority may make thereto as a result of any change of Law affecting such transfer scheme or other change of circumstances between the date of the ODP Grant Agreement and the date on which such scheme is made;

**“Transport Act”**

means the Transport Act 2000;

**“Transport for London” or  
“TfL”**

means Transport for London as established under the Greater London Authority Act 1999;

**“Travelcard Agreement”**

means the agreement of that name referred to in paragraph 4.1(d) of Appendix 1 (List of Transport, Travel and Other Schemes) to Schedule 2.5 (Transport, Travel and Other Schemes);

**“Traveline”**

means the website available at: <http://www.traveline.info> (or such other applicable address that is adopted from time to time) which is provided by the partnership of transport companies, Local Authorities and passenger groups which have come together to bring the information on routes and timers for door to door travel by bus, rail, tube, tram, coach and ferry around Great Britain;

**“Trustee”**

has the meaning given to it in paragraph 4.1 of Schedule 16 (Pensions);

**“TSI”**

means any Technical Standard for Interoperability with which the ODP is required to comply pursuant to Directives EU 96/48 and EU 2001/16 and related legislation;

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| <b>“Turnaround Time”</b>                       | means the time specified in the Train Plan between the completion of a Passenger Service in accordance with the Timetable and the commencement of the next Passenger Service in accordance with the Timetable on the same day using some or all of the same rolling stock vehicles; |
| <b>“Turnover”</b>                              | means, in relation to any period, the aggregate revenue (excluding any applicable Value Added Tax) accruing to the ODP from the sale of Fares and the receipt of ODP Services Payments during such period;  |
| <b>“TWAO”</b>                                  | means a Transport and Works Act Order for the purposes of the CVL Transformation which is either promoted or sponsored by the Authority;  |
| <b>"Underspend"</b>                            | has the meaning given to it in paragraph 2.4(a) of Part 2 (Special Terms related to Committed Obligations) of Schedule 6.2 (Committed Obligations);   |
| <b>"User"</b>                                  | has the meaning given to it in the Station Access Conditions;   |
| <b>"Value"</b>                                 | means at any time the aggregate of the Projected Revenue of each Fare in a Fares Basket at that time;   |
| <b>"Value Added Tax"</b>                       | means value added tax as provided for in the Value Added Tax Act 1994;  |
| <b>"Variation"</b>                             | means a variation to the terms of the ODP Grant Agreement pursuant to paragraph 1 of Schedule 9.3 (Variations to the ODP Grant Agreement and Incentivising Beneficial Changes);   |
| <b>"VCAWE"</b>                                 | has the meaning given to it in Appendix 1 (Annual Rail Services Payments) to Schedule 8.1 (Rail Services Payments);   |
| <b>"VCRPI"</b>                                 | has the meaning given to it in Appendix 1 (Annual Rail Services Payments) to Schedule 8.1 (Rail Services Payments);   |
| <b>"Wales and Cross-Border Lines" or “WCB”</b> | means the routes referred to in paragraph 2.1(a) of Schedule 1.1 (Rail Services and Service Development);   |

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| <b>"Wales and Cross-Border Lines Services" or "WCB Services"</b>                     | means the rail services on the Wales and Cross-Border Lines;  |
| <b>"Warning Notice"</b>  | has the meaning given to it in paragraph 8.1 of Schedule 10.1 (Procedure for remedying a Contravention of the ODP Grant Agreement);   |
| <b>"Waste Management Plan"</b>   | has the meaning given to it in paragraph 4.1 of Part 4 of Schedule 13.3;  |
| <b>"WCB PTL Performance Payment"</b>   | has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Operational Performance);   |
| Welsh component of a Welsh service   | <p>means a Welsh service (other than a Wales-only service) so far as it involves the carriage of passengers by railway in Wales and which is specified in or delivered through the ODP Grant Agreement, but the following parts of a service are excluded:</p> <ul style="list-style-type: none"> <li>a) any part of the services after the last scheduled call wholly in Wales before each occasion when the service leaves Wales; or</li> <li>b) any part of the service before the first scheduled call wholly in Wales after each occasion when the service enters Wales; or</li> <li>c) any part of the service between two scheduled calls not wholly in Wales where there is no intervening scheduled call wholly in Wales;</li> </ul> |
| <b>"Welsh Government Community Benefits Measurement Tool"</b>                        | means the policy and resource toolkit used for reporting requirements for the public sector in Wales;   |
| <b>"Welsh Government's Code of Practice for Ethical Employment in Supply Chains"</b> | means the code of practice established by Welsh Government to support the development of more ethical supply chains to deliver contracts for the Welsh public sector and third sector organisations in receipt of public funds;   |
| <b>"Welsh Service"</b>   | means a railway passenger service which starts in Wales, ends in Wales or otherwise makes at least one scheduled call in Wales and which is specified in or delivered through this ODP Grant Agreement;   |
| <b>"Weekday"</b>   | means any day other than a Saturday, a Sunday or a Bank Holiday;  |



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| <b>"Weekly Season Ticket"</b>    | means a Season Ticket Fare which is valid in Standard Class Accommodation from (and including) the day it first comes into effect until (but excluding) the day which falls seven (7) days after such day;  |
| <b>"Yield Management Data"</b>   | means data collected by or on behalf of the ODP for the purpose of or in connection with managing or setting the prices at which any tickets for travel on the Passenger Services are sold and/or any quotas and/or restrictions applying to such tickets including: <ul style="list-style-type: none"> <li>(a) the number of passengers travelling upon any particular Passenger Service;</li> <li>(b) the ticket types held by such passengers;</li> <li>(c) the prices paid by such passengers for such tickets; and</li> <li>(d) the dates and/or times between which such tickets were made available to purchase at such prices;</li> </ul> |
| <b>"Yield Management System"</b> | means any system (whether a Computer System or otherwise) for the collection of Yield Management Data and/or onto which Yield Management Data is input, processed and/or held as such system may be amended or altered from time to time; and   |
| <b>"Zone"</b>                    | means a zone set out in the map in Schedule 2 of the Travelcard Agreement on the date such agreement came into effect or as amended by agreement with the Authority.  |

#### **4 COMMENCEMENT**

4.1 All the clauses of this Agreement (save for clause 15 (Competition)) and the following Schedules of this Agreement shall take effect and be binding upon each of the Authority and the ODP immediately upon signature of this Agreement:

- (a) Paragraph 4 (Subcontracting any Passenger Services) of Schedule 1.1 (Rail Services and Service Development);
- (b) paragraph 9 (Train Service Requirement Purpose and Responsibility of Schedule 1.1 (Rail Services and Service Development));

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- (c) paragraph 10 (Train Plan) of Schedule 1.1 (Rail Services and Service Development);
  - (d) paragraph 14.4 (Finalising the Train Plan) of Schedule 1.1 (Rail Services and Service Development);
  - (e) paragraph 5.3 (Publishing the Passenger's Charter) of Schedule 1.4 (Passenger Facing Obligations);
  - (f) Schedule 2.1 (Asset Vesting and Transfer);
  - (g) paragraph 2 (Rolling Stock Related Contracts and Insurance Arrangements) and paragraph 3 (Cascaded Rolling Stock and Delayed Cascade Mitigation Plan) of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);
  - (h) paragraph 1 (Other Train Operators) of Schedule 2.3 (Other Train Operators);
  - (i) Schedule 3A (Infrastructure Manager Services);
  - (j) Schedule 3B (Infrastructure Services and ODP Infrastructure Works);
  - (k) paragraph 4.3 (Specific Additional Obligations Relating To Persons With Disabilities) of Schedule 4 (Accessibility and Inclusivity);
  - (l) Schedule 5.1 (Purpose, Structure and Construction);
  - (m) Schedule 5.3 (Allocation of Fares to Fares Baskets);
  - (n) Schedule 5.7 (Changes to Fares and Fares Regulation);
  - (o) Schedule 5.9 (Smart Ticketing);
  - (p) paragraph 10 of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCI Scheme);
  - (q) Schedule 8.5 (Infrastructure Manager Services Payments);
  - (r) Schedule 8.6 (Grant Funding Payments);
  - (s) Schedule 9 (Changes and Variations);
  - (t) Schedule 10 (Remedies, Events of Default and Termination Events);
  - (u) paragraphs 1 (Corporate Information), 3 (Identification of Key Personnel and Provision of Organisation Chart), 5 (Maintenance of Records), 6 (Right to inspect) and 8 (Additional Reports) of Schedule 11.2 (Management Information);
  - (v) paragraph 4 (Performance Bond) of Schedule 12 (Financial Covenants and Bonds);

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- (w) Schedule 14.3 (Key Contracts);
  - (x) Schedule 15.1 (Reletting Provisions);
  - (y) paragraph 1.1 (Handover Package Status) of Schedule 15.3 (Handover Package);
  - (z) Schedule 17 (Confidentiality and Freedom of Information); and
  - (aa) Schedule 18 (Implementation and Rail Services Milestones).

4.2 The other provisions of this Agreement shall take effect and become binding upon the Parties on the Start Date, as stated in the Certificate of Commencement issued pursuant to the Conditions Precedent Agreement.

## **5 DURATION OF THE ODP GRANT AGREEMENT**

5.1 This Agreement shall expire on the Expiry Date or on the date of any earlier termination pursuant to Clauses 4.2(b) or 4.3(b) of the Conditions Precedent Agreement or pursuant to Schedule 10 (Remedies, Events of Default and Termination Events).

### **5.2 Additional Reporting Periods**

- (a) If the Authority gives notice to the ODP not less than six (6) months before the Expiry Date, the ODP Grant Agreement shall continue after such date on the terms set out in the ODP Grant Agreement for not less than one and (subject to sub-clause 5.2(b) below) not more than twenty six (26) consecutive Reporting Periods, as the Authority may stipulate.
- (b) Where the Authority exercises its rights in accordance with clause 5.3 to amend the Expiry Date by a specified number of Reporting Periods then the maximum number of Reporting Periods by which the Rail Services Term can be amended pursuant to clause 5.2(a) shall be reduced by the same number of Reporting Periods.

### **5.3 Amendment of Start Date/Expiry Date**

- (a) The Authority shall have the right on or before 14 September 2018 to serve notice on the ODP that the Start Date shall be a date later than 0200 on 14 October 2018. Such amended Start Date shall be 0200 on the first day of a Reporting Period and the latest such date that the Start Date can be amended to is 0200 on 14 April 2019. The Authority may in such notice also require that the Expiry Date is amended to a later date. Such amended Expiry Date shall be 0200 on the first day of a Reporting Period and the same number of Reporting Periods after the unamended Expiry Date as the number of Reporting Periods that the amended Start Date is after the unamended Start Date.
- (b) Where the Authority exercises its rights pursuant to clause 5.3(a) to amend the Start Date and/or the Expiry Date, the Authority shall be entitled to make such other

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amendments to the terms of the ODP Grant Agreement as are reasonably consequential upon such amendments.

#### 5.4 CVL Asset Transfer

- (a) In the event that:
- (i) prior to the Planned CVL Asset Transfer Date, the Authority considers (in its reasonable opinion) that the CVL Asset Transfer will not be likely to occur on or prior to the Planned CVL Asset Transfer Longstop Date; or
  - (ii) the CVL Asset Transfer fails to occur on or prior to the Planned CVL Asset Transfer Longstop Date,

the Authority shall, as soon as reasonably practicable but in any event no later than one (1) month from the Planned CVL Asset Transfer Longstop Date and following consultation with the ODP, serve a written notice on the ODP either:

- (A) requiring a variation to the terms of this Agreement, and any Package Order entered into with the ODP in relation to the Additional Infrastructure Services and ODP Infrastructure Works, to postpone all or any part of the Infrastructure Manager Services, ODP Infrastructure Works and/or Infrastructure Services for a period of no more than six (6) months (a “**Deferral Notice**”); or
- (B) requiring a variation to the terms of this Agreement and any Package Order entered into with the ODP in relation to the Additional Infrastructure Services and/or ODP Infrastructure Works to remove the Infrastructure Manager Services, ODP Infrastructure Works and Infrastructure Services from the ODP Services (a “**CVL Asset Notice**”).

#### 5.5 Deferral Notice

- (a) A Deferral Notice shall specify:
- (i) the obligations of the Parties and any Package Order entered into with the ODP in relation to the Additional Infrastructure Services and ODP Infrastructure Works which shall no longer be effective including but not limited to all or any part of the Infrastructure Manager Services, ODP Infrastructure Works and Infrastructure Services; and

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- (ii) the time period during which such obligations shall no longer be effective, which shall be no longer than six (6) months from service of the Deferral Notice;
  - (b) Following receipt by the ODP of the Deferral Notice and during the period of a postponement of all or any part of the Infrastructure Manager Services, ODP Infrastructure Works and Infrastructure Services under a Deferral Notice the Parties shall fully and effectively co-operate with each other to resolve the cause of the failure of the CVL Asset Transfer to occur by the Planned CVL Asset Transfer Longstop Date, this may include but shall not be limited to:
    - (i) agreeing a revised Planned CVL Asset Transfer Longstop Date (including revisions to any applicable Planned Rail Services Milestone Delivery Dates and any other consequential variations to the terms of this Agreement and/or terms of any Package Order entered into with the ODP in relation to Additional Infrastructure Services and ODP Infrastructure Works); and/or
    - (ii) agreeing any variations to the terms of this Agreement and any Package Order entered into with the ODP in relation to Additional Infrastructure Services and ODP Infrastructure Works (including to the scope of the ODP Infrastructure Works and Infrastructure Services) which would allow the CVL Transformation to be delivered by, or on behalf of, the ODP without the CVL Asset Transfer occurring,provided always that upon such agreement by the Parties the period set out in the Deferral Notice shall be deemed to have expired and the Parties shall proceed upon the terms agreed in this clause 5.5(b).
  - (c) In the event that the Parties are unable to reach agreement under clause 5.5(b) the Authority shall no later than six (6) months from the service of the Deferral Notice issue a CVL Asset Notice to the ODP.

#### **5.6 CVL Asset Notice**

- (a) A CVL Asset Notice issued by the Authority shall specify:
  - (i) the obligations of the Parties which the Authority considers shall no longer be effective under this Agreement in order for the ODP Infrastructure Works, Infrastructure Services and Infrastructure Manager Services to be removed from the ODP Services;
  - (ii) any revision to limb (a) of the Expiry Date which shall be a minimum of seven (7) calendar years from the Start Date; and

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- (iii) the Authority's proposals on the process to be undertaken by the Parties to agree the required variations and consequential cost implications of the variations provided always that such variations to this Agreement shall be deemed to be:
- (A) in respect of the terms and conditions under Schedule 3B (Infrastructure Services and ODP Infrastructure Works), Variations (as defined in Appendix 1 to Schedule 3B); and
  - (B) for all other parts of this Agreement, Variations (as defined in Clause 3 (Definitions)) which, for the avoidance of doubt shall be a Change (as defined in Clause 3 (Definitions)) and may require a number of Changes to be grouped together as a single Change.
- (b) Following receipt of the CVL Asset Notice the Parties shall fully and effectively co-operate with each other to agree:
- (i) the variations necessary to this Agreement and any associated agreement to effect the Authority's requirement for the removal of all or any part of the ODP Infrastructure Works, Infrastructure Services and Infrastructure Manager Services from the ODP Services;
  - (ii) the amount, if any, payable by the Authority to the ODP in relation to the CVL Notice Profit Compensation Amount (as calculated in accordance with Clause 5.6(c) below);
  - (iii) Breakage Costs, if any, which have been incurred by the ODP that are a direct consequence of the:
    - (A) implementation of the CVL Asset Notice;
    - (B) removal of all or any part of the ODP Infrastructure Works, Infrastructure Services and Infrastructure Manager Services from the ODP Services; and
    - (C) the reduced ODP Grant Agreement Term.
- (c) The CVL Notice Profit Compensation Amount shall be calculated as follows:

**CVL Notice Profit Compensation Amount = (Average Bid Profit – Forecast Bid Profit) x Profit Underperformance Factor**

**Where:**

$$\text{Average Bid Profit} = \sum_{i=1}^8 (ABP_i \times RPI_i)$$

|                  |  |
|------------------|--|
| <b>Where:</b>    |  |
| i                | is the relevant ODP Year;  |
| ABP <sub>i</sub> | is the figure shown in respect of the relevant ODP Year in Column 2 of Table 1 to this Clause 5.6; and |
| RPI              | is the value of RPI (as defined in Schedule 8.1) in the relevant ODP Year;                             |

$$\text{Forecast Bid Profit} = \sum_{i=1}^8 (FBP_i \times RPI_i)$$

|                  |  |
|------------------|--|
| <b>Where:</b>    |  |
| i                | is the relevant ODP Year;  |
| FBP <sub>i</sub> | is the figure shown in respect of the relevant ODP Year in Column 2 of Table 2 to this Clause 5.6; and |
| RPI              | is the value of RPI (as defined in Schedule 8.1) in the relevant ODP Year;                             |

$$\text{Profit Underperformance Factor} = \frac{\text{Actual Profit}}{\text{Forecast Bid Profit}}$$

|               |   |
|---------------|---|
| <b>Where:</b> |   |
| Actual Profit | is the total actual Relevant Profit for the period starting on the Start Date and ending on the Expiry Date calculated in absolute terms post any profit sharing; |

|  |  |
|--|--|
| Forecast Bid Profit  | is the sum of the forecast bid profit for the period starting on the Start Date and ending on the Expiry Date; and |
| If the calculation of the Profit Underperformance Factor gives a value greater than 1 then the Profit Underperformance Factor shall equal 1. |  |

- (d) The CVL Notice Profit Compensation Amount shall equal zero if the value of the CVL Notice Profit Compensation Amount calculated in accordance with Clause 5.6(c) is less than zero.
- (e) The ODP's entitlement to the CVL Notice Profit Compensation Amount and Breakage Costs in accordance with this Clause 5.6 shall be subject at all times to the ODP:
- (i) using all reasonable endeavours to mitigate any losses, costs, liabilities or expenses incurred by it as a result of the Authority serving a CVL Asset Notice;
  - (ii) not being entitled to recover more than once in respect of the same loss suffered by it;
  - (iii) not being entitled to recover any amount in respect of any indirect costs or losses or any loss of profit arising other than the CVL Notice Profit Compensation Amount calculated pursuant to clause 5.6(c);
  - (iv) providing such supporting evidence and other information as the Authority may reasonably require in respect of any compensation claimed; and
  - (v) ensuring that any claim for any CVL Notice Profit Compensation Amount or Breakage Costs is provided to the Authority no later than twelve (12) months after the Expiry Date.
- (f) Following submission to the Authority of the Management Accounts for the Final ODP Year, the ODP shall notify the Authority in writing in respect of any CVL Notice Profit Compensation Amounts, along with sufficient supporting evidence and other information. In respect of Breakage Costs due to the ODP in accordance with this Clause 5.6, the ODP shall notify the Authority as soon as reasonably practicable following such Breakage Costs being incurred, along with sufficient supporting evidence and other information.
- (g) Upon the Authority's receipt of the ODP's notification of any CVL Notice Profit Compensation Amounts and Breakage Costs pursuant to Clause 5.6(f), the Authority shall pay to the ODP:



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- (i) Breakage Costs due and payable as soon as reasonably practicable but in any event no later than two (2) months following such date; and
    - (ii) CVL Notice Profit Compensation Amounts no later than two (2) months following the end of the ODP Grant Agreement Term.
  - (h) If the Authority issues a CVL Asset Notice which specifies that the revised Expiry Date shall be the CVL Revised Expiry Date, at least six (6) months in advance of the CVL Revised Expiry Date the Authority shall (at its sole discretion) either:
    - (i) notify the ODP in writing that it requires the Protected Rolling Stock Leases to be novated to the Successor Operator on the CVL Revised Expiry Date; or
    - (ii) subject to clause 5.6(i), pay the CVL Asset Notice Protected Rolling Stock Fixed Payment to the ODP or Opco or, if the ODP so requests, into an escrow account in the name of the ODP or Opco, details of which have been provided to the Authority within thirty (30) days of the CVL Revised Expiry Date, such sum to be paid by the ODP to the relevant RS Lessor to discharge the ODP's liability for rental payments arising under the Protected Rolling Stock Lease in respect of the CVL Protected Period.
  - (i) Where the RS Lessor leases the Protected Rolling Stock to the Successor Operator or any other train operator at any time during the CVL Protected Period, the Authority may, during the Claw Back Period, claw back the CVL Asset Notice Protected Rolling Stock Fixed Payment to the extent that the RS Lessor has received payment for the use of the Protected Rolling Stock from such Successor Operator or other train operator during the CVL Protected Period.
  - (j) Where the Authority notifies the ODP in writing that it requires the Protected Rolling Stock Leases to be novated to the Successor Operator pursuant to clause 5.6(h)(i):
    - (i) the ODP shall enter and shall procure that the relevant RS Lessor enters into a deed of novation in respect of the Protected Rolling Stock Leases in such form as is agreed by the Authority (acting reasonably) (the "**Agreed Form Deed of Novation**") with effect from the CVL Revised Expiry Date; and
    - (ii) the Authority shall procure that the Successor Operator enters into the Agreed Form Deed of Novation with effect from the CVL Revised Expiry Date.

- (k) Where the Protected Rolling Stock Leases are novated to the Successor Operator as referred to in clause 5.6(h)(i) or the Authority pays the CVL Asset Notice Protected Rolling Stock Fixed Payment to the ODP pursuant to clause 5.6(h)(ii), the ODP shall not be entitled to recover any losses, costs, liabilities or expenses in respect of the Protected Rolling Stock Leases as Breakage Costs or as part of the CVL Notice Profit Compensation Amount pursuant to this clause 5.6.

**Table 1 to Clause 5.6 – Figures for Calculation of Average Bid Profit**

| Year            |                 | Column 1           | Column 2               |
|-----------------|-----------------|--------------------|------------------------|
| From            | To              | ODP Year           | Average Bid Profit (£) |
| 14 October 2018 | 31 March 2019   | Year 1             | [REDACTED]             |
| 01 April 2019   | 31 March 2020   | Year 2             | [REDACTED]             |
| 01 April 2020   | 31 March 2021   | Year 3             | [REDACTED]             |
| 01 April 2021   | 31 March 2022   | Year 4             | [REDACTED]             |
| 01 April 2022   | 31 March 2023   | Year 5             | [REDACTED]             |
| 01 April 2023   | 31 March 2024   | Year 6             | [REDACTED]             |
| 01 April 2024   | 31 March 2025   | Year 7             | [REDACTED]             |
| 01 April 2025   | 13 October 2025 | Year 8 (part year) | [REDACTED]             |

**Table 2 to Clause 5.6 – Figures for Calculation of Forecast Bid Profit**

| Year            |                 | Column 1           | Column 2                |
|-----------------|-----------------|--------------------|-------------------------|
| From            | To              | ODP Year           | Forecast Bid Profit (£) |
| 14 October 2018 | 31 March 2019   | Year 1             | [REDACTED]              |
| 01 April 2019   | 31 March 2020   | Year 2             | [REDACTED]              |
| 01 April 2020   | 31 March 2021   | Year 3             | [REDACTED]              |
| 01 April 2021   | 31 March 2022   | Year 4             | [REDACTED]              |
| 01 April 2022   | 31 March 2023   | Year 5             | [REDACTED]              |
| 01 April 2023   | 31 March 2024   | Year 6             | [REDACTED]              |
| 01 April 2024   | 31 March 2025   | Year 7             | [REDACTED]              |
| 01 April 2025   | 13 October 2025 | Year 8 (part year) | [REDACTED]              |

**6 GENERAL OBLIGATIONS**

6.1 The ODP shall perform its obligations:

- (a) in respect of the Rail Services under this Agreement in accordance with its terms and with that degree of skill, diligence, prudence and foresight which would be exercised by a skilled and experienced Train Operator;
- (b) in respect of the Infrastructure Manager Services under this Agreement in accordance with the standards set out in Schedule 3A (Infrastructure Manager Services) of this Agreement; and
- (c) in respect of the Infrastructure Services and Infrastructure Works under this Agreement in accordance with Schedule 3B (Infrastructure Services and Infrastructure Works) of this Agreement.

6.2 Any obligation on the part of the ODP to use “**all reasonable endeavours**” shall extend to consequent obligations to adequately plan and resource its activities, and to implement those plans and resources, with all due efficiency and economy.

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6.3 The ODP shall co-operate with the Authority and act reasonably and in good faith in and about the performance of its obligations and the exercise of its rights pursuant to the ODP Grant Agreement.

6.4 The Authority shall act reasonably and in good faith in and about the performance of its obligations and the exercise of its rights pursuant to the ODP Grant Agreement.

## **7 ASSIGNMENT**

7.1 The ODP shall not without the prior written consent of the Authority assign, hold in trust for any other person, or grant a Security Interest in or over, the ODP Grant Agreement or any part hereof or any benefit or interest or right herein or hereunder (other than any right of the ODP to receive monies under a Supplemental Agreement).

7.2 Notwithstanding the entry into of any sub-contract by the ODP permitted by this Agreement and notwithstanding the Authority permissions pursuant to Clause 7.3, the ODP shall remain primarily and directly liable to the Authority for any failure by the ODP to perform any obligation or responsibility of the ODP under this Agreement.

7.3 Subject to clause 7.2 and Schedule 14.3, but notwithstanding that this Agreement may describe the relevant matter as being performed, discharged, entered into or obtained by the ODP itself, the Authority hereby agrees that:

(a) the ODP may procure the performance or discharge of the obligations and responsibilities of the ODP under this Agreement by sub-contracting such obligations and responsibilities to the ODP Sub-Contractors; and

(b) references in this Agreement to contracts, agreements, licences, consents, schemes or other relevant approvals or arrangements to which the ODP is or is required to be a party or to enter into or obtain, shall be deemed to include reference to InfraCo or OpCo being party to or entering into or obtaining such contracts, agreements, licences, consents, schemes or other relevant approvals or arrangements in place of the ODP.

## **8 CHANGE OF CONTROL AND FACILITATION FEE**

8.1 A “**Change of Control**” is a change occurring in the identity of any one person, or two (2) or more persons acting by agreement, who may Control the ODP on and from the date of the ODP Grant Agreement and during the ODP Grant Agreement Term, which shall include a person, or two (2) or more persons acting by agreement, ceasing to Control the ODP at any time during the ODP Grant Agreement Term, whether or not any other person Controls the ODP at the same time and for the purposes of this clause 8, two (2) or more persons shall be deemed to be acting by agreement in relation to the ODP if, assuming the ODP was a target company as defined in the Companies Act 2006, such

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persons would be under an obligation to disclose an interest in shares in such company by virtue of an agreement between such persons.

8.2 Otherwise than in accordance with the prior consent of the Authority given pursuant to clause 8.3, a Change of Control shall constitute an Event of Default pursuant to paragraph 1.3 of Schedule 10.2 (Events of Default and Termination Events)

8.3 The ODP may, at any time, apply in writing to the Authority for its consent to a Change of Control (as such term is defined pursuant to clause 8.1).

8.4 Subject to clause 8.5, the Authority may require the ODP to pay a fee in consideration of the grant of such consent (the “**Facilitation Fee**”).

8.5 The ODP shall not be liable to pay the Facilitation Fee where the application for consent to a Change of Control is as a direct result of the Authority issuing:

- (a) an Infrastructure Manager Notice; or
- (b) a CVL Asset Notice,

save for, in each case, where such Infrastructure Manager Notice, or CVL Asset Notice (as the case may be) has been issued following an Event of Default.

8.6 The Authority may require the ODP to pay an additional fee in respect of the staff, professional and other costs incurred by the Authority in connection with the ODP's application (the “**Administration Fee**”). The Administration Fee shall be payable whether or not the Authority consents to the proposed Change of Control.

8.7 On or after submitting such application to the Authority, the ODP will provide, and will procure that the seller and the buyer provide, the Authority with such documentation and information as the Authority may require to assess such application and the amount of the Facilitation Fee. Without limiting clauses 8.12 or 8.13, it shall be deemed to be reasonable for the Authority to delay or withhold consent to the Change of Control where any such documentation is not provided.

8.8 The Facilitation Fee shall be a sum equal to the greater of:

- (a) one million pounds (£1,000,000); or
- (b) where the Estimated Profit Stream is greater than the Bid Profit Stream five percent (5%) of the difference between the Bid Profit Stream and the Estimated Profit Stream.

8.9 The Administration Fee shall be determined by the Authority on the basis of:

- (a) the aggregate time spent by officials within the Authority on matters relating to such application;

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- (b) the Authority's hourly scale rates for such officials, as varied from time to time; and
- (c) the aggregate costs and disbursements, including where applicable VAT and professional costs, incurred by the Authority in connection with such application.
- 8.10 Any determination by the Authority for the purposes of clauses 8.8 or 8.9 shall in the absence of manifest error be final and binding as between the Authority and the ODP (but without prejudice to the requirement of the Authority to reasonably determine the Estimated Profit Stream).
- 8.11 Any consent by the Authority to a Change of Control may be given subject to such conditions as the Authority sees fit and the ODP shall, as applicable, comply with, and/or procure that the seller and/or the buyer comply with, any such conditions.
- 8.12 The Authority shall have absolute discretion as to the grant of consent to any Change of Control and may accordingly refuse such consent for any reason the Authority sees fit.
- 8.13 The Authority shall have no liability whatever to the ODP in respect of any refusal of consent to a Change of Control, any delay in providing such consent, or any condition of such consent.

## **9 COMPLIANCE WITH LAWS**

The ODP shall at all times perform the ODP Services and all its other obligations under the ODP Grant Agreement in accordance with all applicable Laws.

## **10 CUMULATIVE RIGHTS AND REMEDIES**

The rights and remedies of the Authority under the ODP Grant Agreement are cumulative, may be exercised as often as the Authority considers appropriate and are in addition to its rights and remedies under the general Law. The exercise of such rights and remedies shall not limit the Authority's right to make payment adjustments, claim damages in respect of contraventions of the ODP Grant Agreement or pursue any available remedies under general Law.

## **11 DISPUTE RESOLUTION PROCEDURE**

- 11.1 If a dispute arises in relation to any aspect of the ODP Grant Agreement, either Party shall give to the other written notice of the dispute, setting out its nature and full particulars including whether the Party considers the dispute has arisen in respect of the Rail Service, the Infrastructure Works, Infrastructure Manager Services or Infrastructure Services (the "**Dispute Notice**").
- 11.2 On service of the Dispute Notice, a representative of the ODP and a representative of the Authority responsible for operational management of the relevant disputed ODP Service

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shall consult in good faith in an attempt to come to an agreement in relation to the disputed matter.

- 11.3 If the relevant representatives of ODP and the Authority are for any reason unable to resolve the dispute in accordance with clause 11.2 within seven (7) days (or such other time agreed between the Parties), the ODP's and the Authority's representatives shall escalate the dispute to the managing director of the ODP and a representative of the Authority of appropriate seniority to further consult in good faith in attempt to come to an agreement to the disputed matter.
- 11.4 If the managing director of the ODP and the Authority's senior representative are subsequently unable to resolve the dispute in accordance with clause 11.3 within seven (7) days (or such other time agreed between the Parties), the relevant dispute resolution procedure pursuant to clauses 11.5 to 11.12 shall apply.
- 11.5 Any dispute arising out of or in connection with the Rail Services or the Infrastructure Manager Services under the ODP Grant Agreement shall be dealt with in accordance with clauses 11.5 to 11.9.
- 11.6 Wherever the ODP Grant Agreement provides that the Authority may reasonably determine any matter, the ODP may, unless the ODP Grant Agreement expressly provides otherwise, dispute whether a determination made by the Authority is reasonable, but the Authority's determination shall prevail unless and until it is agreed or found to have been unreasonable.
- 11.7 Where either Party is entitled, pursuant to the terms of the ODP Grant Agreement, to refer a dispute arising out of or in connection with the Rail Services under the ODP Grant Agreement for resolution or determination in accordance with the Dispute Resolution Rules, then such dispute shall, unless the Parties otherwise agree and subject to any duty of the Authority under section 55 of the Act, be resolved or determined by arbitration pursuant to the Dispute Resolution Rules.
- 11.8 Where, in the absence of an express provision in the ODP Grant Agreement entitling it to do so, either Party wishes to refer a dispute arising out of or in connection with the ODP Grant Agreement to arbitration pursuant to the Dispute Resolution Rules, the following process shall apply:
- (a) the Party seeking to refer to arbitration shall serve a written notice upon the other Party stating (i) the nature and circumstances of the dispute, (ii) the relief sought including, to the extent possible, an indication of any amount(s) claimed, and (iii) why it is considered that the dispute should be resolved by way of arbitration rather than litigation;

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- (b) the other Party shall respond within twenty (20) Weekdays of service of the notice confirming whether or not referral of the dispute to arbitration is agreed. In the absence of any response, the referral to arbitration shall be deemed not to have been agreed;
  - (c) in the event that the Parties agree to refer the dispute to arbitration then it shall be resolved or determined in accordance with the Dispute Resolution Rules;
  - (d) in the event that the Parties do not agree to refer the dispute to arbitration then it shall be resolved or determined in accordance with clause 17 (Governing Law and Jurisdiction); and
  - (e) nothing in this clause 11.4 shall preclude either Party from commencing, continuing or otherwise taking any step by way of litigation in pursuit of the resolution or determination of the dispute unless an agreement is reached to refer the dispute to arbitration.

11.9 The arbitrator in any dispute referred for resolution or determination under the Dispute Resolution Rules shall be a suitably qualified person chosen by agreement between the Parties or, in default of agreement, chosen by the Secretary of the Access Disputes Committee from a panel of persons agreed from time to time for such purposes between the Authority and the ODP or, in default of agreement as to the arbitrator or as to such panel, selected on the application of any Party by the President of the Law Society or the President of the Institute of Chartered Accountants in England and Wales from time to time (or such other person to whom they may delegate such selection).

**11.10 Disputes under the ODP Grant Agreement in respect of Infrastructure Services**

Any dispute arising out of or in connection with the Infrastructure Works and Infrastructure Services under the ODP Grant Agreement shall be dealt with in accordance with the dispute resolution procedure set out in Schedule 3B (Infrastructure Services and Infrastructure Works) to this Agreement.

**11.11 Disputes under other agreements**

- (a) The ODP shall notify the Authority of any disputes to which it is a party under any Inter-Operator Scheme, Access Agreement, Property Lease or Rolling Stock Related Contract or under any other agreement in circumstances where the relevant dispute could have an adverse effect on the ODP's ability to comply with its obligations under the ODP Grant Agreement or on the provision of the ODP Services and which have been submitted for resolution either to the courts or to any other procedure for dispute resolution provided for under such agreements.
- (b) Such notification shall be made both:



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- (i) at the time of such submission (and such notification shall include reasonable details of the nature of the dispute); and
  - (ii) at the time of the resolution of the dispute (whether or not subject to appeal) (and such notification shall include reasonable details of the result of the dispute, any associated award and whether it is subject to appeal).
- (c) The ODP shall provide such further details of any dispute referred to in clause 11.9 (Disputes under the ODP Grant Agreement) as the Authority may reasonably request from time to time.

## 12 NOTICES

### 12.1 Notices

- (a) Any notice, notification or other communication under or in connection with the matters specified in Schedule 10.2 (Events of Default and Termination Events) or any dispute under or in connection with the ODP Grant Agreement shall be in writing and shall be delivered by hand or recorded delivery or sent by pre-paid first class post to the relevant recipient at the address for service set out below, or to such other address in the United Kingdom as each Party may specify by notice in writing to the other recipient:

**Name:** Welsh Government

**Address:** Crown Buildings, Cathays Park, Cardiff, CF10 3NQ

**Email:** To be provided

**Attention:** Legal Services Director

**Name:** KEOLIS AMEY WALES CYMRU LIMITED

**Address:** Evergreen Building North, 160 Euston Road, London NW1 2DX

**Email:** [REDACTED]

**Attention:** [REDACTED]

- (b) Any other notice, notification or other communication under or in connection with the ODP Grant Agreement shall be in writing and shall be delivered:

- 
- (i) in accordance with clause 12.1(a); or
  - (ii) by electronic data transfer,
  - (iii) except that it shall be marked for the attention of the Contract Manager or the Authority's Representative.
- (c) All notices provided to Authority should also be copied to Transport for Wales using the following details:

**Name:** Transport for Wales

**Address:** 5<sup>th</sup> Floor, Southgate House, Wood St, Cardiff CF10 1GR

**Email:** To be provided

**Attention:** Operations Director

## 12.2 Deemed Receipt

Any such notice or other communication shall be deemed to have been received by the recipient to whom it is addressed as follows:

- (a) if sent by hand or recorded delivery, when delivered;
- (b) if sent by pre-paid first class post, from and to any place within the United Kingdom, three (3) Weekdays after posting unless otherwise proven; and
- (c) if sent by electronic data transfer or email, upon sending, subject to receipt by the sender of a "**delivered**" confirmation (provided that the sender shall not be required to produce a "**read**" confirmation).

## 13 SET-OFF

13.1 Save as otherwise expressly provided under the ODP Grant Agreement or required by law, all sums payable under the ODP Grant Agreement shall be paid in full and without any set-off or any deduction or withholding including on account of any counter-claim.

13.2 Notwithstanding clause 13.1 the Authority shall be entitled to set-off against any amounts payable by it under the ODP Grant Agreement:

- (a) any amount or liability payable or due to it under or in relation to the ODP Grant Agreement (whether such amount or liability is present, contingent and/or future, liquidated or unliquidated);

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- (b) any amount or liability payable or due to it under or in relation to the CVL Asset Lease (whether such amount or liability is present, contingent and/or future, liquidated or unliquidated); and
  - (c) any monetary penalty payable under the Act.
- 13.3 Notwithstanding clause 13.1, the Authority shall be entitled to set off any liability for payment under Schedule 7.1 (Operational Performance) against any sum owed to it by the ODP under Schedule 7.1 (Operational Performance).

## **14 MISCELLANEOUS PROVISIONS**

### **14.1 Waivers**

- (a) Any Party may at any time waive any obligation of any other Party owed to it under the ODP Grant Agreement provided always that such waiver shall be given in written notice by the Authority's Representative or Contract Manager as applicable and the obligations of the Parties hereunder shall be construed accordingly.
- (b) No waiver by any Party of any default by any other Party in the performance of such Party's obligations under the ODP Grant Agreement shall operate or be construed as a waiver of any other or further such default, whether of a like or different character. A failure to exercise or delay in exercising a right or remedy under the ODP Grant Agreement shall not constitute a waiver of any right or remedy or a waiver of any other rights or remedies and no single or partial exercise of any right or remedy under the ODP Grant Agreement shall prevent any further exercise of such right or remedy or the exercise of any other right or remedy.
- (c) A waiver of any right or remedy under the ODP Grant Agreement or by law is only effective if given in writing by the Authority.

### **14.2 Time Limits**

Where in the ODP Grant Agreement any obligation of a Party is required to be performed within a specified time limit (including an obligation to use all reasonable endeavours or reasonable endeavours to secure a particular result within such time limit):

- (a) that obligation shall be deemed to continue after the expiry of such time limit if such Party fails to comply with that obligation (or secure such result, as appropriate) within such time limit;
- (b) the Parties shall consult on the relevant Party's failure to perform the obligation within the specified time limit; and

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- (c) the relevant Party shall, as applicable, continue to use all reasonable endeavours or reasonable endeavours to do or procure that the relevant thing is done as soon as reasonably practicable thereafter.

#### **14.3 Partial Invalidity**

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

#### **14.4 Further Assurance**

Each Party agrees to execute and deliver all such further instruments and do and perform all such further acts and things as shall be necessary or expedient for the carrying out of the provisions of the ODP Grant Agreement.

#### **14.5 Rights of Third Parties**

- (a) A person who is not a Party to the ODP Grant Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the ODP Grant Agreement except to the extent set out in this clause 14.5.
- (b) Any Successor Operator or potential Successor Operator nominated by the Authority and notified to the ODP for the purposes of this clause 14.5 may enforce and rely on the provisions of Schedule 15 (Obligations Associated with Termination) to the same extent as if it were a Party but subject to clauses 14.5(c) and 14.5(d).
- (c) The ODP Grant Agreement may be terminated, and any term may be amended or waived, in each case in accordance with the terms of the ODP Grant Agreement, without the consent of any person nominated under clause 14.5(b).
- (d) The person nominated under clause 14.5(b) shall only be entitled to enforce and rely on Schedule 15 (Obligations Associated with Termination) to the extent determined by the Authority (whether at the time of nomination or at any other time) and, to the extent that any such person is entitled to enforce and rely on Schedule 15 (Obligations Associated with Termination), any legal proceedings in relation thereto must be commenced within one (1) year of the expiry of the ODP Grant Agreement Term and any such person shall not be entitled to enforce or rely on Schedule 15 (Obligations Associated with Termination) to the extent that it has consented to any particular act or omission of the ODP which may constitute a contravention of Schedule 15 (Obligations Associated with Termination) or has been afforded a reasonable opportunity to indicate to the ODP that

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it is not so consenting and has not so indicated (the extent of such reasonable opportunity to be determined by the Authority unless otherwise agreed).

#### 14.6 **The Authority's Consent or Approval**

Where any provision of the ODP Grant Agreement provides for any matter to be subject to the consent or approval of the Authority, then (subject only to the express terms of that provision as to the basis on which that consent or approval may be given or withheld) the Authority shall be entitled to give that consent or approval subject to any condition or conditions as the Authority considers appropriate, which may include the adjustment of any of the terms of the ODP Grant Agreement.

#### 14.7 **Enforcement Costs**

The ODP shall compensate the Authority for all reasonable costs incurred by the Authority as a result of the ODP failing to perform its obligations under the ODP Grant Agreement in accordance with their terms in the exercise of the Authority's rights under Schedule 10 (Remedies, Events of Default and Termination Events).

#### 14.8 **Arm's Length Dealings**

The ODP shall ensure that every contract or other arrangement or transaction to which it may become party in connection with the ODP Grant Agreement with any person (or any Affiliate) is on bona fide arm's length terms.

#### 14.9 **Non-Discrimination**

The ODP will not discriminate in seeking offers in relation to, or in awarding, a contract for the purchase or hire of goods on the grounds:

- (a) of nationality, against a person who is a national of and established in an EEA state; or
- (b) that the goods to be supplied under the contract originate in another EEA state.

For the purpose of this clause, "**EEA state**" means any state which is a party to the EEA agreement entered into on 2 May 1992 (as updated from time to time).

### 15 **COMPETITION**

15.1 For the purposes of this clause 15:

- (a) "**CMA**" means the Competition and Markets Authority;
- (b) "**Commitment**" means:
  - (i) where the Transaction is within the jurisdiction of the CMA undertakings in lieu of reference for a second phase investigation offered by any

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Parent, the ODP or any Affiliate that the CMA is able to accept pursuant to section 73(2) of the Enterprise Act 2002 in relation to the Transaction;  
or

(ii) where the Transaction is notified to the European Commission under Council Regulation (EC) 139/2004 concerning the control of concentrations between undertakings as amended from time to time the giving by any Parent, the ODP or any Affiliate to the European Commission of commitments to enable the European Commission to conclude that the concentration arising out of the Transaction would not impede effective competition in the common market or a substantial part of it and declare it compatible with the common market pursuant to Article 6(1)(b) of the EU Merger Regulation;

(c) **“Competition Authority”** means the European Commission or the CMA;

(d) **“Competition Event”** means an Intervention by a Competition Authority or any Commitment which could prejudice the ability of:

(i) the ODP to operate the ODP Services in accordance with the ODP Grant Agreement; or

(ii) any Affiliate of the ODP to continue to operate any other Rail Franchise of which it is the franchisee;

(e) **“Intervention”** means a determination following the completion of a second phase investigation that the merger resulting from the award of the ODP Grant Agreement to the ODP (i) in the case of the CMA has resulted or may be expected to result in a substantial lessening of competition in the UK market or (ii) in the case of the European Commission would significantly impede effective competition in the internal market and that in either case specified actions are required to be taken for the purposes of remedying those anticipated competition issues;

(f) **“Rail Franchise”** means any passenger rail franchise awarded pursuant to the Act in respect of which a franchisee or its wholly owned subsidiary provides franchised services; and

(g) **“Transaction”** means the entry into the ODP Grant Agreement by the Authority and the ODP.

15.2 Without prejudice to the Authority’s rights under Clause 5.5 of the Conditions Precedent Agreement, in so far as the Transaction is:

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- (a) notified to the European Commission under Council Regulation (EC) 139/2004 concerning the control of concentrations between undertakings as amended from time to time (the “**EU Merger Regulation**”); or
- (b) within the jurisdiction of the CMA in the United Kingdom (including as a result of a referral under Article 4(4) or Article 9 of the EU Merger Regulation),

and the Transaction remains under consideration by a Competition Authority at the Start Date the ODP shall use all reasonable endeavours expeditiously to progress the consideration of the Transaction by the relevant Competition Authority.

15.3 Without prejudice to the generality of clause 15.2, the ODP shall respond in a timely manner to all requests for information and/or documents made by the Competition Authority, respond to any issues letter, issues statement or statement of objections, provide comments on any working papers on which the Competition Authority invites comments, attend any meeting (including issues meetings, state of play meetings or hearings), respond to any provisional findings and notice of possible remedies, respond to any provisional decision on remedies and attend any remedies hearing.

15.4 The ODP shall report to the Authority on at least a weekly basis or as frequently as the Authority shall require on the progress of the consideration of the Transaction by the Competition Authority and immediately concerning any material developments in the case. The ODP shall promptly provide to the Authority copies of all material communications with the Competition Authority, including but not limited to requests for information and/or documents made by the Competition Authority, submissions and responses with supporting evidence, as well as hearing transcripts (provided always that the ODP may redact from such copies information which is confidential to the ODP and which may if disclosed to the Authority prejudicially affect the ODP’s legitimate business interests).

15.5 If at any time the Authority (acting reasonably) determines that a Competition Event has arisen, the Authority shall have the right to give written notice to the ODP informing it that such Competition Event has arisen (“**Competition Event Notice**”) and the provisions of paragraph 2.5 of Schedule 10.2 (Events of Default and Termination Events) shall apply.

## **16 ENTIRE AGREEMENT**

16.1 This ODP Grant Agreement, the CVL Asset Lease, the Funding Deed and the Conditions Precedent Agreement contain the entire agreement between the Parties in relation to the subject matter of the ODP Grant Agreement and supersede all prior agreements and arrangements between the Parties other than any confidentiality agreements or undertakings which the ODP may have entered into with the Authority in connection with

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its proposal to secure the provision of the ODP Services under the ODP Grant Agreement.

16.2 The ODP hereby acknowledges that it is not entering into the ODP Grant Agreement in reliance on any warranties, representations or undertakings howsoever or to whomsoever made except in so far as such warranties, representations or undertakings are contained in the ODP Grant Agreement.

16.3 The ODP hereby acknowledges and agrees with the Authority (for itself and as trustee for each of the other persons referred to therein) to the disclaimers of liability which are contained in Volume 1 of the Invitation to Submit Final Tender and the section entitled “**Important Notice**” contained in any document supplied by or on behalf of the Authority in connection with the ODP Grant Agreement, the process leading to the entering into of the ODP Grant Agreement, or the ODP Services including the Invitation to Submit Final Tender issued in connection therewith.

16.4 The ODP irrevocably and unconditionally waives any right which it may otherwise have to claim damages in respect of and/or to rescind this ODP Grant Agreement and/or the Conditions Precedent Agreement on the basis of any warranty, representation (whether negligent or otherwise, and whether made prior to and/or in this ODP Grant Agreement or the Conditions Precedent Agreement) or undertaking howsoever or to whomsoever made unless and to the extent that such warranty, representation or undertaking was made fraudulently.

## **17 GOVERNING LAW AND JURISDICTION**

The ODP Grant Agreement (and any non-contractual obligations arising out of or in connection with it) shall be governed by and construed in accordance with the laws of England and Wales and the Parties irrevocably agree that the courts of England and Wales are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with the ODP Grant Agreement, except as expressly set out in the ODP Grant Agreement.

## **18 NO PARTNERSHIP, AGENCY OR JOINT VENTURE**

Unless otherwise expressly set out in this ODP Grant Agreement, nothing in this ODP Grant Agreement is intended or shall be deemed to constitute a partnership, agency, or joint venture relationship between the Parties.

## **19 LANGUAGE**

19.1 Any notice given under or in connection with this Agreement shall be in English. All other documents provided under or in connection with this Agreement shall be in English, or accompanied by a certified English translation.



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19.2 If the Agreement is translated into the Welsh language, or any other language, the English language version of this Agreement and its Schedules shall prevail if there is a conflict between such translated version(s).

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**IN WITNESS** whereof the Parties hereto have executed this ODP Grant Agreement the day and year first before written:

**WELSH MINISTERS**

Executed by applying the seal of Welsh Ministers.

The application of the seal of Welsh Ministers is AUTHENTICATED by [REDACTED] who is duly authorised for that purpose by the Director of Legal Services by authority of Welsh Ministers under section 90(2) of the Government of Wales Act 2006

Authenticated by authority of the  
Director of Legal Services

SIGNED FOR AND ON BEHALF OF )  
KEOLIS AMEY WALES CYMRU LIMITED )

Authorised signatory:

Director:

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## Schedule 1

### Passenger Service Obligations

|               |   |
|---------------|---|
| Schedule 1.1: | Rail Services and Service Development<br>Part 1 – Rail Services<br>Part 2 – Service Development |
|               | Appendix 1 – Train Service Requirements   |
| Schedule 1.2: | Operating Obligations   |
| Schedule 1.3: | <b>NOT USED</b>   |
| Schedule 1.4: | Passenger Facing Obligations  |
| Schedule 1.5: | Information about Passengers  |
| Schedule 1.6: | The Rolling Stock   |
|               | Appendix 1: The Composition of the Train Fleet  |
| Schedule 1.7: | Stations  |
|               | Appendix 1: List of Secure Stations Accreditation and Secure Car Parks Accreditation            |
|               | Appendix 2: Information about Station Improvement Measures                                      |
|               | Appendix 3: Station Improvements to be delivered by the ODP                                     |
|               | Appendix 4: Not Used  |
|               | Appendix 5: Draft Station Social and Commercial Development Plan                                |

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## **Schedule 1.1 - Rail Services and Service Development**

### **Part 1 - RAIL SERVICES**

#### **1 RAIL SERVICES**

- 1.1 The ODP may at all times during the Rail Services Term provide and operate the Rail Services specified in this Schedule 1.1. The ODP is required to provide the Passenger Services that comply with the applicable Train Service Requirement and (without prejudice to the other provisions of the ODP Grant Agreement) is permitted to provide other Rail Services subject to the provisions of Part 1 of this Schedule 1.1.
- 1.2 Save for provision and operation of the Infrastructure Manager Services and the Infrastructure Services and Infrastructure Works, the ODP shall not directly or indirectly, without the prior written consent of the Authority, carry on any business or activity other than the provision and operation of the Rail Services.
- 1.3 Nothing in this Schedule 1.1 shall restrict any Affiliate of the ODP from having an interest in or participating in any business or activity.

#### **2 RESTRICTIONS RELATING TO RAIL SERVICES**

- 2.1 The ODP shall not without the prior written consent of the Authority operate Passenger Services other than on the following routes (and, in the event of disruption, any reasonable diversionary route):
- (a) Wales and Cross-Border Lines Services
- (i) Crewe to Chester;
  - (ii) Chester to Llandudno Junction;
  - (iii) Llandudno Junction to Bangor;
  - (iv) Bangor to Holyhead;
  - (v) Llandudno Junction to Llandudno;
  - (vi) Llandudno and Llandudno Junction to Blaenau Ffestiniog;
  - (vii) Crewe and Chester to Bangor and Holyhead;
  - (viii) Wrexham to Bidston;
  - (ix) Wilmslow / Manchester Airport / Manchester to Chester via Warrington Bank Quay;
  - (x) Shrewsbury to Chester;

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- (xi) Shrewsbury to Aberystwyth;
  - (xii) Machynlleth to Pwllheli;
  - (xiii) Birmingham International and Birmingham New Street to Shrewsbury;
  - (xiv) Barry Island to Cardiff Central;
  - (xv) Bridgend to Barry via Llantwit Major;
  - (xvi) Ebbw Vale Town to Cardiff Central;
  - (xvii) Ebbw Vale Town to Newport;
  - (xviii) Swansea to Pembroke Dock;
  - (xix) Gowerton Local Service (Swansea to Llanelli);
  - (xx) Kidwelly and Ferryside Local Service (Swansea to Carmarthen);
  - (xxi) Cardiff Central to Carmarthen via Swansea and via the “Swansea District Line”;
  - (xxii) Cardiff Central and Carmarthen to Milford Haven;
  - (xxiii) Carmarthen to Fishguard Harbour;
  - (xxiv) Bridgend to Swansea;
  - (xxv) Cardiff Central to Maesteg;
  - (xxvi) Shrewsbury to Llanelli and Swansea;
  - (xxvii) Cardiff Central to Crewe and Manchester Piccadilly;
  - (xxviii) Cardiff Central to Hereford;
  - (xxix) Hereford to Shrewsbury;
  - (xxx) Shrewsbury to Crewe;
  - (xxxi) Cardiff Central to Holyhead
  - (xxxii) Cardiff to Gloucester;
  - (xxxiii) Cardiff to Cheltenham Spa;
  - (xxxiv) Cardiff to Penarth; and
  - (xxxv) Cardiff to Radyr via Fairwater;

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(xxxvi) Liverpool Lime Street to Chester via Halton Curve; and

(xxxvii) Park Junction to Gaer Junction (for the Newport to Ebbw Vale Town Service); and

(b) Core Valley Lines

- (i) Rhymney to Cardiff Queen Street;
- (ii) Coryton spur;
- (iii) Ystrad Mynach to Cwmbargoed;
- (iv) Merthyr Tydfil to Cardiff Queen Street;
- (v) Aberdare to Cardiff Queen Street;
- (vi) Aberdare to Hirwaun;
- (vii) Treherbert to Cardiff Queen Street;
- (viii) Cardiff Queen Street to Cardiff Central;
- (ix) Cardiff Queen Street to Cardiff Bay; and
- (x) Cardiff Bay to the Flourish.

2.2 It is acknowledged that a Passenger Service to be operated by the ODP on the routes specified above in paragraph 2.1 may be operated throughout the route, on part of the route or any combination of the whole or part of any two (2) or more of the routes specified above.

2.3 Not Used

2.4 The ODP shall not, and shall procure that OpCo and InfraCo shall not, during the Rail Services Term, without the consent of the Authority:

- (a) provide or operate any railway passenger services other than the Passenger Services or Charter Services; or
- (b) operate any stations or light maintenance depots other than the Stations and Depots; or
- (c) hold shares, participations or any other interest in any other company or body corporate unless such company or body corporate is owned directly or indirectly by another participant in the railway industry and the holding is incidental to the ODP's participation in an Inter-Operator Scheme or any other arrangement designed to ensure or facilitate co-operation between such participants or between any such participants and any other person.

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2.5 The ODP shall not engage any ODP Services Employee in any activity or business which it may not conduct or engage in under this ODP Grant Agreement.

### **3 RESTRICTIONS ON CLOSURES OF RAILWAY PASSENGER SERVICES OR RAILWAY FACILITIES**

3.1 Except to the extent that the Authority agrees otherwise in writing, the ODP shall not:

- (a) cease to operate;
- (b) cease to secure the operation of; or
- (c) propose to terminate the use of,

any Station (or part of a Station) or any railway passenger service over a Route where such cessation or proposal might result in a Closure, provided always that any Closure approved by the Authority in accordance with Schedule 3B shall be deemed to be agreed for the purposes of this paragraph 3.1.

3.2 If any procedures are commenced under Part 4 of the Railways Act 2005 in relation to a Closure, the ODP shall, at its own cost and to the extent so requested by the Secretary of State or the Authority, take such action as the Secretary of State or the Authority may require in order to enable the Authority to comply with any duty imposed on it under Part 4 of the Railways Act 2005 in relation to such Closure.

### **4 SUBCONTRACTING ANY PASSENGER SERVICES**

4.1 Subject to paragraph 4.2, the ODP may not subcontract or delegate the provision of the Passenger Services without the prior written consent of the Authority.

4.2 The ODP may subcontract or delegate the provision of the Passenger Services, provided that:

- (a) the Authority receives prior written notice of any such subcontracting or delegation;
- (b) the ODP continues to be party to all Access Agreements and Property Leases necessary to provide such Passenger Services and to enjoy all relevant access and operational rights thereunder;
- (c) the ODP continues to specify and control the terms and conditions (subject to the requirements of the Inter-Operator Schemes) on which such Passenger Services are to be provided, including the determination of the Price or Child Price (as the case may be) of any Fares;

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- (d) the Planned Train Mileage of the Passenger Services so delegated or subcontracted does not exceed five percent (5%) of the Planned Train Mileage of the ODP in any Reporting Period; and
  - (e) the ODP continues to perform its obligations under this Schedule 1.1 in respect of any subcontracted or delegated services.
- 4.3 Any such subcontracting or delegation shall not relieve the ODP from any of its obligations under the ODP Grant Agreement, including its obligations under this paragraph 4 and Schedule 14 (Preservation of Assets).

## **5 STATION SERVICES**

5.1 The Station Services shall comprise:

- (a) the provision of any services to persons at Stations or to Train Operators whose trains call at such Stations, provided that such services (except to the extent necessary or appropriate to facilitate or support a Community Rail Partnership, station adopter scheme or similar programme):
  - (i) are made available only or principally to passengers alighting from or joining trains calling at such Stations and to such Train Operators;
  - (ii) are provided in connection with the calling of trains at such Stations and are not designed to encourage passengers or other persons to use such Station Services other than in connection with a journey on a train calling at such Stations;
  - (iii) exclude the sale or issue (for a charge) of any goods other than passenger timetables and any items included in the price of a Fare;
  - (iv) may include the provision of car parking spaces;
  - (v) may include any other service, business or activity as agreed to between the Parties; and
  - (vi) may include, at the reasonable discretion of the Authority, making tickets available for purchase for other public transport services that service such Stations or within a reasonable proximity of such Stations, subject to any commercial agreement required to be agreed between the ODP and the operator of such other public transport services. If the ODP is required to procure additional infrastructure to support the exercise by the Authority of its powers under this paragraph 5.1(vi) then the procurement of such infrastructure shall constitute a Change; and



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- (b) the provision of access to any person under an Access Agreement at any Station.
- 5.2 The Station Services shall include the provision of any service which the ODP may provide, or may be required to provide, under any Access Agreement in effect on the Start Date or as lawfully directed by the ORR from time to time.

## **6 LIGHT MAINTENANCE SERVICES**

6.1 Light Maintenance Services shall comprise:

- (a) the provision of access to any other person under an Access Agreement;
- (b) the carrying out of inspections of rolling stock vehicles;
- (c) the carrying out of maintenance work on rolling stock vehicles of a kind which is normally carried out at regular intervals of twelve (12) months or less;
- (d) replacement of failed components and consumables on rolling stock vehicles;
- (e) the preparation of rolling stock vehicles for service;
- (f) the stabling or other temporary holding of rolling stock vehicles;
- (g) the refuelling of rolling stock vehicles;
- (h) the replenishment of water tanks on rolling stock vehicles;
- (i) the emptying of retention tanks fitted to rolling stock vehicles equipped with Controlled Emission Toilets; and
- (j) the cleaning of the exterior or the interior of rolling stock vehicles,

in each case for itself and/or other Train Operators, at any Station or Depot.

6.2 Light Maintenance Services shall include the provision of any service which the ODP may provide, or may be required to provide, under any Access Agreement in effect on the Start Date or as lawfully directed by the ORR from time to time.

## **7 ANCILLARY SERVICES**

The ODP may carry out the following Ancillary Services:

- (a) the selling, lending or hiring of any goods or rights and the provision of any services (whether for a charge or not) on any train used in the provision of the Passenger Services where such goods or services are sold or provided principally for consumption or use on the relevant train, including the sale of any Fares, meals, light refreshments, newspapers, magazines, books, entertainment materials or materials targeted at tourists and other leisure passengers (such as maps);

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- (b) the provision of any service at any station which, if provided on a train used in the provision of the Passenger Services, would fall within paragraph 7(a) or which, if provided at a Station, would fall within paragraph 5 and which, in each case, is made available only or principally to persons at such stations who either are about to travel or have recently travelled on a train used in the provision of the Passenger Services;
- (c) subject to agreement with the Authority, in any Reporting Period, the subleasing, hiring or licensing of up to ten percent (10%) of the rolling stock vehicles used in the provision of the Passenger Services (such percentage to be determined by reference to the aggregate period of time for which such rolling stock vehicles are sub-let, hired or licensed and the aggregate period of time for which they are used in the provision of the Passenger Services);
- (d) the lending, seconding, hiring or contracting out during any Reporting Period to another person or persons (whether for a charge or not) of:
- (i) up to one percent (1%) of the number of ODP Services Employees as at the Start Date, for over ninety percent (90%) of their normal working hours during such Reporting Period (including on a full-time basis); and
  - (ii) one percent (1%) of any other ODP Services Employees as at the Start Date,
- provided that this paragraph shall not apply to any employee lent, seconded, hired or contracted out under any of paragraphs 7(a) to 7(c) inclusive and paragraphs 7(e) to 7(p) inclusive, or engaged in any other activity which is permitted under this Schedule 1.1;
- (e) any heavy maintenance of rolling stock vehicles which does not fall within the Light Maintenance Services, carried out on behalf of any other person at any Depot(s), subject to the number of persons engaged or employed in such activity not exceeding by more than ten percent (10%) the number so engaged or employed on the Start Date.
- (f) the selling at any location of any Fare which is valid, in whole or in part, on the Passenger Services and the selling of any other Fare at any location where such Fares may be purchased from the ODP on or before the date of the ODP Grant Agreement or at any other location, provided that the majority of Fares sold at any such other location shall be Fares which are valid, in whole or in part, on the Passenger Services;
- (g) the selling, in conjunction with any Fare, of any other rights which entitle the purchaser thereof to:
- (i) travel on any other train or light rail service;

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- (ii) travel on any aircraft;
    - (iii) travel on any shipping or ferry service;
    - (iv) travel on any bus; or
    - (v) attend any event or attraction or enter any location;
  - (h) the lending, seconding, hiring or contracting out of ODP Services Employees to other Train Operators in order to enable such Train Operators to provide services at the Stations to passengers travelling on any such operator's trains;
  - (i) the provision of information relating to railway passenger services within Great Britain to passengers through telephone, internet, mobile data services or other appropriate means;
  - (j) the supervision, management and training of train crew of other Train Operators provided such activity is necessarily incidental to the provision of the Passenger Services and could not reasonably be carried out by or through an Affiliate of the ODP;
  - (k) the subleasing, hiring, licensing, lending of any rolling stock vehicles or other assets of the ODP or the lending, hiring or contracting out of any employees of the ODP or the provision of any other services to Network Rail or any other Train Operator on an emergency basis;
  - (l) the licensing or permitting of any other person (including an Affiliate of the ODP) to carry out any activity or business, in connection with the provision of the Rail Services, or otherwise, on any rolling stock vehicle operated by the ODP, at any station served by the Passenger Services, at any Depot, or otherwise (including the letting, leasing or licensing (on an exclusive basis or otherwise) of any part or all of a Station or Depot to such other person);
  - (m) such other activity or business as may be reasonably necessary for the purpose of providing any other Rail Services or complying with the ODP Grant Agreement, provided that it could not reasonably be carried out by or through an Affiliate of the ODP;
  - (n) the subleasing to any other person of the following property which is not comprised in a Station or Depot:
    - (i) any current or former ODP headquarters premises (including the North Wales satellite office); or
    - (ii) Pontypridd HQ, provided always that the ODP may not sublease such property to any person other than OpCo or InfraCo;

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- (o) the provision or operation of Charter Services, subject to the Planned Train Mileage of such Charter Services not exceeding in any Reporting Period two percent (2%) of the Planned Train Mileage of Passenger Services provided by the ODP in such Reporting Period;
  - (p) the provision of consultancy services reasonably ancillary to the provision of the other Rail Services;
  - (q) any services or activity not falling within paragraphs 5, 6, 7(a) to 7(p) above, subject to the gross value of any such services or activity (excluding any attribution of costs) not exceeding twenty five thousand pounds (£25,000) per annum in each ODP Year, per item and in aggregate, two hundred and fifty thousand pounds (£250,000) per annum in each ODP Year provided that in the second and each subsequent ODP Year, these amounts will be increased by RPI;
  - (r) any other service, business or activity required to be provided by the ODP under this ODP Grant Agreement and/or the CVL Asset Lease; and
  - (s) any other service, business or activity as agreed between the Parties in writing.

## **8 ROYAL TRAIN**

- 8.1 The ODP shall, if and to the extent requested by any person (including DB Cargo UK Limited its successor and assigns) and subject to the payment by such person of any reasonable costs of the ODP, co-operate in the provision by such person of railway passenger services for Her Majesty Queen Elizabeth II or any successor head of state or members of the family or representatives of either of them.
- 8.2 The provision of railway services for Her Majesty Queen Elizabeth II or any successor head of state or members of the family or representatives of either of them may include:
  - (a) running a “**sweeper**” train in front of the royal train;
  - (b) having spare locomotives or other rolling stock on standby as rescue traction; and/or
  - (c) carrying out security requirements or co-operating with other persons in ensuring that security requirements are carried out prior to calling at any station on the Routes.

## **Part 2- SERVICE DEVELOPMENT**

### **9 TRAIN SERVICE REQUIREMENT - PURPOSE AND RESPONSIBILITY**

- 9.1 This Part 2 of Schedule 1.1 sets out the obligations of the ODP in relation to the acquisition of timetable development rights required for the purposes of securing a Timetable that complies with the Train Service Requirement and preparing a Train Plan consistent with the obligations of the ODP and the provision of appropriate levels of

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passenger carrying capacity. It also provides for alteration of the Train Service Requirement by the Authority. The Train Service Requirement does not in any way limit the ODP's obligations pursuant to paragraph 14 of this Schedule 1.1.

9.2 The Train Service Requirement is the minimum specification of the Passenger Services to be provided by the ODP during the Rail Services Term.

9.3 The Train Service Requirement as at the date of the ODP Grant Agreement is comprised in the following, all in the agreed terms marked as follows (except TSR0 and TSR1) and included within Appendix 1 to this Schedule 1.1:

- (a) **TSR0** being the Train Services Requirement applicable from the Start Date until the Passenger Change Date in December 2018;
- (b) **TSR1** being the Train Service Requirement applicable from the Passenger Change Date in December 2018 until the Passenger Change Date in December 2019;
- (c) **TSR1A** being the Train Service Requirement applicable from the Passenger Change Date in December 2019 until the Passenger Change Date in December 2021;
- (d) **TSR1B** being the Train Service Requirement applicable from the Passenger Change Date in December 2021 until the Passenger Change Date in December 2022;
- (e) **TSR1C** being the Train Service Requirement applicable from the Passenger Change Date in December 2022 until the Passenger Change Date in December 2023;
- (f) **TSR2** being the Train Service Requirement applicable from the Passenger Change Date in December 2023 until the Passenger Change Date in December 2024; and
- (g) **TSR2A** being the Train Service Requirement applicable from the Passenger Change Date in December 2024 until the end of the ODP Grant Agreement Term.

9.4 The Authority and the ODP agree that the replacement of:

- (a) TSR0 by TSR1 at the time and for the period specified in paragraph 9.3 shall not constitute a Change for the purposes of paragraph (c) of the definition of Change;
- (b) TSR1 by TSR1A at the time and for the period specified in paragraph 9.3 shall not constitute a Change for the purposes of paragraph (c) of the definition of Change;
- (c) TSR1A by TSR1B at the time and for the period specified in paragraph 9.3 shall not constitute a Change for the purposes of paragraph (c) of the definition of Change;
- (d) TSR1B by TSR1C at the time and for the period specified in paragraph 9.3 shall not constitute a Change for the purposes of paragraph (c) of the definition of Change;

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- (e) TSR1C by TSR2 at the time and for the period specified in paragraph 9.3 shall not constitute a Change for the purposes of paragraph (c) of the definition of Change; and
- (f) TSR2 by TSR2A at the time and for the period specified in paragraph 9.3 shall not constitute a Change for the purposes of paragraph (c) of the definition of Change.
- 9.5 For the purposes of this Schedule 1.1, the Train Service Requirement shall remain in force unless and until amended or replaced pursuant to this Schedule 1.1.
- 9.6 In respect of:
- (a) the Wales and Cross-Border Lines Services or any other rail service which requires access to a network operated by Network Rail, the ODP is required to seek Train Slots from Network Rail in accordance with the Train Service Requirement with the intention that the working timetable issued by Network Rail is consistent with such Train Service Requirement. With regard to capacity, the ODP is required to include in the Train Plan the minimum capacity specified in the Train Service Requirement.
- (b) the CVL Services or any other rail service which requires access to a network operated by the Infrastructure Manager or Network Rail (as applicable), the ODP is required to seek Train Slots from the Infrastructure Manager or Network Rail (as applicable) in accordance with the Train Service Requirement with the intention that the working timetable issued by the Infrastructure Manager is consistent with such Train Service Requirement. With regard to capacity, the ODP is required to include in the Train Plan the minimum capacity specified in the Train Service Requirement.
- 9.7 The Train Service Requirement may be expressed in whole or in part at any level of generality or to any level of detail the Authority considers appropriate.
- 9.8 The Parties acknowledge and agree that the TSRs include certain specifications and sets out obligations of the ODP in respect of providing services in addition to Passenger Services. The ODP shall deliver such additional services as set out in the relevant TSRs including in respect of catering, journey times and request stops.
- 9.9 The parties acknowledge and agree that development, consultation and implementation of the December 2018 Timetable and Train Plan will not be the responsibility of the ODP. In the event that the Timetable and the Train Plan for implementation on the Principal Change Date in December 2018 are non-compliant with TSR1, then the ODP shall use all reasonable endeavours to:
- (a) prepare a TSR1 compliant Timetable and Train Plan as soon as reasonably practicable; and
- (b) mitigate the effects of such non-compliance.

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9.10 Subject to paragraph 9.9, the ODP shall be relieved of its relevant obligations under Schedule 1.1, Part 2 to the extent that such Timetable and Train Plan are not compliant with TSR1. This relief shall continue until a TSR1 compliant Timetable and Train Plan are prepared and delivered in accordance with paragraph 9.9(a), and in any event until no later than the Principal Change Date in December 2019.

9.11 In the event that the Timetable and the Train Plan implemented on the Passenger Change Date in December 2018 requires the deployment of more resources than required to operate TSR0 the parties acknowledge and agree that costs for such incremental increase (excluding service requirements for the new Chester to Liverpool services) shall be the responsibility of the Authority provided such costs shall not exceed [REDACTED] in total and provided that such costs can be evidence and do not exceed [REDACTED] for the introduction of new services and/or [REDACTED] for costs results from re-diagramming of trains resulting in increased driver and/or conductor costs.

## **10 TRAIN PLAN**

10.1 Subject to paragraph 10.2, for the purposes of this Agreement, the “**Train Plan**” shall be the plan or diagrams (including sub-plans or sub-diagrams) prepared by the ODP for the operation of trains and train formations under the Timetable that best matches available capacity to Forecast Passenger Demand as amended from time to time during the Rail Services Term in accordance with this Agreement.

10.2 For the purposes of Schedule 7, references to “**Train Plan**” shall be construed as the latest version of the Train Plan which includes any amendments thereto pursuant to paragraphs 3, 4 and/or 5 of Schedule 1.2 (Operating Obligations):

- (a) where such amendments are required as a consequence of Network Rail or the Infrastructure Manager exercising their rights pursuant to the relevant Track Access Agreement;
- (b) where such amendments proposed by the ODP have prior approval from the Authority;  
or
- (c) where such amendments are requested by the Authority.

10.3 The ODP shall submit to the Authority a Train Plan in respect of each Timetable in accordance with this Schedule 1.1.

10.4 In preparing any Train Plan, the ODP shall do so by reference to the Timetable that it envisages operating in order to comply with the Train Service Requirement and paragraph 14 of this Schedule 1.1.

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10.5 Each Train Plan shall set out for each railway passenger service in the Timetable to which it relates:

- (a) its start point and departure time;
- (b) its terminating point and arrival time;
- (c) the number and class of rolling stock vehicles allocated to each such railway passenger service;
- (d) the Passenger Carrying Capacity that each such railway passenger service, as formed, is to have; and
- (e) its Forecast Passenger Demand and, where this has been requested by the Authority and is capable of calculation, Actual Passenger Demand.

10.6 A Train Plan shall be in any format that the Authority may reasonably specify for this purpose.

10.7 At the Start Date, Network Rail will have issued the applicable working timetable on which the Timetable is to be based. Accordingly the ODP shall confirm to the Authority that it intends:

- (a) to adopt:
  - (i) from the Start Date until the Passenger Change Date in December 2018, the Train Plan prepared by the Train Operator under the Previous Franchise Agreement; and
  - (ii) from the Passenger Change Date in December 2018, the Train Plan prepared by the Previous Franchisee and the Authority; or

- (b) to prepare its own Train Plan in accordance with this Schedule 1.1,

such Train Plan shall become the document in the agreed terms marked **TP** as at the Start Date. It is acknowledged that the Train Plan in the agreed terms marked **TP** shall be replaced from time to time during the Rail Services Term in accordance with the provisions of paragraph 14.4.

## **11 CONSULTATION ON SIGNIFICANT ALTERATIONS TO THE TIMETABLE**

11.1 In respect of the Wales and Cross-Border Lines Services and CVL Services in advance of the CVL Asset Transfer, notwithstanding any consultation the Authority might separately undertake in respect of any amended or new draft Train Service Requirement issued pursuant to paragraph 16, the ODP shall where:



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- (a) it intends that any future Timetable will contain Significant Alterations compared to the Timetable then in force; and
  - (b) such Significant Alterations are likely to have, in the reasonable opinion of the ODP, a materially adverse effect on:
    - (i) the ability of passengers using any station served by the Passenger Services to make journeys relating to work or education at reasonably convenient times; and/or
    - (ii) the trading prospects of commercial enterprises located in any community in which a station served by the Passenger Services is located in consequence of it being more difficult for customers or employees to access such commercial enterprises through travel on the Passenger Services,

consult with Stakeholders who would reasonably be expected to be affected by any such Significant Alterations in relation to such proposed future Timetable.

11.2 The first Timetable to which the provisions apply is the first Timetable prepared by the ODP in accordance with paragraph 9.9(a) and in any event no later than, December 2019.

11.3 Accordingly the ODP shall where the circumstances described in paragraph 11.1 apply:

- (a) as soon as reasonably practicable provide to the Authority and all Stakeholders a comprehensive summary of the proposed changes from the Timetable then in force specifying the proposed Timetable changes, the reasons for them and the likely impact on passengers;
- (b) carry out the consultation in relation to such proposed changes using a reasonable range of communication channels (taking into account the scale of the proposed changes) and in a manner that can be reasonably expected to encourage responses from a broad range of affected Stakeholders;
- (c) give consultees such time as is reasonable under all the circumstances to respond (it being agreed that it shall normally be reasonable to give at least twelve (12) weeks to respond in relation to major proposed Timetable changes);
- (d) take due account of the responses of consultees;
- (e) within six (6) weeks of the close of the consultation (or such longer period as the Authority may agree, such agreement not to be unreasonably withheld or delayed) publish a report containing a summary of the main issues raised by respondents (including quantitative analysis of the responses received), the reasoned response of the ODP to them and

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notification of how the ODP will now seek to exercise relevant Timetable Development Rights in the context of its obligation to take due account of the results of the consultation;

- (f) ensure that the published report is promptly provided to the Authority and all respondents who submitted written responses to the consultation and published in a widely accessible form; and
  - (g) ensure that the relevant Timetable Development Rights to implement the proposed Timetable change are not exercised prior to the publication of the report and exercise such Timetable Development Rights in the manner indicated in the report.
- 11.4 In respect of the CVL Services only, notwithstanding any consultation the Authority might separately undertake in respect of any amended or new draft Train Service Requirement issued pursuant to paragraph 16 of this Schedule 1.1, the ODP shall comply from the Start Date until completion of the CVL Transformation with the Public Impact of Implementation Plan (“PIIP”) set out at in Appendix 4 to Schedule 3B and as amended from time to time in accordance with this Agreement.

## **12 TIMETABLE DEVELOPMENT RIGHTS**

- 12.1 The ODP shall use all reasonable endeavours to amend and/or enter into such Access Agreements as may be necessary or desirable from time to time to obtain the timetable development rights that it requires to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement and otherwise comply with its obligations under the ODP Grant Agreement (including under paragraph 14 of this Schedule 1.1).
- 12.2 Prior to exercising any Timetable Development Rights to secure a Timetable the ODP shall make an informed estimate of Forecast Passenger Demand and in doing so shall make reasonable assumptions based on available evidence (making proper use of recognised railway industry systems and forecasting tools as these may develop over the Rail Services Term) with the estimate being in such format and to such level of disaggregation as the Authority may reasonably require.
- 12.3 Subject to the remaining provisions of this paragraph 12, the ODP shall exercise its Timetable Development Rights so as to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement and paragraph 14 of this Schedule 1.1 in accordance with its obligations under paragraph 17 of this Schedule 1.1.
- 12.4 Where the ODP proposes to exercise its Timetable Development Rights so that the Timetable in force after the relevant Passenger Change Date contains Significant Alterations to that in force prior to such Passenger Change Date the ODP shall, without prejudice to its obligation to consult pursuant to paragraph 11, act reasonably with the

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intention of obtaining a Timetable which enables paragraphs 14.1(b) and 14.1(c) of this Schedule 1.1 to be achieved in relation to each Passenger Service in the Timetable to the greatest extent reasonably practicable. It is agreed that in acting reasonably the ODP shall take full and proper account of its calculation of Forecast Passenger Demand made pursuant to paragraph 12.2 above.

- 12.5 Unless the Authority otherwise directs, the ODP shall, for the purposes of securing a Timetable that complies with the Train Service Requirement and paragraph 14 of this Schedule 1.1, exercise its rights under each relevant Track Access Agreement (including the Network Code) to object, to make representations and to withhold consent in respect of any actual or proposed act or omission by Network Rail or the Infrastructure Manager in relation to such agreement in respect of its Timetable Development Rights.
- 12.6 If the Authority does not consider that the ODP has taken sufficient steps under paragraph 12.5, it may require the ODP to exercise its rights in such manner as it reasonably considers appropriate in the circumstances, including:
- (a) disputing any actual or proposed act or omission by Network Rail or the Infrastructure Manager in respect of any Timetable Development Rights; and
  - (b) submitting such dispute to any relevant dispute resolution arrangements or procedures and appealing against any award or determination under such arrangements or procedures, including to the ORR.
- 12.7 Subject to the ODP complying with its obligations under paragraph 12.5 above, it shall not be liable for any failure to secure a Timetable that enables the ODP to operate railway passenger services that comply with the Train Service Requirement and paragraph 14 of this Schedule 1.1, to the extent that such failure is caused by:
- (a) the ODP's Timetable Development Rights being inadequate to enable it to secure the requisite Train Slots, provided that the ODP has exercised and, unless otherwise agreed by the Authority, is continuing to exercise all reasonable endeavours to obtain the requisite Timetable Development Rights in accordance with paragraph 12.1 above;
  - (b) Network Rail or the Infrastructure Manager exercising its/their flexing rights from time to time under the relevant Track Access Agreement or the Network Code in respect of such Train Slots;
  - (c) Network Rail or the Infrastructure Manager exercising its/their other rights from time to time under the relevant Track Access Agreement or the Network Code; or
  - (d) the exercise by the ORR of its powers pursuant to section 22C of the Act.

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## 12.8 TDR Amendments

- (a) If and to the extent that the ODP is not able to secure a Timetable enabling it to operate railway passenger services that comply with the Train Service Requirement as a result of it not being able to obtain the Timetable Development Rights that it requires for that purpose, then the Authority shall (subject to paragraphs 12.8(b) and 12.8(c) below) issue to the ODP such amendments to the Train Service Requirement (“**TDR Amendment**”). The amendments to the Train Service Requirement contained in the TDR Amendment shall be those that the Authority considers necessary for the purposes of enabling the ODP to secure a Timetable that is compliant with the Train Service Requirement by exercise of the Timetable Development Rights that the ODP does have.
- (b) The Authority shall have an unfettered discretion as to whether or not to issue a TDR Amendment in circumstances where the ODP:
- (i) has failed to exercise all reasonable endeavours to obtain the requisite Timetable Development Rights in accordance with paragraph 12.1 above; and
  - (ii) is not relieved by paragraph 12.7 above from liability for such failure to secure a Timetable that enables the ODP to operate railway passenger services that comply with the Train Service Requirement.
- (c) The ODP shall not be relieved from its obligations to obtain a Timetable that enables the ODP to operate the Train Service Requirement by the issue of any TDR Amendment where the Authority reasonably considers that such failure to secure a Timetable that enables the ODP to operate the Train Service Requirement is partly due to the default of the ODP in not properly complying with its obligations under the ODP Grant Agreement in relation to securing timetable development rights. Accordingly any TDR Amendment may be drafted so that it does not relieve the ODP of the obligation to comply with the Train Service Requirement to the extent that the Authority determines that the failure is due to such default of the ODP and the ODP may therefore be in contravention of the ODP Grant Agreement.
- 12.9 Following issue of any TDR Amendment pursuant to paragraph 12.8 the ODP shall, unless otherwise agreed by the Authority, continue to use all reasonable endeavours to amend and/or enter into such Access Agreements as may be necessary or desirable from time to time to obtain the Timetable Development Rights that it requires to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement without such TDR Amendment.

12.10 Any TDR Amendment issued pursuant to paragraph 12.8 shall:

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- (a) unless otherwise required by the Authority, cease to have effect on the date (if any) on which the first Timetable comes into effect after the ODP has obtained the Timetable Development Rights to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement without any such TDR Amendment; and
  - (b) amount to a Change but only to the extent that the ODP makes a saving as a consequence of such TDR Amendment and provided that if such TDR Amendment has been issued in consequence of Network Rail or the Infrastructure Manager exercising the rights referred to in paragraphs 12.7(b) or 12.7(c) there shall be no Change.

12.11 With effect from the date on which any TDR Amendment ceases to have effect in accordance with paragraph 12.10:

- (a) the Train Service Requirement without such TDR Amendment shall thereafter apply; and
- (b) where there has been a Change which is Qualifying Change pursuant to paragraph 12.10(b) there shall be a further Change (which shall be deemed to be a Qualifying Change) to the extent necessary so as, with effect from such date, to disapply the effect of any such Qualifying Change pursuant to paragraph 12.10(b) to take into account the fact that the ODP will have ceased to make a saving.

### **13 CERTIFICATION AND NOTIFICATION BY ODP OF EXERCISING TIMETABLE DEVELOPMENT RIGHTS**

13.1 Before exercising any Timetable Development Right to bid for Train Slots, the ODP shall provide a certificate addressed to the Authority and signed by a statutory director of the ODP confirming that its proposed exercise of that Timetable Development Right will be compliant with its obligation specified in paragraph 12.3.

13.2 If requested by the Authority, the ODP agrees to demonstrate to the reasonable satisfaction of the Authority that the ODP's certificate referred to in paragraph 13.1 is a true and accurate confirmation of compliance with its obligation specified in paragraph 12.3.

13.3 The ODP shall:

- (a) keep the Authority fully informed of any discussions with Network Rail and the Infrastructure Manager in relation to the matters referred to in this Schedule 1.1 which may, in the reasonable opinion of the ODP, have a material impact on the ability of the ODP to deliver the Train Service Requirement or meet the requirements of paragraph 14 of this Schedule 1.1 through the Timetable and shall, if required to do so by the Authority, supply copies of any related correspondence to the Authority; and

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- (b) update any notification under this paragraph 13.3 and/or certification under paragraph 13.1 as soon as reasonably practicable, if at any time it elects or is required to modify any aspect of its exercise of its Timetable Development Rights following Network Rail's or the Infrastructure Manager's (as applicable) proposed or actual rejection or modification of its bid or any part of it or for any other reason.

## **14 PLANNING TO MEET TARGET PASSENGER DEMAND**

### **14.1 Capacity and Timetable Planning**

- (a) The ODP shall, in preparing its Timetable and Train Plan, unless the Authority otherwise agrees, provide for at least the capacity specified in the Previous Franchise Agreement from the Start Date and in accordance with Appendix 2 (Capacity and Management of Crowding) of this Schedule 1.1 from the Passenger Change Date on which TSR0 is replaced by TSR1. Wherever required to calculate such capacity under this ODP Grant Agreement, the ODP shall use the methodology for such calculation as set out in Appendix 6.A. (Determining Rolling Stock Capacity) to the ITSFT.
- (b) The ODP shall use all reasonable endeavours to provide for Passenger Carrying Capacity on each Passenger Service that meets as a minimum the Target Passenger Demand for that Passenger Service.
- (c) The ODP shall use all reasonable endeavours to provide passengers with a reasonable expectation of:
- (i) boarding any Passenger Service;
  - (ii) a seat twenty (20) minutes after boarding (or such other time period as the Authority may stipulate) any Passenger Service operating during a Crowding Peak Period;
  - (iii) a seat immediately on boarding any Passenger Service which is not operating during a Crowding Peak Period; and
  - (iv) the Passenger Carrying Capacity not being exceeded at any time.

### **14.2 Allocation of rolling stock where ODP unable to meet the capacity requirements**

If at the time it prepares its Timetable and/or Train Plan, having exercised all reasonable endeavours, the ODP is unable to prepare a Timetable and/or Train Plan having the Passenger Carrying Capacity and/or meeting the reasonable expectations referred to in paragraphs 14.1(b) and 14.1(c), then the Timetable and/or the Train Plan shall specify the best allocation of Passenger Services and rolling stock vehicles to Passenger Services that is reasonably practicable with a view to:

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- (a) minimising, so far as is possible, the amount by which Target Passenger Demand exceeds the provision of Passenger Carrying Capacity on the affected Passenger Services;
  - (b) ensuring, so far as is possible, that such excess is not unduly concentrated on any particular Route or Passenger Service; and
  - (c) minimising, so far as is possible, the extent to which passengers are required to:
    - (i) experience a level of crowding that prevents any passenger from being able to board any Passenger Service;
    - (ii) stand for twenty (20) minutes after boarding (or such other time period as the Authority may stipulate) any Passenger Service operating during a Crowding Peak Period; and
    - (iii) stand on boarding any Passenger Service which is not operating during a Crowding Peak Period.

#### **14.3 Preparation of Timetable and Train Plan**

- (a) Subject to paragraph 14.3(b), the ODP shall in preparing its Timetable and its Train Plan take full and proper account of its calculation of Forecast Passenger Demand and use all reasonable endeavours to ensure that the Train Fleet is deployed in an optimal manner for the purposes of complying with its obligations under paragraphs 14.1 and 14.2 above.
- (b) The ODP shall in preparing its Timetable and Train Plan deploy the entire Train Fleet (excluding reasonable planning requirements for the allocation of Hot Standbys or other rolling stock vehicles to be out of service due to maintenance requirements, Mandatory Modifications or any other reason agreed with the Authority (such agreement not to be unreasonably withheld or delayed)) in delivering the Passenger Services:
  - (i) during each Peak; and
  - (ii) at such times during each Off-Peak Passenger Service where such deployment of the entire Train Fleet is reasonably required to meet the ODP's obligations pursuant to paragraphs 14.1 and 14.2 above.

#### **14.4 Finalising the Train Plan**

- (a) The ODP shall submit its proposed Train Plan to the Authority as soon as reasonably practicable after Network Rail or the Infrastructure Manager, as applicable, has issued the Timetable on which the Train Plan is to be based.

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- (b) The ODP shall submit its final Train Plan to the Authority prior to the commencement of the Timetable to which it relates.
  - (c) The Train Plan shall be certified by a statutory director of the ODP as being true and accurate and including the minimum capacity specified in the Train Service Requirement.
  - (d) The ODP shall provide to the Authority in a timely manner such rolling stock diagrams as it may reasonably request from time to time.

## **15 CAPACITY MITIGATION PROPOSAL**

15.1 Without prejudice to the obligation of the ODP to include in the Train Plan the capacity specified in the Train Service Requirement, if at any time the ODP is unable to prepare a Timetable and/or a Train Plan which meets the requirements of paragraph 14.1 (regardless of whether the ODP has used all reasonable endeavours to do so), the Authority may serve a notice on the ODP requiring it to produce a proposal to a reasonable specification provided with the notice to remedy or mitigate such inability (“**Capacity Mitigation Proposal**”).

15.2 The Capacity Mitigation Proposal may, without limitation, include measures to be implemented by the ODP to:

- (a) remedy the circumstances leading to the ODP being unable to prepare a Timetable and/or a Train Plan which meets the requirements of paragraph 14.1; and/or
- (b) minimise, so far as is possible, the amount by which Target Passenger Demand exceeds the provision of Passenger Carrying Capacity on the affected Passenger Services;
- (c) ensure, so far as is possible, that such excess is not unduly concentrated on any particular Route or Passenger Service; and
- (d) minimise, so far as is possible, the extent to which passengers are required to stand and in particular:
  - (i) experience on boarding crowding which exceeds the Passenger Carrying Capacity on any Passenger Services;
  - (ii) stand for twenty (20) minutes after boarding (or such other time period as the Authority may stipulate) any Passenger Service operating during a Crowding Peak Period; and
  - (iii) stand after boarding on any Passenger Service which is not operating during a Crowding Peak Period.

in all such cases (unless the Authority specifies to the contrary) taking into account both Actual Passenger Demand and Forecast Passenger Demand.



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- 15.3 Where the Authority reasonably believes that future circumstances may lead to the ODP being unable to prepare a Timetable and/or a Train Plan which meets the requirements of paragraph 14.1 at any time within the next four (4) years (including after the end of the ODP Grant Agreement Term) the Authority shall have the right to serve notice on the ODP specifying those future circumstances and the date that the ODP should assume that they will arise from and requiring it to produce a Capacity Mitigation Proposal to remedy or mitigate such future circumstances on the basis of assumptions provided by the Authority.
- 15.4 The Capacity Mitigation Proposal shall (unless the Authority specifies to the contrary) include the ODP's informed estimate of Forecast Passenger Demand, in such format and to such level of disaggregation as the Authority may reasonably require. Without limitation such specification may require the ODP to present options to address relevant issues through:
- (a) alterations to the Train Service Requirement;
  - (b) modification of rolling stock or the acquisition of additional or replacement rolling stock;
  - (c) alterations to Fares or other passenger incentives;
  - (d) alterations or enhancements to any track, signalling, station, depot or other relevant railway infrastructure; and/or
  - (e) integration with other transport modes.
- 15.5 The Capacity Mitigation Proposal shall provide a comprehensive analysis backed by relevant data and assumptions of:
- (a) all cost and revenue and other financial implications of options contained within it including the potential implications for Rail Services Payments;
  - (b) the implications (if any) for the Benchmarks and/or Annual Benchmarks; and
  - (c) the likely impact of options within it for existing and future passenger journeys and journey opportunities.
- 15.6 The ODP shall meet with the Authority to discuss the Capacity Mitigation Proposal and provide such further information or analysis and further iterations of the Capacity Mitigation Proposal as the Authority shall reasonably require. If the Authority decides that it wishes to implement any Capacity Mitigation Proposal (or any part thereof) this may be by way of a Variation.

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**16 NEW OR AMENDED TRAIN SERVICE REQUIREMENT BY THE AUTHORITY AND ODP INFORMED OPINION**

16.1 As and when required, whether for the purposes of considering alterations to the Train Service Requirement or otherwise, the ODP shall provide to the Authority:

(a) its informed estimate of Forecast Passenger Demand, in such format and to such level of disaggregation as the Authority may reasonably require in order to assist the Authority's decision making on future train service requirements, infrastructure, station and rolling stock vehicle investment, the best use of the network and the alleviation of overcrowding;

(b) its informed opinion as to any changes to the current Train Service Requirement which:

- (i) should be made in order to deliver an optimal range of railway passenger services relative to Target Passenger Demand; and
- (ii) could be implemented and operated without additional resources or an adjustment to the Rail Services Payments;

(c) its informed opinion as to any changes to the current Train Service Requirement which:

- (i) would deliver an optimal range of railway passenger services relative to Target Passenger Demand; and
- (ii) could only be implemented and operated with additional resources and/or an adjustment to the Rail Services Payments, together with an explanation as to:
  - (A) what additional resources and/or adjustments are necessary to make such changes; and
  - (B) why such additional resources and/or adjustments are necessary;

(d) a draft of the Train Plan that the ODP considers that each set of proposed changes would require.

16.2 Prior to issuing any amended or new Train Service Requirement the Authority shall provide to the ODP its draft of any proposed amended or new Train Service Requirement stating the date upon which it proposes that such amended or new Train Service Requirement should take effect along with the Authority's views as to the changes (if any) that it proposes to make to the Benchmarks and/or Annual Benchmarks.

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- 16.3 On receipt of any proposed amended or new Train Service Requirement from the Authority the ODP shall provide (if so requested) its informed opinion (which shall require using all reasonable endeavours to procure the opinion of Network Rail):
- (a) with supporting reasons as to the impact of the proposed amended or new Train Service Requirement on the delivery of an optimal range of railway passenger services patterns relative to Target Passenger Demand and compliance with paragraph 14.1;
  - (b) with supporting reasons as to the changes to resources and adjustment to Rail Services Payments (if any) which would be required in consequence of the proposed amended or new Train Service Requirement;
  - (c) with supporting reasons as to changes (if any) to the Benchmarks and/or Annual Benchmarks;
  - (d) of the process to be required to implement the proposed amendment to the Train Service Requirement together with a plan for the implementation of the amendment to the Train Service Requirement (including all steps required to ensure that the ODP can deliver a Timetable compliant with such amended or new Train Service Requirement) prepared in accordance with procedural arrangements specified by the Authority pursuant to paragraph 17; and
  - (e) with supporting reasons of the likely impact of the proposed amended or new Train Service Requirement on existing and future passenger journeys and journey opportunities,  
  
together with a draft of the Train Plan that it considers that the proposed amended or new Train Service Requirement would require.
- 16.4 There may be iterations of drafts of the proposed amended or new Train Service Requirement and the ODP shall to the extent required by the Authority have the obligations described in this paragraph 16 in respect of all such iterations.
- 16.5 Processes contained in this paragraph 16 shall take place in accordance with procedural arrangements and timescales stipulated by the Authority pursuant to paragraph 17.2.
- 16.6 The Authority may issue to the ODP any amended or new Train Service Requirement that it requires the ODP to operate and notice of the amendments (if any) to the Benchmarks and/or Annual Benchmarks. Such amended or new Train Service Requirement will be issued prior to the commencement of the timetable development process of Network Rail and/or the Infrastructure Manager for the Timetable in respect of which it is proposed to implement the change to Passenger Services arising from the amended or new Train Service Requirement.

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- 16.7 In the absence of the Authority issuing any amended or new Train Service Requirement the existing Train Service Requirement will remain in full force and effect. The degree of variation from any Train Service Requirement specified at the date the ODP Grant Agreement was entered into in respect of any particular period and brought about by any amended or new Train Service Requirement issued pursuant to this paragraph 16 shall (where relevant) be of a magnitude no greater than that contemplated in the ITSFT.
- 16.8 At the same time as the Authority provides the ODP with a draft of any proposed amended or new Train Service Requirement pursuant to paragraph 16.1, the Authority shall also provide to the ODP its opinion of any amendments (if any) that are required to the Benchmarks and/or the Annual Benchmarks.
- 16.9 The ODP shall deliver to the Authority, or procure the delivery to the Authority of, such information, records or documents as the Authority may request within such period as the Authority may reasonably require for the purposes of considering the effects of any proposed amended or new Train Service Requirement.

## **17 PROCEDURAL ARRANGEMENTS AND TIMESCALES**

- 17.1 The ODP agrees that the effective operation of the provisions of this Schedule 1.1, and of provisions addressing the same or similar matters in other franchise or passenger rail services agreements, will require certain procedural arrangements and timescales to be followed to a common timescale by the Authority, the ODP, Network Rail, the Infrastructure Manager and others.
- 17.2 The ODP agrees that the Authority may stipulate any reasonable procedural arrangements and timescales that are to be followed by the Authority and the ODP for these purposes (which shall be consistent with any relevant standard railway industry processes for the development of the Timetable and the resultant Train Plan) and that the Authority may amend any such stipulation from time to time.
- 17.3 The Authority agrees to consult with the ODP as far as reasonably practicable prior to stipulating or amending any such procedural arrangements and timescales in accordance with paragraph 17.2.
- 17.4 Any stipulation by the Authority pursuant to paragraph 17.2:
- (a) shall be at the reasonable discretion of the Authority;
  - (b) may contain procedural arrangements and timescales to be followed by the ODP in relation to other changes to the ODP Services (pursuant to paragraph 1 of Schedule 9.3 (Variations to the ODP Grant Agreement and Incentivising Beneficial Changes)) in conjunction with the Train Service Requirement; and

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- (c) may provide for iterations of drafts of any amended or new Train Service Requirement, Train Plan or Timetable.
- 17.5 Any procedural arrangements and timescales stipulated by the Authority pursuant to paragraph 17.2 shall have contractual effect between the ODP and the Authority in accordance with the terms of such stipulation.

## **18 OBLIGATIONS IN RELATION TO OTHER TRAIN OPERATORS**

18.1 Subject to the terms of the Licences and any applicable Law, the ODP shall co-operate with other Train Operators in respect of their timetable development rights where such other Train Operators provide railway passenger services meeting common or displaced passenger demand, with a view to ensuring that:

- (a) the levels of overcrowding over the Routes or other relevant routes are minimised and not unduly concentrated on particular railway passenger services, Routes or other relevant routes;
- (b) the stopping patterns of such railway passenger services are placed at approximately evenly-spaced intervals throughout each relevant hour, taking into account the reasonable needs of passengers and the different types of railway passenger services provided by other Train Operators and the ODP; and
- (c) a reasonable pattern of railway passenger service is provided on the relevant route(s) to enable passengers to make Connections (particularly where low frequency railway passenger services are operated, first trains or last trains are involved, taking account of seasonal fluctuations in passenger demand and the time needed to make any such Connection).

## **19 PROVISIONS RELATING TO ACCESS AGREEMENTS AND PROPERTY LEASES**

19.1 Where the Authority considers it requisite for the purposes of better securing the delivery of Passenger Services under the ODP Grant Agreement, or any other franchise or passenger rail services agreement, or for the better achievement by it of any of its duties, functions and powers in relation to railways, the Authority may require the ODP:

- (a) to exercise or refrain from exercising any or all of its rights under any Access Agreement or any Property Lease, or any related rights under such other agreements as the Authority may specify; and/or
- (b) subject to the consent of the counterparty thereto, to assign, novate or surrender its rights under any Access Agreement or Property Lease.

19.2 Except to the extent that the Authority otherwise indicates from time to time, the ODP shall notify the Authority of its intention to enter into or amend any Access Agreement:

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- (a) where the approval of the ORR is required under the Act, not less than ten (10) Weekdays before the submission to the ORR; and
  - (b) where no such approval is required, not less than ten (10) Weekdays prior to entering into such amendment or Access Agreement.

19.3 The ODP shall comply with its obligations under any Access Agreement or any Property Lease to which it is a party from time to time:

- (a) to notify or consult with the Authority on any matter or proposal relating to that Access Agreement or Property Lease; and
- (b) which are contingent on a particular course of action being taken by the Authority or which are otherwise expressly included in that Access Agreement or Property Lease for the benefit of the Authority.

19.4 If and to the extent that:

- (a) the Authority exercises its rights pursuant to paragraph 19.1;
- (b) the ODP's compliance with the Authority's requirements pursuant to paragraph 19.1 would lead to the unavoidable consequence of the ODP contravening any other terms of the ODP Grant Agreement, the CVL Asset Lease or the occurrence of an Event of Default; and
- (c) the ODP duly complies with such requirements,

no such contravention of the ODP Grant Agreement or Event of Default shall have occurred.

## **20 THE TIMETABLE AND NETWORK RAIL'S WORKING TIMETABLE**

20.1 Any specification of Passenger Services in the Train Service Requirement shall (unless the Authority states to the contrary) be regarded as relating to how those Passenger Services are to be provided for in the National Rail Timetable that Network Rail publishes for passengers.

20.2 The ODP shall ensure, for each period between two (2) consecutive Passenger Change Dates during the Rail Services Term that the Timetable for such period is, in its reasonable opinion, not materially different from the relevant working timetable issued by Network Rail.

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**Appendix 1 to Schedule 1.1**

**1 Train Service Requirement (TSR) 0**

The Parties acknowledge and agree that TSR0 shall be the most recent Train Plan prepared by the Train Operator under the Previous Franchise Agreement (excluding any temporary amendments) and as approved by the Authority.

**2 Train Service Requirement (TSR) 1**

The Parties acknowledge and agree that TSR1 shall be the Train Plan prepared by the Train Operator under the Previous Franchise Agreement for implementation from the Passenger Change Date in December 2018 and as approved by the Authority and Network Rail.

**3 Train Service Requirement (TSR) 1A**

**4 Train Service Requirement (TSR) 1B**

**5 Train Service Requirement (TSR) 1C**

**6 Train Service Requirement (TSR) 2**

**7 Train Service Requirement (TSR) 2A**

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**Appendix 2 to Schedule 1.1 - Capacity and Management of Crowding**

**1 CROWDING MANAGEMENT REQUIREMENTS**

- 1.1 The ODP shall, subject to the implementation of any Capacity Mitigation Proposal in accordance with paragraph 15.6 of Schedule 1.1, ensure that on or before the Passenger Change Date on which TSR0 is replaced by TSR1, the Train Plan complies with the Authority's crowding management requirements which shall be calculated as follows:

**$A < (B + C)$**

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**Where**

- A** is the mean total daily projected demand in passengers over the Crowded Period as set out in Table 2 of this Appendix 2;
- B** is the mean total number of seats provided daily over the Crowded Period as set out in Table 2 of this Appendix 2; and
- C** is the mean total standing capacity provided daily over the Crowded Period as set out in Table 2 of this Appendix 2.
- 1.2 By no later than one (1) month prior to the Passenger Change Date on which TSR0 is replaced by TSR1, the ODP shall provide, for the Authority's approval, the amounts relating to each of A, B and C under paragraph 1.1 above in respect of each Crowded Service, in the form of document set out in Table 2 to this Appendix 2 of Schedule 1.1.
- 1.3 In accordance with the Process for the Acceptance of Document Deliverables, the ODP and the Authority shall no later than six (6) Reporting Periods from the date of this Agreement, agree the scope, format and content of a report on crowding in respect of Applicable Crowded Trains (the "**ODP Crowd Management Report**") provided always that the ODP Crowd Management Report shall include the items listed in paragraph 1.5.
- 1.4 Once the scope, format and content is agreed between the Parties in accordance with paragraph 1.3, the ODP shall be required to provide the ODP Crowd Management Report twice every ODP Year at intervals of not less than five (5) and no more than seven (7) Reporting Periods.
- 1.5 Each ODP Crowd Management Report shall include, as a minimum:
- (a) a demonstration by the ODP that the number of passengers per Crowded Service within the Crowded Period will not exceed the Passenger Carrying Capacity;



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- (b) a Forecast Passenger Demand:
- (i) for a rolling three (3) year period for each Crowded Service. Where the ODP forecasts a total average load factor of more than eighty percent (80%) (where the average load factor is calculated as the ratio of the values of A to (B + C) as specified in Table 2 of this Appendix 2) for more than one (1) hour in any day during the following three (3) years, (excluding any Special Events), then it shall propose a Capacity Mitigation Proposal ; and
  - (ii) including all relevant assumptions used by the ODP to produce such forecast and, where relevant, explanation of differences between the Forecast Passenger Demand and Actual Passenger Demand.
- (c) evidence that from the Passenger Change Date on which TSR0 is replaced by TSR1, the Train Plan is sufficient to ensure that (as set out in Table 2 of this Appendix 2)  $A < (B + C)$  for each Crowded Service.
- (d) information on the methods utilised by the ODP to gather the required information in relation to the use by passengers of the Passenger Services and the process for implementing within, a reasonable timescale, real-time loading information to improve the Passenger Services.
- (e) an Actual Passenger Demand report setting out an analysis of the recorded train loading data and the frequency, timing and location of Passenger Services recorded with loading levels where the Passenger Carrying Capacity was exceeded.

**Table 1 to Appendix 2 of Schedule 1.1**

| <b>Reference</b> | <b>Crowded Service</b> (corresponding Service Code numbers shown in brackets) | <b>Crowded Period</b>  |
|------------------|---|--|
| C1.1             | Cheltenham Spa to Cardiff (AW4290)  | Weekdays:<br>All arrivals at Cardiff Queen Street (CDQ), Cardiff Central (CDF) and Cardiff Bay (CDB) between 07:30 and 08:59 (where a train calls at more than one of CDQ, CDF and CDB, the first station arrival should be used to determine the Applicable Crowded Services) |
| C1.2             | Cardiff Queen Street to Cardiff Bay (AW4300)                                  |  |
| C1.3             | Maesteg to Cardiff (AW4310)   |  |
| C1.4             | Manchester/North Wales/Hereford to Cardiff (AW4340)                           |  |
| C1.5             | Swansea to Cardiff (AW4380)   |  |
| C1.6             | Bridgend/Rhose to Cardiff (AW4390)  |  |
| C1.7             | Radyr to Cardiff (AW4400)   |  |
| C1.8             | Aberdare to Cardiff (AW4410)  |  |
| C1.9             | Barry Island to Cardiff (AW4420)  |  |
| C1.10            | Penarth to Cardiff (AW4430)   |  |
| C1.11            | Ebbw Vale to Cardiff (AW4440)   |  |
| C1.12            | Coryton to Cardiff (AW4450)   |  |
| C1.13            | Merthyr Tydfil to Cardiff (AW4460)  |  |
| C1.14            | Treherbert to Cardiff (AW4470)  |  |
| C1.15            | Rhymney to Cardiff (AW4480)   |  |
| C2.1             | Cardiff to Cheltenham Spa (AW4290)  | Weekdays:<br>All departures from Cardiff Queen Street (CDQ), Cardiff Central   |
| C2.2             | Cardiff Bay to Cardiff Queen Street (AW4300)                                  |  |
| C2.3             | Cardiff to Maesteg (AW4310)   |  |
| C2.4             | Cardiff to Herford/Manchester/North Wales (AW4340)                            |  |

|       |                                       |  |
|-------|---------------------------------------|--|
| C2.5  | Cardiff to Swansea (AW4380)           | (CDF) and Cardiff Bay (CDB) between 16:00 and 18:15 (where a train calls at more than one of CDQ, CDF and CDB, the last station departure should be used to determine the Applicable Crowded Services) |
| C2.6  | Cardiff to Rhoose / Bridgend (AW4390) |  |
| C2.7  | Cardiff to Radyr (AW4400)             |  |
| C2.8  | Cardiff to Aberdare (AW4410)          |  |
| C2.9  | Cardiff to Barry Island (AW4420)      |  |
| C2.10 | Cardiff to Penarth (AW4430)           |  |
| C2.11 | Cardiff to Ebbw Vale (AW4440)         |  |
| C2.12 | Cardiff to Coryton (AW4450)           |  |
| C2.13 | Cardiff to Merthyr Tydfil (AW4460)    |  |
| C2.14 | Cardiff to Treherbert (AW4470)        |  |
| C2.15 | Cardiff to Rhymney (AW4480)           |  |

**Table 2 to Appendix 2 of Schedule 1.1**

**Template Total Standing Capacity**

| Crowded Service Reference | ODP Years |   |   |      |   |   |         |   |   |         |   |   |
|---------------------------|-----------|---|---|------|---|---|---------|---|---|---------|---|---|
|                           | 2019      |   |   | 2020 |   |   | 2021... |   |   | ...2034 |   |   |
|                           | A         | B | C | A    | B | C | A       | B | C | A       | B | C |
| C1.1                      |           |   |   |      |   |   |         |   |   |         |   |   |
| C1.2                      |           |   |   |      |   |   |         |   |   |         |   |   |
| C1.3                      |           |   |   |      |   |   |         |   |   |         |   |   |
| ...                       |           |   |   |      |   |   |         |   |   |         |   |   |

- A = the mean total daily projected demand in passengers over the Crowded Period;
- B = the mean total number of seats provided daily over the Crowded Period; and
- C = the mean total standing capacity provided daily over the Crowded Period.
- For Crowded Services C1.1 to C1.15 the values of A, B and C should be determined for Applicable Crowded Services at the first station of arrival (CDQ, CDF of CDB within the Crowded Period).
- For Crowded Services C2.1 to C2.15 the values of A, B and C should be determined for Applicable Crowded Services at the last station of departure (CDQ, CDF of CDB within the Crowded Period).

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## Schedule 1.2 – Operating Obligations

### **1 DAILY OPERATING OBLIGATIONS**

- 1.1 The ODP agrees to use all reasonable endeavours to operate on each day of the Rail Services Term each of its Passenger Services as are set out in the Plan of the Day for that day and with at least the Passenger Carrying Capacity specified in the Train Plan for that Passenger Service. The ODP shall notify the Authority as soon as reasonably practicable if it has on any day of the Rail Services Term failed to operate to a material extent each of its Passenger Services as are set out in the Plan of the Day for that day and with at least the Passenger Carrying Capacity specified in the Train Plan for that Passenger Service.

### **2 TIMETABLING AND TRAIN PLANNING COMPLIANCE INVESTIGATION**

- 2.1 If the Authority considers that the ODP may have breached any of its obligations under any of paragraphs 12.1, 12.3, 12.4, 12.5, 14.1, 14.2 or 14.3 of Schedule 1.1 (Rail Services and Service Development) and/or paragraph 1 of this Schedule 1.2, it shall (in addition to its right to obtain further information pursuant to paragraph 1.1 of Schedule 1.5 (Information about Passengers) and without prejudice to any other rights of the Authority under the ODP Grant Agreement or otherwise) have the right, by serving notice on the ODP, to instigate an investigation of the ODP's compliance with its obligations under paragraphs 12.1, 12.3, 12.4, 12.5, 14.1, 14.2 and 14.3 of Schedule 1.1 (Rail Services and Service Development) and paragraph 1 of this Schedule 1.2, including any differences between the Forecast Passenger Demand and the Actual Passenger Demand and any unreasonable assumptions about the timetables likely to be operated by other Train Operators made by the ODP ("**Timetabling and Train Planning Compliance Investigation**").

- 2.2 Following the service of such a notice the ODP shall:

- (a) provide such information as the Authority may reasonably require for the purposes of determining if the ODP has complied with its obligations under paragraphs 12.1, 12.3, 12.4, 12.5, 14.1 or 14.2 of Schedule 1.1 (Rail Services and Service Development) and/or paragraph 1 of this Schedule 1.2 including evidence of:
- (i) the steps taken by the ODP to amend and/or enter into Access Agreements, exercise Timetable Development Rights and exercise its rights under the relevant Track Access Agreement to object, to make representations and to withhold consent in respect of any actual or proposed act or omission by Network Rail or the Infrastructure Manager in relation to such agreement in respect of its Timetable Development Rights;

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- (ii) the extent to which the ODP has operated on each day of the relevant Reporting Period each of its Passenger Services as are set out in the Plan of the Day for that day and with at least the Passenger Carrying Capacity specified in the Train Plan for that Passenger Service;
  - (iii) Forecast Passenger Demand and the way that it was calculated including all evidence taken into account and assumptions used (including any divergences from then existing industry modelling standards and the reasons for such divergences); and
  - (iv) any assumptions about the timetables likely to be operated by other Train Operators made by the ODP; and
  - (v) the alternative solutions considered by the ODP before finalising the Timetable and Train Plan and the reasons why any such alternative solutions were not adopted; and
- (b) permit the Authority to carry out an audit of the extent to which the Timetable and Train Plan enables the ODP to operate railway passenger services that comply with the Train Service Requirement and paragraph 14 of Schedule 1.1 (Rail Services and Service Development) and fully co-operate with and provide all information needed to facilitate such audit.

### 2.3 **Contravention of the ODP Grant Agreement**

- (a) The ODP shall be in contravention of the ODP Grant Agreement if following the completion by the Authority of the Timetabling and Train Planning Compliance Investigation it concludes that the ODP breached any of its obligations under any of paragraphs 12.1, 12.3, 12.4, 12.5, 14.1, 14.2 or 14.3 of Schedule 1.1 (Rail Services and Service Development) and/or paragraph 1 of this Schedule 1.2 including where the ODP:
- (i) failed to act reasonably in calculating Forecast Passenger Demand because it unreasonably assumed that there would be differences between Forecast Passenger Demand and Actual Passenger Demand at the time that the Forecast Passenger Demand calculation was made; or
  - (ii) made unreasonable assumptions about the timetables likely to be operated by other Train Operators serving some or all of the same stations as the ODP.
- (b) Where the Authority does conclude pursuant to paragraph 2.3(a) above that the ODP has breached any relevant obligation the ODP shall pay to the Authority the costs

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incurred by it in undertaking any Timetabling and Train Planning Compliance Investigation (including any audit pursuant to paragraph 2.2(b)).

- (c) The Authority shall notify the ODP if it concludes pursuant to paragraph 2.3(a) that the ODP is in contravention of the ODP Grant Agreement and it may at its discretion, and entirely without prejudice to its other rights consequent upon the relevant contravention, serve a Remedial Plan Notice pursuant to paragraph 2 of Schedule 10.1 (Procedure for remedying a Contravention of the ODP Grant Agreement).

### **3 TIMETABLE CHANGES PROPOSED BY NETWORK RAIL AND/OR THE INFRASTRUCTURE MANAGER**

3.1 The ODP shall notify the Authority promptly after being notified by Network Rail or the Infrastructure Manager that Network Rail or the Infrastructure Manager has decided or proposes to:

- (a) omit from the Plan of the Day Passenger Services that are included in the Timetable; or
- (b) reschedule in the Plan of the Day Passenger Services from their scheduling in the Timetable.

3.2 To the extent that any such decision or proposal may, in the reasonable opinion of the ODP, materially (having regard to both duration and scale) prejudice the ODP's ability to deliver the Timetable with the Passenger Carrying Capacity stipulated in the Train Plan the ODP shall explain in such notification the way in which, in its reasonable opinion, such omission or rescheduling may materially prejudice the ODP's ability to deliver the Timetable with the Passenger Carrying Capacity stipulated in the Train Plan.

3.3 The ODP agrees to supply to the Authority from time to time, in the format required by the Authority, such details of any actual or proposed omission or rescheduling of Passenger Services by Network Rail or the Infrastructure Manager as the Authority may reasonably require, including details of the steps which the ODP proposes to take pursuant to paragraph 3.4.

3.4 Where the actual or proposed omission or rescheduling of Passenger Services is one which may, in the reasonable opinion of the Authority or the ODP, materially prejudice the ODP's ability to deliver the Timetable with the Passenger Carrying Capacity stipulated in the Train Plan, the ODP agrees (unless the Authority specifically agrees otherwise) to exercise its rights under the Track Access Agreement (including the Network Code) to:

- (a) object (including submitting its objection to any relevant dispute resolution arrangements or procedures and appealing against any award or determination under such arrangements or procedures, including to the ORR);

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- (b) make representations; and
  - (c) withhold consent,

in respect of any actual or proposed omission or rescheduling of Passenger Services by Network Rail or the Infrastructure Manager.

- 3.5 The provisions of this paragraph 3 shall apply to any actual or proposed omission or rescheduling of Passenger Services that originates from any person other than Network Rail and the Infrastructure Manager, as those provisions apply to Network Rail and the Infrastructure Manager.

#### **4 TIMETABLE CHANGES PROPOSED BY THE ODP**

- 4.1 The ODP agrees, subject to this paragraph 4, not to propose to Network Rail or the Infrastructure Manager:

- (a) the addition to the Plan of the Day of any railway passenger services which are not included in the Timetable;
- (b) the omission from the Plan of the Day of any Passenger Services included in the Timetable; or
- (c) the rescheduling in the Plan of the Day of any Passenger Services from their scheduling in the Timetable,

without the Authority's prior consent.

- 4.2 The ODP shall submit to the Authority an amended Train Plan in respect of each Timetable change proposal.

- 4.3 The ODP shall use all reasonable endeavours to operate adequate railway passenger services to or from any special events which are not already provided for in the Plan of the Day to meet the passenger demand that is reasonably likely to arise from such special events and to ensure that the railway passenger services provided have an appropriate amount of passenger carrying capacity. The ODP shall in meeting its obligations pursuant to this paragraph 4:

- (a) consider amending the Plan of the Day through the omission, addition or rescheduling of Passenger Services; and
- (b) seek to optimise the effective delivery of the Passenger Services as a whole with the provision of appropriate capacity in the context of the additional demand consequent upon a relevant special event.



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- 4.4 By no later than the Start Date and thereafter at the start of each ODP Year (or such later date as the Authority may reasonably determine) the ODP shall prepare and provide to the Authority the Special Event Planning Calendar for approval in accordance with the Process for the Acceptance of Document Deliverables set out in Appendix 1 to Schedule 18.3. In relation to the first Special Event Planning Calendar, such approval shall not be unreasonably withheld by the Authority where any information is omitted by reason of such information being unavailable to the ODP prior to the Start Date provided always ODP shall have used reasonable endeavours to procure such information.
- 4.5 The Special Event Planning Calendar shall include:
- (a) all reasonable foreseeable Special Events for an eighteen (18) month period from the start of such ODP Year, including those Special Events where the dates and details of the Special Event are not confirmed when the Special Event Planning Calendar is compiled;
  - (b) for each Special Event, the Special Event's dates, organiser, promoters, duration and an indication of the scope and scale of the impact on and/or demand for Rail Services;
  - (c) the category for each Special Event in accordance with paragraph 4.11; and
  - (d) the ODP Services Employee responsible for the publication of the Special Event Planning Calendar.
- 4.6 The ODP shall notify the Authority as soon as reasonable practicable if the Special Event Planning Calendar requires revision to reflect changes to any of the Special Events or additional Special Events are required to be included in the Special Event Planning Calendar.
- 4.7 The ODP shall comply with any guidance which the Authority may issue from time to time as to its reasonable requirements for the format of, and the content and assumptions to be included in, the Special Event Planning Calendar or Special Event Management Plans.
- 4.8 For each Special Event in the Special Event Planning Calendar the ODP shall:
- (a) develop and submit to the Authority a Special Event Management Plan no less than three (3) months before the Special Event;
  - (b) no less than two (2) months before the Special Event meet with the Authority to discuss the Special Event and the ODP's Special Event Management Plan;
  - (c) revise the Special Event Management Plan to meet the Authority's reasonable requirements;

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- (d) continually monitor each Special Event Management Plan to ensure its appropriateness for delivery of the Rail Services during the relevant Special Event;
  - (e) implement the Special Event Management Plan; and
  - (f) continually review the performance of each Special Event Management Plan and identify opportunities to improve each Special Event Management Plan and/or its implementation to improve its effectiveness and efficiency and make recommendations to the Authority as necessary for future Special Events.

4.9 The Special Event Management Plan shall be developed by the ODP such that:

- (a) it reduces the safety risk to passengers, members of the public and staff to as low a level as reasonably practicable;
- (b) it is consistent with British Transport Police's requirements and the requirements of other police and security services;
- (c) it minimises queuing to a reasonable level giving due regard to the Authority's reasonable requirements in accordance with paragraph 4.8(c);
- (d) it reasonably meets the needs of passengers with mobility impairments; and
- (e) any proposed deviations from the minimum requirements set out in paragraph 4.12, are clearly set out by the ODP including evidence and/or rationale demonstrating that such deviation would optimise passenger services for the relevant Special Event and represent the most efficient use of rolling stock available provided always that any proposal shall remain subject to Authority approval.

4.10 The ODP shall use all reasonable endeavours to develop its Special Event Management Plan in consultation and cooperation with all relevant third parties including (but not limited to):

- (a) Local Authorities including licensing and planning authorities as well as Highway Authorities;
- (b) the organisers and promoters of the Special Event;
- (c) other railway companies including Train Operators, Network Rail and where appropriate Freight Operators; and
- (d) other public transport providers.

4.11 The Special Event Classification set out in the table below shall be used by the ODP to classify Special Events and this classification shall be used for each Special Event in the Special Event Planning Calendar:

| Special Event Classification | Description  | Examples  |
|------------------------------|--|---|
| A                            | Major event affecting multiple services in Cardiff or other major centres, potentially affecting peak time travel, projected to cause significant excess crowding on train services/stations and with the potential for reputational damage to Wales if not managed properly | International Rugby World Cup, Papal Visit, Prince of Wales Investiture, Beyoncé concert                          |
| B                            | Large public gatherings which lead to a large increase in demand at smaller stations and on normally uncrowded services  | Royal Welsh Show, Green Man Festival, Fireworks festivals   |
| C                            | Public events in major centres with special security and/or demand implications  | Premier League and Championship football matches, music concerts, Chester Races, public demonstrations or marches |
| D                            | Events leading to special security requirements and potential travel restrictions  | NATO conference   |
| E                            | Events requiring temporary suspension of rail services or non-stopping at designated stations  | At request of emergency services or for public safety reasons   |

4.12 Each Special Event Management Plan shall as a minimum include the information set out in the table below:

|  | Special event classification |   |   |   |   |
|--|------------------------------|---|---|---|---|
|  | A                            | B | C | D | E |
| Key:<br>✓ = Required<br>X = Not Required   |                              |   |   |   |   |
| <b>Resources</b>   |                              |   |   |   |   |
| No. of additional qualified railway staff at stations  | ✓                            | ✓ | ✓ | ✓ | x |
| No. of security / agency personnel   | ✓                            | ✓ | ✓ | ✓ | ✓ |
| No. of other operational and response personnel to provide greater service resilience and effect more rapid service recovery | ✓                            | ✓ | ✓ | x | ✓ |
| Command and control management team  | ✓                            | x | x | ✓ | ✓ |
| Local control team   | x                            | ✓ | ✓ | x | x |
| <b>Rail Services</b>   |                              |   |   |   |   |
| Additional rail services for the Special Event   | ✓                            | x | x | x | x |
| Additional rolling stock to strengthen existing rail services  | ✓                            | ✓ | ✓ | x | x |
| Potential changes to quantity or timing of scheduled rail services   | x                            | x | x | ✓ | x |
| <b>Other special operational arrangements</b>  |                              |   |   |   |   |
| Command and control arrangements, including co-ordination with Network Rail  | ✓                            | x | x | x | ✓ |
| Co-ordination with other rail operators, other transport operators, emergency services and event organiser                   | ✓                            | ✓ | ✓ | ✓ | ✓ |
| Staff communications prior to event  | ✓                            | ✓ | ✓ | ✓ | ✓ |
| <b>Public Communications</b>   |                              |   |   |   |   |
| Publicity prior to event   | ✓                            | ✓ | ✓ | ✓ | ✓ |
| Travel information during event  | ✓                            | ✓ | ✓ | ✓ | ✓ |

4.13 For the avoidance of doubt and without limitation the ODP shall ensure that it responds to the Identified Special Events in accordance with the Classification as set out in the table below:

| Identified Special Event   | Special Event Location               | Classification |
|----------------------------|--------------------------------------|----------------|
| Six Nations                | Cardiff                              | A              |
| Autumn Rugby International | Cardiff                              | A/C            |
| Royal Welsh Show           | Builth Wells (served by Builth Road) | B              |
| Chester races              | Chester                              | C              |

4.14 By no later than the Start Date, the ODP shall provide to the Authority a Special Event Management Plan that sets out the ODP’s proposed response to any Special Event that is not included in the Special Event Planning Calendar and where there is insufficient prior notice of such Special Event to agree a Special Event Management Plan in accordance with paragraph 4.8 (a “**Contingency Special Event Management Plan**”). The Contingency Special Event Management Plan shall, as a minimum, include:

- (a) ODP responsibilities and decision making processes for ensuring that available resources are identified and mobilised in an efficient and effective manner;
- (b) arrangements for co-ordinating with Network Rail and or the Infrastructure Manager, other rail operators, other transport operators, emergency services and the event organiser as appropriate; and
- (c) a communications plan, identifying procedures for communicating to staff and the public prior to and during the event.

## **5 TIMETABLE CHANGES AND TRAIN PLAN CHANGES REQUESTED BY THE AUTHORITY**

5.1 The ODP agrees, as and when requested by the Authority, to use all reasonable endeavours to seek and to obtain:

- (a) the addition to the Plan of the Day of any railway passenger services that are not included in the Timetable;
- (b) the omission from the Plan of the Day of any Passenger Services that are included in the Timetable; and/or

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- (c) the rescheduling in the Plan of the Day of any Passenger Services from their scheduling in the Timetable.

5.2 The Authority may reasonably request that the ODP shall submit to the Authority an amendment to the Train Plan at any time.

## **6 OBLIGATIONS OF THE ODP IN THE EVENT OF DISRUPTION TO RAILWAY PASSENGER SERVICES**

6.1 In the event of any planned or unplanned disruption to railway passenger services operated on the Routes, or on other parts of the network which are reasonably local to the Routes, the ODP shall:

- (a) without prejudice to any other provision of this Schedule 1.2, notify the Authority promptly where such disruption would materially (having regard to both duration and scale) prejudice the ODP's ability to deliver the Timetable or deliver the Timetable in accordance with the Train Plan;
- (b) co-operate with Network Rail the Infrastructure Manager, other Train Operators and other (non-rail) transport providers to act in the overall interests of passengers using such railway passenger services, including using all reasonable endeavours to ensure that such disruption is not concentrated on a particular part of the network, except where such concentration is either:
  - (i) in the overall interests of passengers using such Passenger Services or railway passenger services and would not result in disproportionate inconvenience to any group of passengers; or
  - (ii) reasonably necessary as a result of the cause or the location of the disruption; and
- (c) use all reasonable endeavours to provide or secure the provision of alternative transport arrangements in accordance with paragraph 6.2.

6.2 The ODP shall use all reasonable endeavours to provide or secure the provision of alternative transport arrangements to enable passengers affected by any disruption referred to in paragraph 6.1 to complete their intended journeys in accordance with this paragraph 6.2. In particular, the ODP shall use all reasonable endeavours to:

- (a) ensure that such alternative transport arrangements are of reasonable quality, of a reasonably similar frequency to the Passenger Services included in the Timetable which such arrangements replace and reasonably fit for the purpose of the journey to be undertaken;

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- (b) transport passengers to, or as near as reasonably practicable to, the end of their intended journey on such Passenger Services, having particular regard to the needs of any Disabled Persons and, where appropriate, making additional arrangements for such Disabled Persons to complete their intended journey;
  - (c) provide adequate and prominent publicity (including via the ODP's website and Communication Platforms) of such alternative transport arrangements in advance and during the period of such disruption, subject, in the case of unplanned disruption, to the ODP having sufficient notice of such disruption to enable it to provide such publicity;
  - (d) provide sufficient alternative transport capacity for the reasonably foreseeable demand for the disrupted Passenger Services; and
  - (e) ensure, if any planned disruption overruns, that there is a reasonable contingency arrangement for such alternative transport arrangements to continue for the duration of such overrun.

## **7 OBLIGATION TO USE ALL REASONABLE ENDEAVOURS UNDER THIS SCHEDULE 1.2**

7.1 Any obligation in this Schedule 1.2 on the part of the ODP to use “**all reasonable endeavours**” shall (with the exception of paragraph 5 of this Schedule 1.2) include an obligation to:

- (a) ensure (so far as it is able to do so) the provision of the Passenger Services as set out in the Plan of the Day in accordance with the Train Plan in ordinary operating conditions and to secure the provision of alternative transport arrangements to enable passengers affected by any disruption as set out in paragraph 6 of this Schedule 1.2;
- (b) take reasonable measures to avoid and/or reduce the impact of any disruption to the Rail Services having regard to all the circumstances, including the reasonably foreseeable risks arising from the matters referred to in paragraph 7.2;
- (c) actively manage the performance by Network Rail of its contractual relationship with the ODP (and provide appropriate management resources for this purpose) so as to secure the best performance reasonably obtainable from Network Rail by these means (including taking the steps referred to in paragraph 7.4), having regard to all the circumstances; and
- (d) procure that the Infrastructure Manager actively manages its relationship with Network Rail in respect of any matters or issues which require co-operation between Network Rail and the Infrastructure Manager as separate network operators on a wider connected network.

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7.2 The matters to which the ODP is to have regard pursuant to paragraph 7.1(b) shall include:

- (a) variations in weather and operating conditions (including Network Rail's or the Infrastructure Manager's infrastructure not being available for any reason), which may in either case include seasonal variations;
- (b) default by, or restrictions imposed by, suppliers to the ODP;
- (c) shortages of appropriately skilled or qualified ODP Services Employees;
- (d) disputes with ODP Services Employees;
- (e) the availability of the Train Fleet, having regard to maintenance requirements and any Mandatory Modifications;
- (f) establishing reasonable Turnaround Time allowances for enabling or disabling (as appropriate) any part of a train, the rostering of any train crew and the servicing or cleaning of any rolling stock vehicles;
- (g) failures of rolling stock vehicles in service and contingency arrangements (including Hot Standbys and rescue traction). and
- (h) establishing and maintaining during the ODP Grant Agreement Term robust contractual arrangements with appropriate suppliers of transport services to provide alternative transport solutions in the event of any planned or unplanned disruption to the Rail Services.

7.3 For the purpose of taking measures in respect of any disruption to the Rail Services in accordance with paragraph 7.1(b) and assessing the extent of any risk referred to in paragraph 7.1(b) and any such risk's reasonable foreseeability, regard shall be had both:

- (a) to the historical levels of incidence of disruption in the operation of:
  - (i) the Rail Services;
  - (ii) similar services both by the ODP and/or its predecessors; and
  - (iii) other services of a type similar to the Rail Services; and
- (b) to potential changes in circumstances which may affect those levels.

7.4 The steps to which paragraph 7.1(c) refers include:

- (a) co-operating with Network Rail in the development, agreement and implementation of:
  - (i) a five (5) year (rolling) Performance Strategy Plan; and



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- (ii) recovery plans in response to failures to achieve the performance levels specified in any Performance Strategy Plan;
  - (b) co-operating with Network Rail in adopting the principles set out in any Service Recovery Plans agreed between Network Rail and the ODP from time to time;
  - (c) undertaking regular reviews of:
    - (i) the most common and most detrimental causes of Passenger Time Lost Delay (PTL) attrition and delay to the Passenger Services; and
    - (ii) the causes of the most significant delays to the Passenger Services or those with the longest duration (to the extent not already reviewed in accordance with paragraph 7.4(c)(i)) including as a minimum ten (10) such occurrences,  
  
which have occurred during a Reporting Period and which have been caused by the ODP, any other Train Operator or any other train operator licensed under the Act or Network Rail;
  - (d) undertaking with Network Rail a review of the time taken to recover the Passenger Services following the occurrence of any of the events specified in paragraphs 7.4(c)(i) and 7.4(c)(ii) and seeking to identify and implement actions that reduce the delay effect of such events;
  - (e) setting up and holding regular and effective performance review meetings with Network Rail, evidenced by meeting minutes and the closure of actions agreed between the parties;
  - (f) regularly monitoring (at least every Reporting Period) the delivery of local output commitments made by Network Rail in the Performance Strategy Plan and derived delivery plans and using reasonable endeavours to specify and develop such delivery plans;
  - (g) as and when required by Network Rail, co-operating with Network Rail in improving the accuracy of future timetables by providing access to trains (and data collected from train systems), other facilities and/or information;
  - (h) co-operating with Network Rail in other delay management initiatives and ongoing quarterly reviews of the Performance Strategy Plan;
  - (i) regularly reviewing (at least every Reporting Period) the imposition and clearance of temporary speed restrictions;

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- (j) regularly reviewing (at least every Reporting Period) the timely and efficient handover and hand-back of possessions; and
  - (k) where appropriate and where Network Rail fails to perform its obligations under any Track Access Agreement, enforcing the ODP's rights under such Track Access Agreement(s).
- 7.5 The ODP undertakes to reasonably co-operate with Network Rail and the Infrastructure Manager with regard to Network Rail's and the Infrastructure Manager's management of the relevant network, including in relation to the establishment of up to date Timetable Planning Rules.
- 7.6 To the extent not already provided for in the ODP Grant Agreement, the ODP shall use all reasonable endeavours to ensure the performance by Network Rail of its obligations under any relevant agreement including, where appropriate or where requested by the Authority, enforcing its rights against Network Rail under any such agreement.
- 7.7 When and to the extent reasonably requested by the Authority, the ODP shall provide to the Authority evidence of the steps taken by it in order to comply with its obligations under this paragraph 7.

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**Schedule 1.3 – NOT USED**

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## **Schedule 1.4 – Passenger Facing Obligations**

### **1 PUBLISHING THE TIMETABLE**

#### **1.1 The First Timetable**

The ODP shall publish on the Start Date:

- (a) the Timetable:
  - (i) at each staffed Station, by making the relevant information available upon request and free of charge in one or more booklets or in other similar form;
  - (ii) at each Station, by displaying the relevant information on information displays;
  - (iii) at each ODP Access Station, by providing to the operator of each such station the departure and arrival times of the Passenger Services that call at each such station and the principal Connections to any other transport services relevant to each such station in the same forms as are specified in paragraphs (i) and (ii); and
  - (iv) on the ODP's website and Communications Platforms; and
- (b) the timetables of other Train Operators at Stations, in accordance with paragraph 1.4.

#### **1.2 Timetable Revisions and Alterations**

The ODP shall publish updates or replacements to the Timetable at the locations specified in paragraph 1.1 to the extent necessary to reflect any changes which come into effect on a Passenger Change Date:

- (a) in the case of booklets, at least four (4) weeks before the changes come into effect;
- (b) in the case of information displays, no later than the day before the changes come into effect;
- (c) in the case of information provided to the operators of ODP Access Stations, in sufficient time for such information to be published by such operators within the time limits provided for in this paragraph 1.2;
- (d) in the case of the ODP's website and Communications Platforms, at least four (4) weeks before the changes come into effect;
- (e) in the case of notifying Stakeholders, at least eight (8) weeks before the changes come into effect.

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1.3 In addition, the ODP shall:

- (a) subject to paragraph 1.4, display posters at each Station advising passengers of all Significant Alterations between any two Passenger Change Dates to railway passenger services calling at that Station, no later than four (4) weeks in advance of the date on which the alterations come into effect; and
- (b) provide posters to the operators of ODP Access Stations, advising passengers of all Significant Alterations between any two (2) Passenger Change Dates to the Passenger Services which call at such ODP Access Stations, in sufficient time for such information to be published by such operators within the time limit provided for in paragraph 1.3(a).

**1.4 Other Train Operators' Timetables**

The ODP shall also comply with the requirements of paragraphs 1.1 to 1.3 inclusive by making available booklets and displaying information in information displays and otherwise displaying posters in respect of any other Train Operator's timetable at each Station where the railway passenger services of such other Train Operator are scheduled to call or in respect of which Connections to such other Train Operators railway passenger services can be made from that Station:

- (a) within the time limits specified in paragraphs 1.2 and 1.3 where and to the extent that such other Train Operator delivers to the ODP the relevant information and materials in sufficient time for the ODP to so publish; and
- (b) as soon as reasonably practicable thereafter where and to the extent that such other Train Operator delivers the relevant information and materials late to the ODP.

**1.5 National Rail Timetable and National Rail Enquiry Scheme**

The ODP shall use all reasonable endeavours to procure (including by virtue of any arrangements made from time to time between Network Rail and RSP) that the National Rail Timetable (or any replacement), which Network Rail is responsible for publishing from time to time in relation to the Passenger Services, incorporates or is consistent with its Timetable from time to time.

1.6 The ODP shall use all reasonable endeavours to procure that information in relation to:

- (a) the Timetable; and
- (b) any significant alterations to the Timetable to take effect between any two (2) Passenger Change Dates,

is available to passengers through the National Rail Enquiry Scheme (or any replacement) not less than four (4) weeks prior to coming into effect.

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## **2 COMMUNICATING LATE TIMETABLE CHANGES**

- 2.1 Save in respect of significant alterations, for which the provisions of paragraphs 1.3 and 1.6 shall apply, the ODP shall inform passengers, so far as possible on not less than seven (7) days' prior notice, if it will be unable to operate its trains in accordance with the Timetable. Such information shall include any revised Timetable or travelling arrangements.
- 2.2 Such information shall be provided by:
- (a) revising or adding to the information displays referred to in paragraph 1.1;
  - (b) notifying the operators of the ODP Access Stations, as appropriate, including by providing such operators with revised posters; and
  - (c) updating the ODP's website and Communications Platforms.
- 2.3 The ODP shall revise or add to the information displays at the Stations promptly on receipt of any equivalent information relating to the railway passenger services of other Train Operators whose services call at the Stations.
- 2.4 Where the ODP is unable to provide the information specified in paragraph 2.1 because the relevant revisions are made on an emergency basis, the ODP shall notify passengers and publish the relevant revisions by way of the means contemplated by paragraph 2.2 as soon as reasonably practicable.
- 2.5 The ODP shall ensure that, so far as reasonably practicable (including by communication of the relevant information to persons likely to receive enquiries), passengers making enquiries regarding the Passenger Services are informed of the revised Timetable and any revised travel arrangements of the ODP as far in advance as is reasonably practicable.

## **3 FARES SELLING RESTRICTIONS**

### **3.1 Restrictions on Sales**

The ODP shall ensure that the purchaser of any Commuter Fare or Protected Fare:

- (a) shall be entitled, without further charge, to such rights of access and egress and other similar rights at the commencement and end of the relevant intended journey or journeys as may be reasonably necessary for such purchaser to travel on the Passenger Services;
- (b) shall not be required to incur any cost or take any action beyond the payment of an amount equal to the Price or Child Price (as the case may be) of such Commuter Fare or Protected Fare (as the case may be) and, in relation to the issue of a Season Ticket Fare, the completion of such identity card as the ODP may reasonably require; and

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- (c) shall not be required to pay an amount in respect of a seat reservation or other similar right which it may be compulsory for such purchaser to have in order to make a journey with such Commuter Fare or Protected Fare (as the case may be) on a Passenger Service.

3.2 The ODP shall procure that for any:

- (a) Protected Return Fare, Single Fare which is a Commuter Fare or Return Fare which is a Commuter Fare, each such Fare shall be offered for sale wherever and whenever any other Fare (not being a Season Ticket Fare) for a journey between the same origin and destination stations is offered for sale; and
- (b) Protected Weekly Season Ticket or Season Ticket Fare which is a Commuter Fare, each such Fare shall be offered for sale at all staffed ticket offices at which Fares for a journey between the same origin and destination stations are sold and otherwise wherever and whenever any Season Ticket Fare is offered for sale,

in each case, either by it or its agents (except persons acting in such capacity by virtue of having been appointed under Parts II to VI of Chapter 9 of the Ticketing and Settlement Agreement or by being party to the Ticketing and Settlement Agreement).

3.3 Not used

3.4 The ODP shall not sell or offer to sell:

- (a) any Fare in respect of which the:
  - (i) Prices are regulated under Schedule 5.4 (Regulation of Fares Basket Values) and Schedule 5.5 (Regulation of Individual Fares), at prices that are greater than the Prices set for such Fares from time to time in accordance with Schedule 5.4 (Regulation of Fares Basket Values) and Schedule 5.5 (Regulation of Individual Fares); and
  - (ii) Child Prices are regulated under Schedule 5.4 (Regulation of Fares Basket Values) and Schedule 5.5 (Regulation of Individual Fares), at prices that are greater than the Child Prices set for such Fares from time to time in accordance with Schedule 5.4 (Regulation of Fares Basket Values) and Schedule 5.5 (Regulation of Individual Fares);
- (b) any Fare or Discount Card which has a validity of thirteen (13) or more months, except to the extent required to do so under the terms of the Ticketing and Settlement Agreement.

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### 3.5 **Agents of the ODP**

The ODP shall procure that all persons selling or offering to sell Fares on its behalf (whether under the terms of the Ticketing and Settlement Agreement, as its agents or otherwise):

- (a) for Fares in respect of which the:
  - (i) Prices are regulated under Schedule 5.4 (Regulation of Fares Basket Values) and Schedule 5.5 (Regulation of Individual Fares), sell or offer to sell at prices no greater than the Prices set for such Fares from time to time in accordance with Schedule 5.4 (Regulation of Fares Basket Values) and Schedule 5.5 (Regulation of Individual Fares); and
  - (ii) Child Prices are regulated under Schedule 5.4 (Regulation of Fares Basket Values) and Schedule 5.5 (Regulation of Individual Fares), sell or offer to sell at prices no greater than the Child Prices set for such Fares from time to time in accordance with Schedules 5.4 (Regulation of Fares Basket Values) and Schedule 5.5 (Regulation of Individual Fares);
- (b) for Fares in respect of which the Child Price has been set pursuant to paragraph 2.1 of Schedule 5.2 (ODP's Obligation to Create Fares), sell or offer to sell such Fares to any person under the age of 16 for an amount which is no greater than fifty percent (50%) of the Price of the relevant Fare; and
- (c) for all Fares:
  - (i) do not sell or offer to sell any Fare or Discount Card with a validity of thirteen (13) or more months without the consent of the Authority (such consent not to be unreasonably withheld); and
  - (ii) comply with the provisions of paragraph 5 of Schedule 15.2 (Last Twelve (12) or Thirteen (13) months of ODP Grant Agreement Term and other conduct of business provisions) to the extent they apply to the selling of Fares by the ODP.

### 3.6 **Lowest Available Fares**

The ODP shall:

- (a) advertise, offer and make available for purchase to each passenger the Lowest Available Fare; and
- (b) implement a process to compensate, in accordance with paragraph 5.6 of Schedule 1.4 (Passenger Facing Obligations) and the procedure set out in the Passenger's Charter,



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any passenger that purchases a Fare from the ODP which is not the Lowest Available Fare. Such compensation shall not be less than an amount which is equal to the difference between the value of the Fare purchased by the passenger and the Lowest Available Fare.

### 3.7 **Additional Ancillary Services**

The ODP shall, subject to this paragraph 3, be entitled to charge a purchaser of any Commuter Fare or Protected Fare for any additional services:

- (a) which are ancillary to the railway passenger service for which such Commuter Fare or Protected Fare (as the case may be) was purchased (including, charges in respect of car parking or catering services); and
- (b) which such purchaser is not obliged to purchase.

### 3.8 **Sale of Fares for travel on Bank Holidays**

The ODP shall ensure that, for any Fare in respect of travel on a Bank Holiday, it only offers for sale (and shall procure that any person authorised to sell Fares on its behalf only offers for sale) such Fare that has the same rights and restrictions as a Fare which is valid for travel on a Saturday or Sunday.

## 4 **MINIMUM WI-FI SERVICE ON TRAINS**

4.1 For the purposes of this paragraph 4, the following definitions shall apply:

- (a) **“Ethernet”** means a system for connecting a number of computer systems to form a local area network, with protocols to control the passing of information and to avoid simultaneous transmission by two or more systems, in accordance with the IEEE 802.3 standard;
- (b) **“Free of Charge”** shall mean:
  - (i) the passenger does not have to pay to use the Mobile Communication Services on an ad-hoc or on-going basis; and
  - (ii) the use of the Mobile Communication Services by the passenger is independent of any Wi-Fi or cellular minutes or Wi-Fi or cellular data allowances (such as 3G or 4G mobile broadband) the individual passenger may have through any subscription with one or more telecommunication internet service provider or mobile network operator;
- (c) **“MCS Backstop Date”** means by no later than 31 October 2020;

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- (d) **“MCS Equipment”** means the equipment including the hardware, data communications cabling, power, equipment racks, external aerials and cabling required for the Mobile Communications Services;
- (e) **“MCS Report”** has the meaning given to it in paragraph 4.6;
- (f) **“MCS Route Signal Survey”** has the meaning set out in paragraph 4.12; and
- (g) **“Train to Internet Coverage”** means the availability of one or more commercial networks (such as 3G or 4G high speed packet access provided by third party mobile network operators) and/or any alternative network solutions installed along the rail network upon which the Passenger Services operate to work together with the MCS Equipment installed on trains to permit access to the internet.
- 4.2 By no later than the MCS Backstop Date and throughout the remainder of the Rail Services Term, the ODP shall provide the Mobile Communication Services in both first/business class and Standard Class Accommodation on all its Train Fleet used for the provision of Passenger Services.
- 4.3 The Mobile Communication Services procured by the ODP pursuant to paragraph 4.2 shall provide the Minimum Wi-Fi Service and be provided Free of Charge to all passengers who use the Passenger Services.
- 4.4 The **“Minimum Wi-Fi Service”** means, subject to paragraph 4.5, a wireless internet service which allows each passenger to browse web pages on the internet and send and receive mail electronically through any mobile, tablet or computer device that they may use for this purpose and which is, subject to the availability of the Train to Internet Coverage, available for use by each passenger at all times for the duration of each passenger’s journey.
- 4.5 To ensure a non-discriminatory Minimum Wi-Fi Service is offered to any passenger, the ODP shall be permitted:
- (a) to dynamically manage the available bandwidth on an active user or select vehicles basis as required, in accordance with a fair-usage policy to be published by the ODP; and
- (b) to filter the type of services which may be accessed by a passenger using the Mobile Communication Services, including by restricting passenger access to video and audio streaming services, peer-to-peer file sharing and inappropriate content.
- 4.6 The ODP shall monitor the performance of the Mobile Communication Services for the purposes of providing to the Authority a report on the performance of the Mobile Communication Services, and such report shall be submitted to the Authority one (1)

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month after the end of each ODP Year or on such other more frequent basis as is agreed between the Authority and the ODP (the “**MCS Report**”).

- 4.7 The MCS Report shall include information on the:
- (a) customer usage statistics in respect of the applicable period including:
    - (i) the number of passengers using the Mobile Communication Services;
    - (ii) the average duration (in minutes and seconds) of connections to the Mobile Communication Services; and
    - (iii) the average amount of data received and transmitted;
  - (b) statistics on the availability of the Mobile Communication Services including the duration of any significant periods of time during which the Mobile Communication Services were not available, the reason for such unavailability and the action taken by the ODP in respect of such unavailability; and
  - (c) information on the average internet speed (in megabits per second) and the average latency figures (in milliseconds) experienced by passengers in respect of each connected device which is using the Mobile Communication Services, by route, together with any factors which, in the ODP’s reasonable opinion, have affected and/or contributed to such average internet speed and latency figures.
- 4.8 Where, in the Authority’s reasonable opinion, the performance of the Mobile Communication Services reported in the MCS Report is poor, or has changed significantly between Reporting Periods, the ODP shall provide reasons for such poor performance and/or fluctuating performance (as applicable) to the Authority, together with any remedial or mitigating action that the ODP proposes to take in respect of the poor and/or fluctuating performance of the Mobile Communication Services.
- 4.9 By the MCS Backstop Date, the ODP shall procure that all rolling stock vehicles comprised in its Train Fleet and used for the provision of the Passenger Services are fitted with the MCS Equipment as is necessary to ensure compliance with the requirements of this paragraph 4.
- 4.10 Any MCS Equipment procured by the ODP in accordance with paragraph 4.9 shall, subject to paragraph 4.11, form a through rolling stock unit Ethernet backbone including inter-carriage connectivity capable of gigabit transmission speeds.
- 4.11 Where any rolling stock vehicle comprised in the Train Fleet as at the Start Date is already fitted with through rolling stock unit Ethernet backbones that are not compliant with the requirements of paragraphs 4.10 but are capable of complying with the other

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requirements of this paragraph 4, the ODP shall be permitted to retain these cables and the provisions of paragraphs 4.10 shall not apply in respect of such rolling stock vehicle.

**4.12 MCS Route Signal Survey**

- (a) The ODP shall undertake a signal-strength survey of all Routes (“**MCS Route Signal Survey**”) for the purposes of the Mobile Communications Services to determine the likely Train to Internet Coverage, data speeds, coverage and availability of data services to trains on that Route to establish a non-binding baseline for determining the likely:
  - (i) per passenger data connection speeds;
  - (ii) typical latencies; and
  - (iii) the number of simultaneous Wi-Fi connected passengers that can be supported.
- (b) The MCS Route Signal Survey shall be undertaken as part of the initial planning and design activities associated with the implementation of the Mobile Communication Services and installation of the MCS Equipment or as the Authority reasonably directs.
- (c) A report and data in respect of the MCS Route Signal Survey shall be shared with the Authority by the ODP in an appropriate format that will not require specialist software to access or interpret. The ODP shall grant to the Authority a perpetual, non-exclusive, irrevocable, world-wide, paid-up, royalty-free licence to use, copy, modify, transmit, distribute and publish the MCS Route Signal Survey for any purpose, and such licence shall be transferable and/or capable of being sub-licensed.

**4.13 The ODP shall:**

- (a) market the availability of Mobile Communication Services to passengers via:
  - (i) the ODP’s public webpage, together with terms and conditions, a fair-usage policy and “how to use the service guides”; and
  - (ii) on-board physical notices, for example, a notice which reads: “Free Wi-Fi Available Here”; and
- (b) ensure all branding of the Mobile Communication Services conforms to the Brand Guidelines.

**4.14** The provisions of paragraphs 5 (Review of Compliance), 6 (Remedy for Late Completion or non-Delivery of Committed Obligations), 8 (Third Party Consents, Agreement and Conditions) and 9 (Definition of “all reasonable endeavours” or “reasonable endeavours”) of Part 2 (Special Terms related to Committed Obligations) of Schedule 6.2 (Committed Obligations) shall apply in respect of the obligations of the ODP specified in this

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paragraph 4, provided that references to a 'Committed Obligation' in paragraphs 5, 6, 8 and 9 of Part 2 (Special Terms related to Committed Obligations) of Schedule 6.2 (Committed Obligations) shall be construed as references to the ODP's obligations under this paragraph 4 in respect of the Mobile Communication Services.

## **5 PASSENGER'S CHARTER**

### **5.1 Content**

The ODP shall:

- (a) publish its Passenger's Charter(s) for the Wales and Cross-Border Lines Services and for the CVL Services (if different from the WCB passenger Services):
  - (i) based upon the Passenger's Charter Principles described in the draft document marked **PCP** and included in Appendix 1 to this Schedule 1.4; and
  - (ii) in accordance with the requirements specified in paragraph 5.3;
- (b) review the need for changes to the Passenger's Charter(s) at least every three (3) years, in consultation with the Passengers' Council, and shall submit a draft of any revisions to the Passenger's Charter that it wishes to propose, together with proof of such consultation, to the Authority; and
- (c) state the date of publication clearly on the front cover of the Passenger's Charter.

5.2 The ODP may not change the Passenger's Charter(s) without the Authority's prior written consent (which is not to be unreasonably withheld).

### **5.3 Publishing the Passenger's Charter**

The ODP shall publicise its Passenger's Charter(s) by:

- (a) providing copies to the Authority and the Passengers' Council at least seven (7) days before it comes into effect;
- (b) making available copies to passengers, free of charge, at each staffed Station and in the case of any revision thereto, providing such copies at least seven (7) days before such revision comes into effect;
- (c) sending a copy, free of charge, to any person who requests it; and
- (d) displaying it on its website and Communications Platforms at all times and, in the case of any revision thereto, at least seven (7) days before such revision comes into effect,

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save in respect of the Passenger's Charter(s) which is effective on the Start Date, in which case the ODP shall publicise such Passenger's Charter in the manner contemplated by this paragraph 4.3 on and from the Start Date, subject to the ODP not being required to publish the Passenger's Charter(s) on its Communications Platforms until the expiry of the first Reporting Period following the Start Date.

5.4 The ODP shall also provide at each staffed Station the then current passenger's charter of any other Train Operator whose trains call there, subject to the provision of such passenger's charter to the ODP by such other Train Operator.

5.5 The ODP shall provide copies of its Passenger's Charter(s) to the operators of ODP Access Stations to enable such operators to provide it.

5.6 **Passenger's Charter Payments and Other Obligations**

The ODP shall:

- (a) make all payments which passengers may reasonably expect to be made or provided from time to time under the terms of the Passenger's Charter(s) (whether or not the ODP is legally obliged to do so);
- (b) use all reasonable endeavours to make passengers aware of their right to claim compensation, including in relation to Delay Repay and Lowest Available Fare, pursuant to the Passenger's Charter(s) including by:
  - (i) displaying the relevant information on trains and at Stations;
  - (ii) making appropriate announcements to passengers on trains and at Stations when the circumstances giving rise to that right occur;
  - (iii) making compensation claim forms readily available to passengers at Stations and on the ODP website and Communications Platforms; and
  - (iv) any other reasonable means to reflect future advancements in technology proposed in writing either by the ODP or the Authority and agreed by both Parties (acting reasonably); and
- (c) use all reasonable endeavours:
  - (i) to comply with any other obligations, statements and representations; and
  - (ii) to meet any other standards or targets of performance, as are comprised in its Passenger's Charter from time to time.

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## **6 STATUTORY NOTICES**

If requested by the Authority, the ODP shall publish and display at Stations (and shall use all reasonable endeavours to procure the publication and display at ODP Access Stations of) such statutory notices as the Authority may wish to publish from time to time in the exercise of its functions (including in relation to Closures or any enforcement or penalty orders).

## **7 TRAIN AND STATION CLEANING**

7.1 The ODP acknowledges that passengers expect clean and well maintained rolling stock and stations as part of their experience of the ODP Services.

7.2 The ODP shall:

- (a) ensure that the nature and frequency of its planned and reactive programme for maintaining a reasonable standard of train presentation is such that all rolling stock used by it in the provision of the Passenger Services is expected to be kept reasonably clean, appropriately stocked with consumables and free from minor defects;
- (b) use all reasonable endeavours to ensure that a reasonable standard of train presentation is maintained at all times in respect of all rolling stock used by it in the provision of the Passenger Services;
- (c) ensure that the nature and frequency of its planned and reactive programme for maintaining a reasonable standard of Station condition and passenger environment is such that all of the Stations are expected to be clean, free of litter and graffiti, painted to a reasonable standard and free from minor defects; and
- (d) use all reasonable endeavours to ensure that all Stations are clean, free of litter and graffiti, painted to a reasonable standard and free from minor defects throughout the Rail Services Term.

7.3 The ODP shall perform regular inspection and maintenance of Stations and rolling stock to ensure cleanliness and other aspects of service quality as set out in Schedule 7.3 (Service Quality Regime). The ODP shall inspect and maintain Stations on a regular basis at the frequency applicable to that category of Station as set out in Schedule 7.3. The plan for such inspection and maintenance visits shall be in accordance with Schedule 7.3.

7.4 The ODP shall maintain an electronic record of all Service Quality Defects concerning station or train quality which shall be available to the Authority. The record shall include the following matters:

- (a) unique identifier of the Service Quality Defect;

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- (b) time and date when the ODP was informed or became aware of the Service Quality Defect;
  - (c) location and description of the Service Quality Defect;
  - (d) status of Service Quality Defect and planned resolution; and
  - (e) the time period between the ODP becoming aware of the Service Quality Defect and its resolution.

7.5 The ODP shall make available electronic means of reporting the Service Quality Defects to the Authority as well as telephone or in person reporting to:

- (a) ODP Services Employees;
- (b) passengers and public; and
- (c) adopted station volunteers

7.6 The ODP shall utilise automated reporting of Service Quality Defects where available from assets.

7.7 The ODP shall publish to passengers and the public the standards for station and train quality that it is targeting, its targets for resolution for any Service Quality Defects (taking into account geographic and other relevant factors), and the means of reporting any defects in clear guidance documentation and other communications.

## **8 PUBLICATION OF PERFORMANCE DATA**

8.1 The ODP shall in accordance with paragraph 8.2 of this Schedule 1.4 (and in such format as the Authority may reasonably require) publish on the ODP's website and Communications Platforms and otherwise communicate as relevant in relation to each Reporting Period during the Rail Services Term the performance of the ODP in accordance with Schedule 7 (Operational Performance) or as required by the Authority from time to time, such data to be published by the ODP within ten (10) Weekdays of it becoming available to the ODP.

8.2 The ODP shall ensure that the data published by it pursuant to paragraph 8.1 shall in each case be shown:

- (a) in relation to all Passenger Services;
- (b) disaggregated by reference to Service Groups;
- (c) on a periodic and/or on an average basis (as applicable); and
- (d) include details of:



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(i) the number of Passenger Services operated by the ODP during each relevant Reporting Period which are late in arriving at their final scheduled destination in the Plan of the Day by:

- (A) between fifteen (15) minutes and twenty-nine (29) minutes;
- (B) between thirty (30) minutes and fifty-nine (59) minutes;
- (C) between sixty (60) minutes and one hundred and nineteen (119) minutes; and
- (D) One hundred and twenty (120) minutes or more,

and the percentage that each such category of delayed Passenger Services represents of the total number of Passenger Services scheduled to be provided in the Plan of the Day during such Reporting Period; and

(ii) the number of Passenger Services formed with fewer vehicles/less Passenger Carrying Capacity than specified in the Train Plan during such Reporting Period and the percentage that this represents of all Passenger Services scheduled to be operated in that Reporting Period.

8.3 As part of each Customer Report (to be published in the format as set out in Appendix 3 to this Schedule 1.4) to be provided by the ODP pursuant to paragraph 18 of Schedule 7.2 (National Rail Passenger Surveys and Customer Report), the ODP shall publish (in such format as the Authority may reasonably require, including Braille, large print, audio versions, easy read or alternative formats):

- (a) the mean average of each of the Cancellations Figures for the Reporting Periods that have elapsed since the last Reporting Period reported on in the previous Customer Report (or, in the case of the first (1<sup>st</sup>) Customer Report, since the Start Date);
- (b) the latest PTL Figures, Short Formation Figures, Missed Station Stop Figures, PPM Figures, CaSL Figures and Right Time Figures for the last Reporting Period before publication of the relevant Customer Report;
- (c) from the third (3<sup>rd</sup>) Customer Report onwards, a summary comparison of the statistics produced pursuant to paragraphs 8.3(a) and 8.3(b) as against the equivalent statistics provided for the same Reporting Period(s) in the previous ODP Year;
- (d) an update on the key activities undertaken by the ODP to improve its performance in relation to the measures referred to in paragraphs 8.3(a) and 8.3(b);

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- (e) a summary of the key activities planned to be undertaken by the ODP in the period in relation to which the next Customer Report will report to improve its performance in relation to the measures referred to in paragraphs 8.3(a) and 8.3(b);
  - (f) no later than twelve (12) months from the Start Date, all or any part of its Sustainable Development Strategy including any revisions resulting from an assessment report pursuant to paragraph 4.2(d) of Schedule 13.3;
  - (g) no later than three (3) months following the end of each ODP Year, all or any of its reports showing progress and proposed revisions to the Sustainable Development Plan, pursuant to paragraph 4.2(f) of Schedule 13.3; and
  - (h) no later than six (6) months following the Start Date, and every two (2) years thereafter, the latest agreed revision of the Active Travel and Cycling Policy and Strategy.

## **9 PUBLICATION OF COMPLAINTS AND FAULTS HANDLING DATA**

9.1 As part of each Customer Report to be provided by the ODP pursuant to paragraph 17.1 of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCI Scheme), the ODP shall publish (in such format as the Authority may reasonably require) in relation to the Reporting Periods that have elapsed since the last Reporting Period reported on in the previous Customer Report or, in the case of the first (1<sup>st</sup>) Customer Report, since the Start Date):

- (a) a summary of the data published by the ORR from time to time in relation to the handling of passenger complaints regarding the ODP's operation of the Passenger Services;
- (b) details of the number of faults notified to the ODP by passengers or station users through specified channels including the website of the ODP (each a "**Notified Fault**") in each case identifying the total numbers of Notified Faults (by reference to whether such Notified Faults relate to rolling stock or stations), with such numbers further disaggregated by Service Group and broken down into relevant sub-categories of Notified Fault;
- (c) the mean average time taken by the ODP:
  - (i) to resolve Notified Faults; and
  - (ii) where Notified Faults are not resolved within twenty (20) Weekdays, to provide feedback to applicable passengers and/or station users on its progress in seeking resolution of such Notified Faults; and
- (d) from the third (3<sup>rd</sup>) Customer Report onwards a summary comparison of:
  - (i) the mean average number of Notified Faults notified to the ODP;

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- (ii) the mean average time taken by the ODP to resolve Notified Faults; and
  - (iii) the mean average time taken by the ODP, where Notified Faults have not been resolved within twenty (20) Weekdays. to provide feedback to applicable passengers and/or station users on its progress in seeking resolution of such Notified Faults,

in each case in comparison with the relevant equivalent mean average statistics provided for the same Reporting Periods in the previous ODP Year.

## **10 MARKETING AND COMMUNICATIONS**

- 10.1 The ODP shall adhere to the style and brand values for branding and marketing the Rail Services in accordance with the Authority's style requirements and constraints (the "**Brand**") and which is and shall remain the Authority's Intellectual Property Rights. The ODP shall develop, maintain and agree with the Authority style guidelines for the Brand (the "**Brand Guidelines**") and ensure that all communications including web pages, printed material and electronic documents related to the ODP Services adhere to the Brand Guidelines. The ODP shall protect the Brand and improve awareness of the Brand. The ODP shall propose updates and refreshes to the Brand Guidelines as appropriate for Authority agreement and as a minimum every 3 years from the Start Date.
- 10.2 The Brand Guidelines shall describe the Brand which the ODP shall apply to Rolling Stock interiors and exteriors, signage, Stations, and any other relevant asset.
- 10.3 The Brand Guidelines shall include any categorisation of Rail Services and Stations which may have separate sub-branding for:
- (a) CVL Services;
  - (b) South Wales Metro services;
  - (c) Wales and Cross-Border Lines Services; and
  - (d) any other grouping of Stations or services that the Authority may identify from time to time.
- 10.4 The ODP shall provide a publicly accessible web site to host marketing and communications materials, the domain name for such site to be registered to the Authority. The ODP shall also use on-line, social media and mobile channels for marketing and communications as appropriate in addition to other communications channels and as agreed with the Authority and which shall be registered to the Authority as appropriate.

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10.5 A draft Marketing and Communications Strategy is set out in Appendix 2 of this Schedule. The Marketing and Communications Strategy, shall be agreed with the Authority on or before the Start Date and reviewed on or before expiry of the fourth (4th) Reporting Period in the first ODP Year and reviewed thereafter on or before each subsequent anniversary of the initial review date.

10.6 The Marketing and Communications Strategy shall include as a minimum:

- (a) clearly outlined marketing objectives;
- (b) the proposed marketing approach, including the proposed segmentation of the market;
- (c) the plan for development and delivery of the Brand Guidelines;
- (d) usage, application and roll out of the Brand following the Brand Guidelines;
- (e) key messages;
- (f) stakeholder classification and audience priorities;
- (g) proposed communications channels to be used for each stakeholder group;
- (h) guidelines for description of the Rail Services;
- (i) process for agreement on collateral and content of the Marketing and Communications Services with the Authority;
- (j) process for agreement of the Marketing and Communications Plan with the Authority; and
- (k) a financial and resources budget for the Marketing and Communications Services for each ODP Year.

10.7 The ODP shall develop a plan for the Marketing and Communications Services for each following twelve (12) months to promote usage of the Rail Services and implement the Marketing and Communications Strategy (“**Marketing and Communications Plan**”). The Marketing and Communications Plan shall be agreed with the Authority on or before the Start Date and reviewed on or before expiry of the fourth (4th) Reporting Period in the first ODP Year and reviewed thereafter on or before each subsequent anniversary of the initial review date.

## **11 COMMUNICATIONS TO PASSENGERS**

11.1 The ODP shall communicate to passengers concerning the Passenger Services through the ODP’s website and Communications Platforms and in a manner agreed with the Authority in the Marketing and Communications Plan.

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11.2 The ODP shall utilise the ODP's website and Communications Platforms for provision of information concerning the Passenger Services including up to date information on:

- (a) timetables and timetable changes;
- (b) service delays and cancellations;
- (c) service changes during perturbation;
- (d) fares, offers and discounts;
- (e) building brand loyalty and encouraging usage of the Passenger Services;
- (f) customer services; and
- (g) any other matters as may be relevant.

11.3 The ODP shall monitor the ODP's website and Communications Platforms and shall use all reasonable endeavours to respond to contact from passengers and the public directly and shall set out standards for such response in the Passenger's Charter.

## **12 PASSENGER WELL-BEING**

12.1 The ODP shall use all reasonable endeavours to ensure that the Passenger Services are delivered at all times in a manner which encourages a healthy and secure travelling environment for passengers.

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**Appendix 1 to Schedule 1.4**

Passenger's Charter Principles

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**Appendix 2 to Schedule 1.4**

Draft Marketing And Communications Strategy

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**Appendix 3 to Schedule 1.4**

Template Format for Customer Report



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**Schedule 1.5 - Information About Passengers**

**1 PASSENGER NUMBERS INFORMATION**

1.1 The ODP shall, as and when reasonably requested by the Authority (and, for these purposes, it shall not be unreasonable to make such a request on a quarterly basis during each ODP Year), provide information to the Authority and (where notified to do so by the Authority) the Secretary of State on the extent of the use by passengers of the Passenger Services. Without limitation to the generality of the foregoing, in particular and when so requested, the ODP shall provide information relating to:

- (a) the number of passengers travelling in each class of accommodation:
  - (i) on each Passenger Service;
  - (ii) on each Route; and/or
  - (iii) at any station or between any stations;

(b) the times of the day, week or year at which passengers travel; and

(c) the Actual Consist Data and the Scheduled Consist Data,

(the information referred to in the whole of paragraph 1.1 being referred to together as “**Actual Passenger Demand**”).

1.2 The ODP shall obtain and collate the information specified in paragraph 1.1 by using the technology specified in paragraph 3. The ODP shall ensure that any technology for determining the number of passengers travelling in each class of accommodation that is fitted on the Train Fleet remains operational and in good working order from the date that it is fitted throughout the Rail Services Term. The ODP shall also ensure that, if such technology is not fitted to one hundred percent (100%) of the Train Fleet, the individual rolling stock vehicles that have been fitted with such technology shall be rotated around the Routes as necessary to satisfy such request for data as is made by the Authority pursuant to paragraph 1.1. The Authority acting reasonably shall have the right to obtain such other information that the ODP has, ought properly to have or could reasonably obtain which may provide a more detailed or accurate view of the extent of use by passengers of the Passenger Services including information about ingress and egress of passengers at ticket gates at Stations.

1.3 The ODP shall provide to the Authority and (where notified to do so by the Authority) to the Secretary of State all of the information generated by the technology specified in paragraph 3 and/or by using manual counts pursuant to paragraph 2 including the information specified in paragraph 1.1:

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- (a) promptly following its collation and in any case within the following timescales:
- (i) in the case of data collected automatically by the Count Equipment and capable of being transmitted directly and automatically to the RPC Database or the Preliminary Database (as appropriate), within 48 hours of its collation;
  - (ii) in the case of data collected automatically by the Count Equipment but not capable of direct and automatic transmission to the RPC Database or the Preliminary Database (as appropriate), within one (1) calendar month of its collation; and
  - (iii) in the case of data collected by manual count, within one (1) calendar month of its collation;
- (b) using such systems, in such a format and to such level of disaggregation as the Authority may reasonably require, and in a format which is capable of being read by the RPC Database or the Preliminary Database (as appropriate) (which shall include providing data which is not encrypted);
- (c) either by transmitting such data directly to the RPC Database or the Preliminary Database (as appropriate) or by ensuring that the database provider can pull and transmit such data to the RPC Database or the Preliminary Database (as appropriate), as appropriate according to the nature of the ODP's Count Equipment from time to time or by providing such data to the Authority by such other means as the Authority notifies to the ODP from time to time; and
- (d) to the extent required by the Authority, by providing the Authority with direct remote access to the system used by the ODP to collect such information such that the Authority is able to download such information,

and such information may be used by the Authority for such purposes as it may reasonably require including for the purposes of assisting its decision making on future train service requirements, infrastructure, station and rolling stock investment, the best use of the network and the alleviation of overcrowding.

- 1.4 The ODP shall use any flagging system contained within the RPC Database to highlight such events and occurrences as the Authority may reasonably specify in writing from time to time.

## **2 MANUAL PASSENGER COUNTS**

- 2.1 The Authority shall have the right to require the ODP to carry out manual counts in relation to some or all of the Passenger Services at such times as may be required and in such

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manner (including as to levels of accuracy and the number of days) as may be specified from time to time by the Authority including if, exceptionally, the ODP is unable to comply with its obligations to provide data generated by the technology specified in paragraph 3.

- 2.2 The Authority shall be entitled to audit such counts (whether by specimen checks at the time of such counts, verification of proper compliance with the manner approved by it or otherwise). In the event that such audit reveals, in the reasonable opinion of the Authority, a material error, or a reasonable likelihood of material error, in such counts, the Authority may require the counts to be repeated or the results adjusted as it considers appropriate, and in these circumstances the ODP shall pay to the Authority the costs of any such audits.

**3 TECHNOLOGY FOR OBTAINING THE INFORMATION REFERRED TO IN PARAGRAPH 1.2**

- 3.1 The technology to be used for the purpose of paragraph 1.2 shall be enhanced video and/or infrared sensors passenger counting systems, as detailed in item SI201 of the Service Improvement Plan.

- 3.2 The technology to be used for the purposes of paragraph 1.2 shall be fitted to:

- (a) in the case of any brand new rolling stock which is admitted to the Train Fleet, 100% of it from the date that such rolling stock is properly admitted; and
- (b) in the case of all other rolling stock in the Train Fleet, in accordance with the requirements set out in Appendix 1 to Schedule 1.6 (The Composition of the Train Fleet).

- 3.3 Without limiting the Authority's rights under paragraph 1.1 of this Schedule 1.5, the technology specified in paragraph 3.1 shall be used to provide counts in relation to all Timetabled Services that are provided by rolling stock equipped with the passenger counting technology. The ODP may only use a method of extrapolation and use extrapolated data to provide a reliable estimate of a full train's count with the Authority's prior written approval of the use of extrapolated data and the method of extrapolation (such approval not to be unreasonably withheld or delayed). The ODP shall comply with its obligation under this paragraph 3 from the date(s) such rolling stock is incorporated into the Train Fleet.

- 3.4 The Parties acknowledge that the information supplied under paragraph 1.1 above, and any product of it created by the RPC Database or the Preliminary Database (as appropriate), may constitute Confidential Information to which Schedule 17 (Confidentiality and Freedom of Information) applies.

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#### **4 CRM DATA**

- 4.1 The ODP shall ensure that any CRM System is the property of the ODP or is licensed to the ODP on terms which have been approved by the Authority (such approval not to be unreasonably withheld or delayed) and that any CRM Data obtained by or on behalf of the ODP shall be:
- (a) obtained on terms such that the ODP shall be the Data Controller of such data; and
  - (b) the property of the ODP.
- 4.2 In relation to any CRM Data obtained by or on behalf of the ODP, the ODP shall ensure or procure that at the same time as the ODP obtains such CRM Data, it shall ensure that Data Subjects are made aware that such CRM Data may be disclosed to any Successor Operator and/or the Authority and Processed by any Successor Operator for the same purposes as notified by the ODP to the Data Subject.
- 4.3 If ODP seeks the consent of the Data Subject to process any CRM Data, the ODP shall, to the extent permitted by applicable Data Protection Requirements, ensure that it also obtains the consent of the Data Subject for such CRM Data to be processed by any Successor Operator and/or the Authority for the same purposes. Any consent referred to in this paragraph 4.3 shall be sought in such manner as shall from time to time be approved by the Authority (such approval not to be unreasonably withheld or delayed) and shall be on terms such as shall permit, in each case in compliance with the Data Protection Requirements:
- (a) the ODP to disclose such CRM Data to any Successor Operator and/or the Authority; and
  - (b) any such Successor Operator to process such CRM Data in the manner contemplated by paragraph 4.2.
- 4.4 If the ODP seeks the consent of the Data Subject to process any CRM Data pursuant to paragraph 4.3 and at such time the Data Protection Requirements do not permit such consent to also be obtained for any Successor Operator and/or the Authority, the ODP shall inform the Authority in writing of the same. If:
- (a) any changes to the Data Protection Requirements subsequently provide that such consent can be obtained by the ODP for any Successor Operator and/or the Authority, the ODP shall promptly inform the Authority; or
  - (b) the identify of the Successor Operator becomes known,

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the Authority and the ODP shall in each case agree the timetable for the ODP to do all such things as necessary to obtain the consent of the Data Subject to process any CRM Data for the same purposes as the ODP originally obtained such consent.

4.5 Subject to paragraph 4.4, the ODP shall not be required to:

- (a) disclose, publish, share or otherwise provide or make available any Personal Data (including CRM Data) to any person (including a Successor Operator or any participant involved with the re-letting of the Rail Services); or
- (b) provide access to any CRM System,

in each case pursuant to the terms of the ODP Grant Agreement (together, the “**CRM Obligations**”) if and to the extent that the ODP demonstrates to the satisfaction of the Authority that compliance with such CRM Obligations would put the ODP, acting as a Data Controller, in contravention of its duties and/or obligations under any Data Protection Requirements.

4.6 In respect of Personal Data processed by the Authority under or in connection with this Agreement, including any CRM Data provided to it, the Parties acknowledge and agree that such Personal Data shall be processed by the Authority as a Controller. The Authority agrees that it shall at all times comply with the Data Protection Requirements in respect of such processing to the extent that such Data Protection Requirements apply to it.

## **5 YIELD MANAGEMENT DATA**

5.1 The ODP shall ensure that any Yield Management Data and Yield Management System are the property of the ODP or are licensed to the ODP on terms which have been approved by the Authority (such approval not to be unreasonably withheld or delayed).

5.2 If and to the extent that the collection, use and/or processing of any Yield Management Data is subject to the Data Protection Requirements then paragraphs 4.1(a), 4.2, 4.3, 4.4 and 6 of this Schedule 1.5 shall apply in respect of Yield Management Data in the same way as they apply to CRM Data.

## **6 PERSONAL DATA - GENERAL PROVISIONS**

6.1 In respect of any Personal Data processed by the ODP, including CRM Data, the Parties acknowledge and agree that such Personal Data shall be processed by ODP as Data Controller. ODP agrees that it shall at all times comply with the Data Protection Requirements to the extent that such legislation applies to it.

6.2 The ODP shall promptly notify the Authority of any actual or suspected, threatened or ‘near miss’ incident of accidental or unlawful destruction or accidental loss, alteration, unauthorised or accidental disclosure of or access to the CRM Data by itself or by the

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CRM Data Processor (a “**Security Breach**”) (the ODP hereby acknowledges that whilst the Authority is not Data Controller in respect of the CRM Data, the Authority's legitimate interests given its duties under the Act may be affected in the event of a Security Breach and as such the Authority wishes to be notified of the same).

6.3 The ODP shall, and shall procure that any CRM Data Processor which it appoints shall, not cause or permit the CRM Data to be transferred to any location outside the European Economic Area without the prior written permission of:

- (a) (in the case of the ODP) the Authority; or
- (b) (in the case of any Data Processor appointed by the ODP) the ODP provided that the ODP shall not give any such consent without the prior written permission of the Authority.

and in any case, where written permission is given by the Authority, the ODP shall ensure that any transfer is compliant with the Data Protection Requirements and is made on the basis of an adequacy decision given by the European Commission or otherwise subject to the appropriate safeguards as permitted pursuant to the Data Protection Requirements. The ODP shall provide all such evidence as may be required by the Authority to demonstrate that this paragraph 6.3 has been complied with.

## **7 RAIL PASSENGER COUNTS DATABASE**

7.1 Subject to compliance by the ODP with its obligations set out in this Schedule 1.5, the Authority shall as soon as reasonably practicable following the date of this Agreement:

- (a) use reasonable endeavours to procure that the Secretary of State shall set up and thereafter maintain the RPC Database;
- (b) use reasonable endeavours to procure that the Secretary of State shall populate the RPC Database with such Actual Passenger Demand information as the ODP shall provide pursuant to the ODP's obligations contained elsewhere in the ODP Grant Agreement and any other information that the Authority shall desire; and
- (c) use reasonable endeavours to procure that the Secretary of State shall provide the ODP with log-in details to the RPC Database in order to allow the ODP to access Actual Passenger Demand information that has been provided by the ODP, any Network Rail Data, any Third Party Data and to generate reports from the RPC Database.

7.2 The RPC Database is not intended to be used as the sole basis for any business decision. The Authority makes no representation as to the accuracy and/or completeness of:

- (a) any data or information contained in the RPC Database;

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- (b) the raw Actual Passenger Demand information provided by the ODP or any Network Rail Data or any Third Party Data (as inputted to the RPC Database by whatever means); or
  - (c) any product of that Actual Passenger Demand information, Network Rail Data and/or Third Party Data.

### 7.3

- (a) The Authority is not liable for:
  - (i) any inaccuracy, incompleteness or other error in Actual Passenger Demand information, Network Rail Data, Third Party Data or product of the above provided to the Authority by the ODP, NR or a third party; or
  - (ii) any failure of the RPC Database to achieve any particular business result for the ODP. For the avoidance of doubt, it is the responsibility of the ODP to decide the appropriateness of using the RPC Database to achieve its own business results; or
  - (iii) any loss, destruction, corruption, degradation, inaccuracy or damage of or to the Actual Passenger Demand information following its submission to the RPC Database; or
  - (iv) any loss or damage to the property or assets of the ODP (tangible or intangible) as a result of a breach of paragraph 7.1 of this Schedule 1.5; or
  - (v) any indirect, special or consequential loss or damage.
- (b) The Authority's total liability for the duration of the ODP Grant Agreement in respect of a breach of its obligations under paragraph 7.1 of this Schedule 1.5 for all other heads of loss or damage which can lawfully be limited shall be limited to the extent to which the Authority is successful in recovering the equivalent loss from such entity to whom the Authority subcontracts its obligations under paragraph 7.1 of this Schedule 1.5 (the "**Subcontractor**"), subject to the following provisions:
  - (i) if reasonably requested by the ODP within three (3) months of incurring such loss or damage, the Authority shall use reasonable endeavours to recover the equivalent losses from the Subcontractor;
  - (ii) it shall not be reasonable for the ODP to make a request pursuant to paragraph 7.3(b)(i) above if the value of the ODP's losses does not exceed ten thousand pounds (**£10,000**) x RPI;

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- (iii) prior to accounting to the ODP for any sums recovered from the Subcontractor pursuant to this paragraph 7.3(b), the Authority shall be entitled to deduct and retain any reasonable costs and expenses incurred in pursuing such a claim which it does not successfully recover from the Subcontractor; and
    - (iv) the Authority shall be entitled to deduct from any sums recovered from the Subcontractor pursuant to this paragraph 7.3(b) such sum as it reasonably deems appropriate to take account of the Authority's actual or potential liability to other train operating companies pursuant to equivalent arrangements with them, with a view to distributing any sums received from the Subcontractor fairly between the various operators.
  - (c) The ODP shall use all reasonable endeavours to mitigate any losses incurred by it as a result of a breach by the Authority of its obligations contained in paragraph 7.1 of this Schedule 1.5.

7.4 The Parties acknowledge that it is intended that the RPC Database will also contain actual passenger demand information relating to Train Operators other than the ODP but a Train Operator will have access only to information relating to its own franchise (in the case of the ODP, via the log on details provided pursuant to paragraph 7.1(c)). For the avoidance of doubt, the licence granted at paragraph 8.6 shall only permit the usage of the RPC Database, Derivative Output and Intellectual Property Rights related to the Actual Passenger Demand information supplied by the ODP.

7.5 Without prejudice to Schedule 14.4 (Designation of Rail Services Assets), paragraphs 2.1 and 3 of Schedule 15.1 (Reletting Provisions), Schedule 15.4 (Provisions Applying on and after Termination) or any other rights of the Authority, the ODP agrees that, following the expiry or termination by whatever means of the ODP Grant Agreement and any Continuation Document, the Authority shall be entitled to allow access to the ODP's Actual Passenger Demand information by way of granting access to that area of the RPC Database or otherwise to any future operator of the Passenger Services (whether or not in direct succession to the ODP) or to such part of the Actual Passenger Demand information as relates to the part of the Rail Services which is being taken over by such future operator.

## **8 INTELLECTUAL PROPERTY RIGHTS AND GENERAL PROVISIONS**

8.1 All Intellectual Property Rights in the RPC Database and Derivative Output shall at all times remain owned by the Authority and to the extent that any rights in the RPC Database vest in the ODP by operation of law, the ODP hereby assigns such rights to the Authority.



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- 8.2 Subject to Schedule 14.4 (Designation of Rail Services Assets) and Schedule 15.4 (Provisions Applying on and after Termination), all Intellectual Property Rights in the Actual Passenger Demand information will at all times remain owned by the ODP and (subject as previously stated) to the extent that any rights in the Actual Passenger Demand information vest in the Authority by operation of law, the Authority hereby assigns such rights to the ODP.
- 8.3 All Intellectual Property Rights in the Network Rail Data will at all times remain owned by the relevant NR entity and to the extent that any rights in the Network Rail Data vest in the Authority or the ODP by operation of law, the Authority and/or the ODP (as applicable) will enter into a separate agreement with the relevant Network Rail entity to assign such rights to it.
- 8.4 All Intellectual Property Rights in the Third Party Data will at all times remain owned by the third party from whom they have been obtained and to the extent that any rights in the Third Party Data vest in the Authority or the ODP by operation of law, the Authority and/or the ODP (as applicable) will enter into a separate agreement with the relevant Third Party to assign such rights to it.
- 8.5 Subject to Schedule 14.4 (Designation of Rail Services Assets) and Schedule 15.4 (Provisions Applying on and after Termination), each Party:
- (a) acknowledges and agrees that it shall not acquire or claim any title to any of the other Party's Intellectual Property Rights (or those of the other Party's licensors) by virtue of the rights granted to it under this Agreement or through its use of such Intellectual Property Rights; and
  - (b) agrees that it will not, at any time, do, or omit to do, anything which is likely to prejudice the other Party's ownership (or the other Party's licensors' ownership) of such Intellectual Property Rights.
- 8.6 The Authority shall use reasonable endeavours to procure that the Secretary of State shall grant, for the duration of the Rail Services Term, the ODP a non-exclusive, non-transferrable licence to use:
- (a) the RPC Database;
  - (b) any Derivative Output; and
  - (c) all Intellectual Property Rights in the same,
- in the United Kingdom for the purposes of accessing the Actual Passenger Demand information by using the functionality of the RPC Database.

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8.7 Without limiting any other rights the Authority may have, the ODP hereby grants the Authority a perpetual, non-terminable, non-exclusive licence (which is transferrable and/or capable of being sub-licensed in the circumstances set out in this paragraph 8.7) to use the Actual Passenger Demand information and all Intellectual Property Rights in the same:

- (a) by including them in the RPC Database; and/or
- (b) by including them in the Preliminary Database; and/or
- (c) whether included in the RPC Database, the Preliminary Database or in any other format for such purposes as it may reasonably require including for the purposes of assisting its decision making on future train service requirements, infrastructure, station and rolling stock investment, the best use of the network and the alleviation of overcrowding; and/or
- (d) to the extent permitted by the other provisions of the ODP Grant Agreement to share, disclose, or publish the same and transfer and/or sub-licence and permit the use and sharing, disclosing or publishing for the purposes it is shared or disclosed; and/or
- (e) to allow a future operator of the Passenger Services (whether or not in direct succession to the ODP) to view and access such Actual Passenger Demand information (whether via the RPC Database or otherwise) as directly relates to the services that it will be running,

and such rights to use the Actual Passenger Demand information and all Intellectual Property Rights pursuant to this paragraph 8.7 shall continue following expiry or termination of this Agreement.

8.8 Paragraphs 7.2, 7.3, 8.1, 8.2 and 8.7 of this Schedule 1.5 shall continue in force after expiry or termination of the ODP Grant Agreement or any Continuation Document, together with any other provisions which expressly or impliedly continue in force after the expiry or termination of the ODP Grant Agreement or any Continuation Document.

8.9 The Parties intend that the provisions of The Contract (Rights of Third Parties) Act 1999 will apply to allow the relevant NR entity to rely on and enforce against a third party the provisions of paragraph 8.3 of this Schedule 1.5.

## **9 OPEN TRAVEL DATA**

9.1 The ODP shall provide to the Authority (and any other third party nominated by the Authority) data concerning the ODP Services to support provision of consistent, accurate and timely information to passengers concerning their 'door to door' journey (the "**Open Travel Data**") both before and during journeys.

9.2 The Open Travel Data shall include amongst other information:

- 
- (a) journey planning;
  - (b) real-time arrivals and departures;
  - (c) Timetables;
  - (d) passenger loading/count data;
  - (e) real time train locations;
  - (f) available fares and ticket products;
  - (g) Routes and Stations;
  - (h) perturbation and Passenger Service changes;
  - (i) unit/timetable diagrams completed;
  - (j) unit daily mileage;
  - (k) unit defects outstanding and completed;
  - (l) unit planned maintenance (including heavy maintenance);
  - (m) any unit ride or routing monitoring information for systems fitted;
  - (n) Train Fleet MTIN performance
  - (o) delay attributed to the Train Fleet; and
  - (p) Train Fleet availability performance.

9.3 The ODP shall provide the Open Travel Data to the Authority in an open Application Programming Interface (“**API**”) format accessible securely over the internet.

9.4 The specification of the Open Travel Data shall be provided by the ODP for agreement with the Authority following the “Process for the Acceptance of Document Deliverables” set out in Appendix 1 to Schedule 18.3 within six (6) months of the date of this Agreement.

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## **Schedule 1.6 - The Rolling Stock**

### **1 PURPOSE**

- 1.1 This Schedule records the rolling stock vehicles which shall be comprised in the Train Fleet from the Start Date and further additional rolling stock that will become part of the Train Fleet during the Rail Services Term and the minimum requirements for the rolling stock vehicles applicable to each Service Type. It includes other requirements in relation to the Train Fleet including in relation to rolling stock testing and commissioning, compliance with the requirements of the Authority, vehicle specifications and improvements to be made to vehicles.

### **2 THE COMPOSITION OF THE TRAIN FLEET**

- 2.1 The Train Fleet consists of the rolling stock vehicles shown in Table 1 in Appendix 1 to this Schedule 1.6 between the corresponding dates referred to in Column 3 of Table 1.
- 2.2 The Train Fleet shall consist of the rolling stock vehicles which meet the minimum requirements and specifications shown in Tables 2A to 2E in Appendix 2 to this Schedule 1.6.
- 2.3 Definitions of the minimum requirements and specifications shown in Tables 2A to 2E in Appendix 2 to this Schedule 1.6 are listed in Table 3 in Appendix 2 to this Schedule 1.6.
- 2.4 The Passenger Carrying Capacity of any rolling stock vehicles shall be as set out in Column 2 of Table 1 in Appendix 1 to this Schedule 1.6 or as determined by the Authority in accordance with paragraph 3.4 of this Schedule 1.6 (as applicable).
- 2.5 The ODP shall procure that the rolling stock vehicles described in the Tables 1 and 2 in Appendix 1 to this Schedule 1.6, with the capacity and other characteristics referred to there, are available for deployment in the provision of the Passenger Services to the extent required by the Timetable and Train Plan during the periods referred to therein.
- 2.6 The ODP shall procure that the Protected Rolling Stock Leases shall include the right for the lessee to (at no cost):
- (a) novate the Protected Rolling Stock Leases to the Successor Operator on the CVL Revised Expiry Date and the TFC Termination Date pursuant to the terms of an Agreed Form Deed of Novation (which shall be appended to the Protected Rolling Stock Leases); and
  - (b) sub-lease all or any of the Protected Rolling Stock on substantially the same terms as the Protected Rolling Stock Lease subject to the lessee obtaining the lessor's prior written consent (such consent not to be unreasonably withheld or delayed).

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2.7 The ODP shall procure that the Protected Rolling Stock Leases shall include an obligation on the RS Lessor to use reasonable endeavours to lease the Protected Rolling Stock to another train operator during the CVL Protected Period or TFC Protected Period (as applicable) in the event that either:

- (a) a CVL Asset Notice is issued by the Authority and the Authority pays the CVL Asset Notice Protected Rolling Stock Fixed Payment to the ODP pursuant to clause 5.6(h)(ii); or
- (b) a Termination For Convenience Notice is issued by the Authority and the Authority pays the TFC Protected Rolling Stock Fixed Payment to the ODP pursuant to paragraph 6.5(b) of Schedule 10.2 (Events of Default and Termination Events).

### **3 CHANGES TO THE TRAIN FLEET**

3.1 The ODP shall maintain the composition of the Train Fleet during the Rail Services Term, unless the Authority otherwise agrees, such that there are no changes to the Train Fleet, including changes:

- (a) to the classes or types;
- (b) to the interior configurations; or
- (c) which may reduce the journey time capabilities,

of any rolling stock vehicles specified in the Train Fleet.

3.2 Not Used

3.3 During the Rail Services Term, the ODP shall advise the Authority of any rolling stock vehicles damaged beyond economic repair or likely to be unavailable for service for a period of three (3) consecutive Reporting Periods or more.

3.4 If any change is made to the Train Fleet in accordance with this Schedule 1.6, the Authority may, after consulting the ODP, notify the ODP of the Passenger Carrying Capacity of any rolling stock vehicles or class of rolling stock vehicles comprising the Train Fleet following such change.

### **4 ROLLING STOCK TESTING AND COMMISSIONING**

4.1 The ODP shall, to the extent reasonably requested by the Authority and subject to payment of the ODP's reasonable costs by the relevant third party, co-operate with any third party which the Authority may specify (including a Successor Operator, a rolling stock vehicle manufacturer or Network Rail or the Authority itself in connection with the

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testing and commissioning of new rolling stock vehicles or any new equipment to be fitted to rolling stock vehicles (whether such rolling stock vehicles are new or otherwise).

4.2 The co-operation referred to in paragraph 4.1 shall not unreasonably disrupt the provision and operation of the Rail Services and may include:

- (a) the movement of test trains within and around depots;
- (b) making available suitably qualified personnel to operate test trains along the Routes and provide information on the Routes;
- (c) making Train Slots available for such purposes;
- (d) granting or procuring the grant of access to the third party and its representatives to any relevant facilities; and
- (e) the delivery of rolling stock vehicles to specific locations.

## **5 CONTROLLED EMISSION TOILETS**

5.1 The ODP shall ensure that all rolling stock vehicles comprised in the Train Fleet used for the provision of the Passenger Services which have on board toilet facilities shall be fitted with Controlled Emission Toilets by no later than 1 January 2020 so that for the remainder of the Rail Services Term all rolling stock vehicles which have on board toilets are exclusively fitted with Controlled Emission Toilets. Any newly built rolling stock which becomes part of the Train Fleet prior to 1 January 2020 which have on board toilet facilities shall be fitted exclusively with Controlled Emission Toilets.

5.2 The ODP shall ensure that the contents of the toilet retention tanks relating to each Controlled Emission Toilet fitted on rolling stock vehicles in accordance with the requirements of paragraph 5.1 are disposed of in a safe and hygienic manner at suitable facilities designed for these purposes including at Depots and stabling points.

5.3 Pending installation of the Controlled Emission Toilets, the ODP shall use reasonable endeavours to stop toilets fitted to existing rolling stock vehicles emptying whilst the rolling stock is stationary within a station.

5.4 The provisions of paragraphs 1 (Continuation of Availability) and 5 (Review of Compliance) of Part 2 of Schedule 6.2 (Committed Obligations) shall apply in respect of the obligations of the ODP specified in paragraph 5.1

## **6 ROLLING STOCK MINIMUM REQUIREMENTS**

6.1 The ODP shall ensure that each rolling stock vehicle in the Train Fleet complies with:

- 
- (a) each Rolling Stock Minimum Requirement for the applicable Service Type, as set out in rows 11 to 31 of Tables 2A to 2E in Appendix 2 to this Schedule 1.6 by no later than the Minimum Requirement Introduction Date; and
  - (b) the applicable Service Type is the Service Type assigned to each Service Code on which the rolling stock vehicle is operated, as set out in Column 4 of the Train Fleet Service Codes Table under Appendix 3 to this Schedule 1.6.

## **7 BABY CHANGING FACILITIES**

- 7.1 The ODP shall ensure that as soon as reasonably practicable but in any event by no later than 1 January 2020 each train operated by the ODP in delivering the Passenger Services that is fitted with toilet facilities is also fitted with such number of baby change facilities as is necessary to be compliant with the requirements of the PRM TSI.

## **8 MEASUREMENT OF TRACTION ENERGY USAGE**

- 8.1 The ODP shall ensure that all rolling stock units that form part of the Train Fleet are able to measure and monitor fuel use as soon as reasonably practicable, and in the case of electric traction, enable the ODP to be a “**Metered Train Operator**” as defined by Network Rail’s Traction Electricity Rules.

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**Appendix 1 to Schedule 1.6**

The Composition of the Train Fleet



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**Appendix 2 to Schedule 1.6**

Rolling Stock Minimum Requirements Tables

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**Appendix 3 to Schedule 1.6**

Train Fleet Service Code Table

| Column 1     | Column 2   | Column 3 | Column 4       |
|--------------|--|----------|----------------|
| Service Code | Service code description                         | WCB/CVL  | Service Type   |
| AW4310       | Cardiff to Maesteg                               | WCB      | Suburban       |
| AW4320       | Swansea to Milford Haven/Pembroke Dock/Fishguard | WCB      | Sprinter/Rural |
| AW4350       | Swansea to Shrewsbury                            | WCB      | Sprinter/Rural |
| AW4380       | Cardiff to Swansea                               | WCB      | Sprinter/Rural |
| AW4290       | Cardiff to Cheltenham                            | WCB      | Suburban       |
| AW4440       | Cardiff to Ebbw Vale Town                        | CVL      | Suburban       |
| AW2610       | Chester-Shrewsbury-Birmingham                    | WCB      | Sprinter/Rural |
| AW3340       | Aberystwyth-Shrewsbury                           | WCB      | Sprinter/Rural |
| AW3350       | Machynlleth-Pwllheli                             | WCB      | Sprinter/Rural |
| AW4300       | Cardiff Queen Street to Cardiff Bay              | CVL      | CVL            |

|        |                                |     |                       |
|--------|--------------------------------|-----|-----------------------|
| AW4390 | Cardiff - Rhoose - Bridgend    | WCB | Suburban              |
| AW4400 | Cardiff to Radyr               | CVL | CVL                   |
| AW4410 | Cardiff to Aberdare            | CVL | CVL                   |
| AW4420 | Barry Island to Cardiff        | WCB | CVL                   |
| AW4430 | Penarth to Cardiff             | WCB | CVL                   |
| AW4450 | Cardiff to Coryton             | CVL | CVL                   |
| AW4460 | Cardiff to Merthyr Tydfil      | CVL | CVL                   |
| AW4470 | Cardiff to Treherbert          | CVL | CVL                   |
| AW4480 | Cardiff to Rhymney             | CVL | CVL                   |
| AW2670 | Shrewsbury to Crewe            | WCB | Sprinter/Rural        |
| AW4340 | Cardiff to Manchester          | WCB | Long Distance/Express |
| AW3380 | Llandudno - Blaenau Ffestiniog | WCB | Sprinter/Rural        |

|          |                                  |     |                       |
|----------|----------------------------------|-----|-----------------------|
| AW3420/8 | Wrexham – Bidston                | WCB | Suburban              |
| AW3400   | Crewe to Holyhead/Llandudno      | WCB | Long Distance/Express |
| AW3450   | Manchester to Chester            | WCB | Sprinter/Rural        |
|          | Chester to Liverpool Lime Street | WCB | Suburban <sup>1</sup> |

<sup>1</sup> Applies to through services between Manchester Piccadilly and Cardiff Central and between North Wales and Cardiff Central as specified in the Train Service Requirements under “Through Services”. Minimum requirements of the Sprinter/Rural Rolling Stock Service Group apply to other train services operated within Service Codes AW4340 and AW3400.

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**Schedule 1.7 - Stations**

**1 STATION ASSET MANAGEMENT**

1.1 If and to the extent that, in the Authority's reasonable opinion, the ODP carries out works or perform services which fall within the scope of both ODP Services provided under this Schedule 1.7 (Stations) and Infrastructure Manager Services, the ODP shall not be entitled to both payments payable under this Schedule 1.7 and payable under Schedule 3A.3.

1.2 The ODP shall implement and comply with:

- (a) the Previous Franchisee's Station Asset Management Plan ("PFSAMP") until the date of approval of the Station Asset Management Plan in accordance with paragraph 1.3; and
- (b) from such date of approval, the Station Asset Management Plan.

1.3 By no later than the end of the first ODP Year (or such later date as the Authority may reasonably determine) the ODP shall prepare and provide to the Authority for approval (such approval not to be unreasonably withheld or delayed) the draft Station Asset Management Plan. Where the Authority does not approve the draft Station Asset Management Plan submitted to it, the ODP shall make:

- (a) such amendments to it as the Authority shall reasonably direct; and
- (b) provide such additional information as the Authority may reasonably require.

1.4 The Station Asset Management Plan shall:

- (a) include the information set out in paragraph 1.45; and
- (b) meet the requirements of paragraph 1.6,

and it shall be reasonable for the Authority to not approve a plan which does not include such information or meet such requirements.

1.5 The ODP shall ensure that the Station Asset Management Plan shall include in relation to each Station:

- (a) the details of all maintenance, repair, renewal and enhancement activity undertaken by the ODP since the Start Date;
- (b) the details of any maintenance, repair, renewal and enhancement activity which the ODP has not completed or not completed within the specified time frame set out in any Station Asset Management Plan (or the Previous Franchisee's Station Asset Management Plan, as the case may be) together with reasons;

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- (c) the maintenance, repair, renewal and enhancement activity undertaken since the Start Date or planned by Network Rail, any Local Authority, any Community Rail Partnership and any other relevant stakeholder, which the ODP is aware of;
  - (d) the assumptions the ODP has made about the current state and future degradation of assets at the Station at the Start Date or, if an asset becomes an asset at the Station on a later date, the assumptions of the ODP about the current state and future degradation of each relevant asset on the date that it becomes such an asset at the Station;
  - (e) under and over provision of assets at the Station at the Start Date given current and projected future customer volumes and reasonable customer demands and planned enhancements or removals to accommodate changing customer volumes and reasonable customer demands;
  - (f) plans for improving the environmental performance of Stations, including where appropriate, plans for:
    - (i) energy metering and data management, including measurement and verification plans for measures adopted;
    - (ii) lighting and lighting controls;
    - (iii) heating and heating controls;
    - (iv) auxiliary power uses;
    - (v) other energy efficiency measures;
    - (vi) renewable energy generation; and
    - (vii) water efficiency measures;
  - (g) the plans to ensure that delivery of Station Services is resilient to periods of extreme weather and minimises disruption to passengers; and
  - (h) how the Principles of Inclusive Design will be taken into account in the maintenance, repair and renewal of the Station.

1.6 In addition, the ODP shall ensure that the Station Asset Management Plan:

- (a) shall cover a period of no less than forty (40) years from the date that it is created or revised and updated in accordance with this Schedule 1.7, as if the ODP was to operate each of the Stations for such forty (40) year period;
- (b) is developed in accordance, and complies, with guidance and policies (including the guidance documents known as "*Subject Specific Guidelines*" published by the Institute of Asset Management (or such appropriate replacement guidance) which are

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commensurate with those that would be referred to by a competent, skilled and experienced train operator using an asset management planning approach, in particular in respect of the balance of maintenance and renewal of each asset type.

- 1.7 Any amendments to the Station Asset Management Plan must be agreed by the Authority (such consent not to be unreasonably withheld or delayed).
- 1.8 By the date three (3) months prior to the end of the second ODP Year and on each subsequent anniversary of such date the ODP shall have reviewed the Station Asset Management Plan and shall submit to the Authority for approval (such approval not to be unreasonably withheld or delayed) a draft updated version of the Station Asset Management Plan.
- 1.9 The updated draft Station Asset Management Plan shall include and reflect the following:
- (a) a schedule of any revisions to the current Station Asset Management Plan and a brief summary of the rationale supporting any change for review and approval by the Authority;
  - (b) any changed and developing circumstances and the requirements of the Station Asset Management Plan Accreditation;
  - (c) where relevant, the outcomes of, and the ODP's responses to the stakeholder consultation process described in paragraph 8; and
  - (d) the information required in accordance with paragraphs 1.4 and 1.5 of this Schedule 1.7 save that the reference to the "*Start Date*" in paragraph 1.4(a) shall be read as the date on which the Station Asset Management Plan is reviewed and updated by the ODP in accordance with paragraph 1.8 of this Schedule 1.7.
- 1.10 If:
- (a) the Authority approves an updated draft Station Asset Management Plan submitted to it pursuant to paragraph 1.8, such document shall become the then current Station Asset Management Plan; or
  - (b) the Authority does not approve an updated draft Station Asset Management Plan submitted to it pursuant to paragraph 1.8, then the ODP shall make:
    - (i) such amendments to it as the Authority shall reasonably direct; and
    - (ii) provide such additional information as the Authority may reasonably require.
- 1.11 The ODP shall put in place such arrangements as are necessary (to the reasonable satisfaction of the Authority) to ensure that the Station Asset Management Plan is (and



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continues to be maintained in) a format acceptable to the Authority which is capable of being transferred to a Successor Operator as part of the Handover Package so that the Successor Operator is able to access, use and amend the Station Asset Management Plan using the same format.

1.12 The ODP shall:

- (a) ensure that it applies for and obtains the Station Asset Management Plan Accreditation by no later than the end of the second (2<sup>nd</sup>) ODP Year;
- (b) promptly upon receipt by the ODP, provide to the Authority a certificate of accreditation issued by an organisation accredited by the United Kingdom Accreditation System (UKAS) which has been signed by a director of the ODP and which confirms that the Station Asset Management Plan Accreditation has been obtained (the “**Station Asset Management Plan Accreditation Certificate**”); and
- (c) maintain the Station Asset Management Plan Accreditation from the date that it is required to be achieved in accordance with paragraph 1.12 (a) for the remainder of the Rail Services Term.

1.13 If the Station Asset Management Plan Accreditation is at any time lost or the ODP fails to secure such then the ODP shall report that fact to the Authority as soon as reasonably practicable and in any event within ten (10) Weekdays of the ODP becoming aware of such fact.

1.14 From the date upon which the ODP notified the Authority pursuant to paragraph 1.13 (or should have notified the Authority having complied with the provisions of this Agreement), the ODP shall:

- (a) re-secure such accreditation as soon as reasonably practicable and in any case within three (3) months; and
- (b) report to the Authority every Reporting Period on the measures it is proposing to take, and is taking, to achieve such restoration of the Station Asset Management Plan Accreditation.

1.15 Where the ODP fails to secure the Station Asset Management Plan Accreditation pursuant to paragraph 1.13 within three (3) months of the date of such accreditation being lost or failed to be secured (as the case may be) such failure shall constitute a contravention of the ODP Grant Agreement and the Authority may issue a Remedial Plan Notice pursuant to Schedule 10.1 (Procedure for remedying a Contravention of the ODP Grant Agreement) and the provisions of Schedule 10 (Remedies, Events of Default and Termination Events) shall apply.

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## 2 STATION IMPROVEMENTS

- 2.1 From the Start Date, the ODP shall implement and comply with its Station Improvement Plan. Furthermore the ODP shall develop its Station Improvement Plan in accordance with this paragraph 2 (Station Improvements).
- 2.2 By no later than six (6) months from the Start Date, the ODP shall:
- (a) carry out a Station Condition Survey and submit to the Authority a written report setting out the results of the Station Condition Survey (the “**Station Condition Survey Report**”);
  - (b) develop its Station Improvement Plan having regard to the Station Condition Survey and submit to the Authority the amended Station Improvement Plan.
- 2.3 As soon as reasonably practicable following receipt of the Station Condition Survey Report and the amended Station Improvement Plan by the Authority, the ODP and the Authority shall meet to discuss the Station Condition Survey Report and the amended Station Improvement Plan.
- 2.4 Following the meeting of the Parties in paragraph 2.3, the Authority shall either:
- (a) approve the amended Station Improvement Plan; or
  - (b) if it does not approve the amended Station Improvement Plan, acting reasonably (and it shall be reasonable for the Authority to not approve a plan which does not include the information set out in paragraph 2.8), determine the content of the Station Improvement Plan.
- 2.5 Not used.
- 2.6 The Station Improvement Plan shall, in relation to each Station, include plans in respect of Station improvement works to be carried out by the ODP, including:
- (a) a programme of works to improve the standards of presentation and condition of the Stations;
  - (b) a timetable for the delivery of the works referred to in paragraph 2.7(a), including proposed commencement and completion dates for works at each Station and any other key dates and milestones;
  - (c) a breakdown of the costs that the ODP will incur in delivering the works referred to in paragraph 2.6(a); and
  - (d) the anticipated impact of the completion of the works referred to in paragraph 2.6(a) on the Service Quality Standards, Time To Fix Service Levels and SQ Levels set out in Schedule 7.3.

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- 2.7 By no later than the end of the third ODP Year (or such later date as the Authority may reasonably determine) and on each third anniversary of such date, the ODP shall prepare and provide to the Authority for approval (such approval not to be unreasonably withheld or delayed) an updated Station Improvement Plan. Where the Authority does not approve the updated Station Improvement Plan, the Authority shall require the ODP to:
- (a) make such amendments to the Station Improvement Plan as the Authority shall reasonably direct; and/or
  - (b) provide such additional information as the Authority may reasonably require.
- 2.8 Each updated Station Improvement Plan shall include:
- (a) a schedule of any revisions to the Station Improvement Plan and a brief summary of the rationale supporting any change for review and approval by the Authority; and
  - (b) any changed and developing circumstances.
- 2.9 The ODP shall put in place such arrangements as are necessary (to the reasonable satisfaction of the Authority) to ensure that the Station Improvement Plan is (and continues to be maintained in) a format acceptable to the Authority which is capable of being transferred to a Successor Operator as part of the Handover Package so that the Successor Operator is able to access, use and amend the Station Improvement Plan using the same format.
- 2.10 Where the Authority approves an updated Station Improvement Plan the ODP and the Authority shall work together to agree the Service Quality Standards, Time To Fix Service Levels and SQ Levels that apply in respect of the Stations from the date of such approval for the purposes of Schedule 7.3.
- 2.11 The ODP shall deliver the Station improvements and provide a profile of committed spend for such Station improvements and meet the minimum standards as set out in Appendix 3 of this Schedule 1.7, and incorporate such improvements in the Station Improvement Plan.

### **3 GREY ASSETS**

- 3.1 The ODP shall use all reasonable endeavours to agree with Network Rail by the date no later than the date two (2) years following the Start Date the allocation of responsibility under the relevant Station Leases of all the Grey Assets which have been identified during the first eighteen (18) months following the Start Date.
- 3.2 The ODP shall, where it discovers any Grey Assets not covered by paragraph 3.1:

- 
- (a) consult with Network Rail and, where reasonably necessary and agreed by Network Rail, carry out a joint inspection of the Grey Asset; and
  - (b) use all reasonable endeavours to agree with Network Rail the allocation of responsibility under the relevant Station Lease of such Grey Asset as soon as reasonably practicable.

3.3 Where the ODP is unable to agree with Network Rail the allocation of responsibility under the relevant Station Lease of any Grey Asset pursuant to paragraph 3.1 or paragraph 2.2(b), the ODP shall refer such matter to the dispute resolution process under the terms of the relevant Station Lease.

#### **4 SOCIAL AND COMMERCIAL USE OF STATIONS**

4.1 The ODP shall seek tenants for unused Station premises for use as retail facilities and/or for community use with the aim of encouraging more activity around Stations. The ODP shall use all reasonable endeavours to procure that commercial or community occupation of unused Station premises increases through the Rail Services Term with the ambition to have occupation of all unused Station premises achieved by ODP Year 5 and for such level of occupation to be maintained thereafter for the ODP Grant Agreement Term (subject to normal turnover of occupation from ODP Year 5 to the Expiry Date).

#### **5 STATION SOCIAL AND COMMERCIAL DEVELOPMENT PLAN**

5.1 From the Start Date, the ODP shall provide, implement and comply with the Station Social and Commercial Development Plan for the Rail Services Term, which shall be based upon a draft of such plan as set out in Appendix 5 to this Schedule 1.7.

5.2 Any amendments to the Station Social and Commercial Development Plan must be agreed by the Authority in accordance with this paragraph 3.

5.3 The ODP shall revise the Station Social and Commercial Development Plan by no later than the end of the first ODP Year and on each subsequent anniversary of this date by submitting to the Authority an updated version of the Station Social and Commercial Development Plan for approval. The ODP shall ensure that each revised Station Social and Commercial Development Plan submitted to the Authority shall comply with the following minimum requirements:

- (a) it shall identify schemes to develop currently redundant or under-utilised station buildings and facilities for use by community groups and social enterprise organisation or for commercial development including schemes which sustain and enhance the viability of existing facilities at Stations or lead to the development of new facilities including through appropriate sub leasing of station buildings;

- 
- (b) appropriately reflect changed and developing circumstances to the extent relevant and appropriate;
  - (c) appropriately reflect the outcome of the consultation which it is required to carry out pursuant to paragraph 4 below in relation to concerns, issues, opportunities and risks relating to the Stations and priorities for investment;
  - (d) effectively evaluate, prioritise and develop such schemes taking account of customer and community views expressed in the consultation carried out by the ODP;
  - (e) provide for the implementation of schemes specified pursuant to paragraphs 4 and 5.3(a) above in accordance with a plan which allocates a priority between such schemes by reference to specified criteria and includes planned timescales for the delivery of relevant outputs; and
  - (f) be for a period of ten (10) years on the basis that it shall continue to be reviewed on a rolling annual basis.

5.4 Subsequent updated versions of the Station Social and Commercial Development Plan shall:

- (a) incorporate a schedule of any revisions to the Station Social and Commercial Development Plan and a brief summary of the rationale supporting any change for review and approval by the Authority;
- (b) reflect changed and developing circumstances where relevant; and
- (c) reflect the outcomes of, and the ODP's responses to, the stakeholder consultation process described in paragraph 4.

5.5 The ODP shall ensure that the Station Social and Commercial Development Plan shall be updated so that following each update it continues to cover at least a period of ten (10) years from the date of the update.

5.6 If:

- (a) the Authority approves an updated draft Station Social and Commercial Development Plan submitted to it pursuant to paragraphs 5.3 and 5.4, such document shall become the then current Station Social and Commercial Development Plan; or
- (b) the Authority does not approve an updated draft Station Social and Commercial Development Plan submitted to it pursuant to paragraph 5.3 and 5.4, then the ODP shall:
  - (i) make such amendments to it as the Authority shall reasonably direct; and

- 
- (ii) provide such additional information as the Authority may reasonably require,

it being agreed that it will be unreasonable for the Authority to make amendments that increase cost and risk to the ODP beyond parameters specified in the Record of Assumptions.

- 5.7 The ODP shall establish and participate in a stations alliance board with the Authority which shall meet at least quarterly and allow the Authority to review jointly with the ODP priorities, decisions and approvals concerning Station investments, Station improvement measures, operations, strategy and performance through review of the Station Social and Commercial Development Plan, Station Improvement Plan and other activities (the “**Station Alliance Board**”).

## **6 CONSULTATIONS**

- 6.1 On or before the annual submission of the Station Asset Management Plan or the Station Social and Commercial Development Plan pursuant to the provisions of this Schedule 1.7, the ODP shall conduct consultations with relevant Stakeholders (including ACoRP, passengers, users of Stations and members of relevant local communities) in relation to the potential risks, opportunities and priorities for investment and operational efficiencies in relation to Stations. The ODP shall act reasonably in determining the scope of the specification of such consultations including the Stations to be considered.

## **7 PRINCIPLES OF INCLUSIVE DESIGN**

- 7.1 The ODP shall ensure that all renewal, enhancement and other building works at Stations are implemented in accordance with the Principles of Inclusive Design.

## **8 SECURITY AT STATIONS**

- 8.1 The ODP shall during the Rail Services Term, monitor and record all reported and observed incidents of:

- (a) anti-social behaviour; and
- (b) criminality (including assaults on passengers and ODP Services Employees, theft, criminal damage to railway property and graffiti vandalism),

which occur at Stations, and shall use all reasonable endeavours to address, minimise and avoid future instances of anti-social behaviour and criminality at Stations taking account of such data. The ODP may comply with its obligations to monitor and record incidents under this paragraph 8 by providing copies of relevant information provided by the ODP to the British Transport Police where such information is relevant.

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- 8.2 The ODP shall provide to the Authority upon request such information as the Authority may reasonably require from time to time in respect of the ODP's compliance with the requirements of paragraph 8.1.
- 8.3 The ODP shall maintain for the duration of the Rail Services Term the Secure Stations Accreditation for the Stations already achieved by the Train Operator under the Previous Franchise Agreement as set out in Appendix 1 to this Schedule 1.7.
- 8.4 The ODP shall maintain for the duration of the Rail Services Term the Secure Car Parks Accreditation for the Stations already achieved by the Train Operator under the Previous Franchise Agreement as set out in Appendix 1 to this Schedule 1.7.
- 8.5 In this paragraph 8:
- (a) **“Secure Car Parks Accreditation”** and means car parks at Stations which have achieved accreditation under the Secure Car Parks Scheme;
  - (b) **“Secure Car Parks Scheme”** means the certification scheme which is managed by the Department for Transport and British Transport Police and sets car park design and management safety standards for crime reduction at railway station car parks or any successor certification scheme as implemented from time to time;
  - (c) **“Secure Stations Accreditation”** and means Stations which have achieved accreditation under the Secure Stations Scheme; and
  - (d) **“Secure Stations Scheme”** means the certification scheme which is managed by the Department for Transport and British Transport Police and sets station design and management safety standards for crime reduction at railway stations or any successor certification scheme as implemented from time to time.

## **9 INFORMATION ABOUT STATION IMPROVEMENT MEASURES**

- 9.1 The ODP shall at all times during the Rail Services Term maintain records in relation to the measures taken by it to improve the Station environment at each of the Stations.
- 9.2 The content and format of information to be covered by such records shall be proposed by the ODP for the Authority's approval within three (3) months of this Agreement, in the form set out at Appendix 2 of this Schedule 1.7. Once approved, such records shall be the **“Station Improvement Records”**.
- 9.3 The ODP shall, subject to paragraph 9.4, provide to the Authority the Station Improvement Records within one (1) Reporting Period of each anniversary of the Start Date during the Rail Services Term.

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9.4 When so requested by the Authority, the ODP shall, within such reasonable period as the Authority may specify, make such information available for review by the Authority by reference to:

- (a) such level of disaggregation as is reasonably specified by the Authority; and
- (b) any particular Station as is reasonably specified by the Authority.

9.5 The information to be provided by the ODP to the Authority within the timescales stipulated are set out in Appendix 2 to this Schedule 1.7.

## **10 NOT USED**

## **11 STATION INVESTMENT**

11.1 The ODP shall at all times during the ODP Grant Agreement Term, co-operate with the Authority and any third party nominated by the Authority and notified to the ODP in developing opportunities for financing investment at Stations and ODP Access Stations in order to improve the station environment at such stations.

11.2 In co-operating with the Authority and/or any nominated third party in developing any such financing opportunities, the ODP shall:

- (a) attend meetings with the Authority and/or such third party to discuss such opportunities;
- (b) provide the ODP's opinion on those opportunities;
- (c) review and comment on implementation timetables and programmes for any such opportunities; and
- (d) where requested by the Authority to do so use all reasonable endeavours to engage with Network Rail for the purposes of ascertaining the feasibility and costs of making amendments to any Station Leases in order to facilitate the implementation of those opportunities.

## **12 WIRELESS INTERNET ACCESS**

12.1 The ODP shall provide free wireless internet access at Stations for all passengers to access online services (including video streaming) in accordance with the Service Improvement Plan. The ODP shall provide a committed data rate which supports reasonable passenger expectations at all times, including during each Peak. A reasonable committed data rate as of the Start Date is approximately two (2) Mbps per passenger concurrently using wi-fi and this is expected to increase during the Rail Services Term in order to continue to meet reasonable passenger expectations.-



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### **13 MINIMUM STATION STANDARDS**

13.1 All Stations must have facilities which are at least equivalent to those in place under the Previous Franchise Agreement, including:

- (a) a public address and/or a public information display and/or a freephone link/help point communication system. Such communication links shall be maintained in working order and shall be used effectively by the ODP Services Employees to provide, in the event of a delay or cancellation, details of the delay or cancellation and any alternative journey arrangements (and any other relevant information);
- (b) weather proof covered waiting accommodation or other adequate shelter which offers reasonable protection from the weather. Adequate alternative shelter shall be provided by the ODP when such waiting accommodation is temporarily out of use. Seating shall also be provided, where reasonably practicable, in such waiting accommodation, shelters and on Station platforms; and
- (c) adequate lighting, which shall be switched on throughout the hours of darkness during which trains are scheduled to call at the relevant Station (including for a reasonable period of time before and after the first and last scheduled train in order to allow passengers to await the first scheduled train at the Station or depart from the Station following the departure of the last scheduled train).

13.2 Each Station must have information displays and/or signing which provide the following information:

- (a) the name, address and telephone number of the customer services manager (or his equivalent) under whose control the Station rests;
- (b) the location of the nearest public telephone or "freephone" if provided (unless such telephone or "freephone" is located within the Station and is adequately signed);
- (c) the telephone number/s of the National Rail Enquiries (or successor facility), including the telephone number that provides information on rail services for passengers with special needs;
- (d) the telephone number of an alternative location from which current train running information can be obtained if a public address or "freephone" facility is not provided at the Station;
- (e) wherever appropriate, the location and telephone number of the nearest taxi rank or operator, other public transport services, and, for Stations which are not staffed at all times of the day at which passenger trains are scheduled to call, the nearest person authorised to sell tickets for use on the Passenger Services;

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- (f) a list of tickets which may be purchased on trains calling at that Station at times at which such Station is not staffed (if at all);
  - (g) arrangements for the issue of season tickets, railcards and other facilities relating to trains calling at such Station and which cannot be purchased at the Station;
  - (h) for Stations which have two or more platforms, customer information displays or directional signs indicating the destinations served by trains calling at each platform;
  - (i) the nearest station with access for mobility-impaired customers if no such access is provided at the Station;
  - (j) the location of bicycle storage facilities at the Station;
  - (k) the telephone number and text number of Traveline, or such other enquiry line as the Authority may approve for this purpose, to facilitate the ability of passengers to transfer easily to other modes of transport;
  - (l) arrangements for the purchase of any tickets when they are not available for purchase from the Station. This shall include arrangements for the issue of season tickets, railcards and other facilities relating to trains calling at such Station which are not normally available for purchase at that station;
  - (m) if no access for mobility impaired customers is provided at the Station, a telephone hotline number for such passengers and/or information as to the nearest station with such access; and
  - (n) a map of the locality served by that Station.
- 13.3 The ODP will not reduce the amount of any bicycle storage facilities provided at any Station without the Authority's prior written consent. The ODP will maintain all such bicycle storage facilities to a reasonable standard.
- 13.4 By no later than 1 December 2023, the ODP shall provide at each South Wales Metro Station, secure bicycle parking facilities which, as a minimum:
- (a) are in a location which is designed and maintained in a way which, as far as reasonably possible, mitigates the risk of criminal activity. Such mitigation of criminal activity may be achieved by the use of appropriate lighting, low or transparent fencing, landscaping, the removal of concealed areas and the placement of windows, doors, and walkways which provide easy observation of surrounding areas by responsible users of the South Wales Metro Station; and
  - (b) have bicycle parking stands which:
    - (i) are compatible with different sizes and shapes of bicycle; and

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(ii) which enable the bicycle frame and at least one wheel to be locked.

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## Appendix 1 to Schedule 1.7

### List of Stations and Car Parks with Secure Stations Accreditation and Secure Car Parks Accreditation

#### 1 SECURE STATIONS ACCREDITATION

Current:

| Station Name         | Accreditation  | Status     |
|----------------------|----------------|------------|
| ABERYSTWYTH          | Secure Station | Accredited |
| BANGOR               | Secure Station | Accredited |
| BRIDGEND             | Secure Station | Accredited |
| CARDIFF CENTRAL      | Secure Station | Accredited |
| CARDIFF QUEEN STREET | Secure Station | Accredited |
| CARMARTHEN           | Secure Station | Accredited |
| COLWYN BAY           | Secure Station | Accredited |
| HEREFORD             | Secure Station | Accredited |
| LLANDUDNO            | Secure Station | Accredited |
| MACHYNLLETH          | Secure Station | Accredited |
| NEWPORT HIGH STREET  | Secure Station | Accredited |
| PRESTATYN            | Secure Station | Accredited |
| SWANSEA HIGH STREET  | Secure Station | Accredited |

Planned:

| Station Name       | Planned Date    | Planned Status |
|--------------------|-----------------|----------------|
| Aber               | 31st March 2024 | Accredited     |
| Abercynon          | 31st March 2024 | Accredited     |
| Aberdare           | 31st March 2024 | Accredited     |
| Aberdovey          | 31st March 2029 | Accredited     |
| Abererch           | 31st March 2029 | Accredited     |
| Abergavenny        | 31st March 2029 | Accredited     |
| Abergele & Pensarn | 31st March 2029 | Accredited     |

|                           |                 |            |
|---------------------------|-----------------|------------|
| Ammanford                 | 31st March 2029 | Accredited |
| Baglan                    | 31st March 2029 | Accredited |
| Bargoed                   | 31st March 2024 | Accredited |
| Barmouth                  | 31st March 2029 | Accredited |
| Barry                     | 31st March 2024 | Accredited |
| Barry Docks               | 31st March 2024 | Accredited |
| Barry Island              | 31st March 2024 | Accredited |
| Betws-y-Coed              | 31st March 2029 | Accredited |
| Birchgrove                | 31st March 2024 | Accredited |
| Blaenau Ffestiniog        | 31st March 2029 | Accredited |
| Bodorgan                  | 31st March 2029 | Accredited |
| Borth                     | 31st March 2029 | Accredited |
| Brithdir                  | 31st March 2024 | Accredited |
| Briton Ferry              | 31st March 2029 | Accredited |
| Broome                    | 31st March 2029 | Accredited |
| Buckley                   | 31st March 2029 | Accredited |
| Bucknell                  | 31st March 2029 | Accredited |
| Builth Road               | 31st March 2029 | Accredited |
| Bynea                     | 31st March 2029 | Accredited |
| Cadoxton                  | 31st March 2024 | Accredited |
| Caergwrle                 | 31st March 2029 | Accredited |
| Caerphilly                | 31st March 2024 | Accredited |
| Caersws                   | 31st March 2029 | Accredited |
| Caldicot                  | 31st March 2029 | Accredited |
| Cardiff Bay               | 31st March 2024 | Accredited |
| Cathays                   | 31st March 2024 | Accredited |
| Cefn-Y-Bedd               | 31st March 2029 | Accredited |
| Chepstow                  | 31st March 2029 | Accredited |
| Chester                   | 31st March 2029 | Accredited |
| Chirk                     | 31st March 2029 | Accredited |
| Church Stretton           | 31st March 2029 | Accredited |
| Cilmeri                   | 31st March 2029 | Accredited |
| Clarbston Road            | 31st March 2029 | Accredited |
| Clunderwen                | 31st March 2029 | Accredited |
| Cogan                     | 31st March 2024 | Accredited |
| Conwy                     | 31st March 2029 | Accredited |
| Coryton                   | 31st March 2024 | Accredited |
| Craven Arms               | 31st March 2029 | Accredited |
| Criccieth                 | 31st March 2029 | Accredited |
| Crosskeys                 | 31st March 2029 | Accredited |
| Crwys Road                | 31st March 2024 | Accredited |
| Cwmbach                   | 31st March 2024 | Accredited |
| Cwmbran                   | 31st March 2029 | Accredited |
| Cynghordy                 | 31st March 2029 | Accredited |
| Danescourt                | 31st March 2029 | Accredited |
| Deganwy                   | 31st March 2029 | Accredited |
| Dinas (Mid Glamorgan)     | 31st March 2029 | Accredited |
| Dinas Powys               | 31st March 2024 | Accredited |
| Dingle Road               | 31st March 2024 | Accredited |
| Dolau                     | 31st March 2029 | Accredited |
| Dolgarrog                 | 31st March 2029 | Accredited |
| Dolwyddelan               | 31st March 2029 | Accredited |
| Dovey Junction            | 31st March 2029 | Accredited |
| Dyffryn Ardudwy           | 31st March 2029 | Accredited |
| Eastbrook                 | 31st March 2024 | Accredited |
| Ebbw Vale Parkway         | 31st March 2029 | Accredited |
| Ebbw Vale Town            | 31st March 2029 | Accredited |
| Energlyn & Churchill Park | 31st March 2024 | Accredited |

|                          |                 |            |
|--------------------------|-----------------|------------|
| Fairbourne               | 31st March 2029 | Accredited |
| Fairwater                | 31st March 2024 | Accredited |
| Fernhill                 | 31st March 2024 | Accredited |
| Ferryside                | 31st March 2029 | Accredited |
| Ffairfach                | 31st March 2029 | Accredited |
| Fishguard & Goodwick     | 31st March 2029 | Accredited |
| Fishguard Harbour        | 31st March 2029 | Accredited |
| Flint                    | 31st March 2029 | Accredited |
| Frodsham                 | 31st March 2029 | Accredited |
| Gabalfa                  | 31st March 2026 | Accredited |
| Garth (Mid-Glamorgan)    | 31st March 2029 | Accredited |
| Garth (Powys)            | 31st March 2029 | Accredited |
| Glan Conwy               | 31st March 2029 | Accredited |
| Gobowen                  | 31st March 2029 | Accredited |
| Gowerton                 | 31st March 2029 | Accredited |
| Grangetown (S Glamorgan) | 31st March 2029 | Accredited |
| Gwersyllt                | 31st March 2029 | Accredited |
| Harlech                  | 31st March 2029 | Accredited |
| Haverfordwest            | 31st March 2029 | Accredited |
| Hawarden                 | 31st March 2029 | Accredited |
| Hawarden Bridge          | 31st March 2029 | Accredited |
| Heath High Level         | 31st March 2024 | Accredited |
| Heath Low Level          | 31st March 2024 | Accredited |
| Helsby                   | 31st March 2029 | Accredited |
| Hengoed                  | 31st March 2024 | Accredited |
| Heswall                  | 31st March 2029 | Accredited |
| Holyhead                 | 31st March 2029 | Accredited |
| Hope (Clwyd)             | 31st March 2029 | Accredited |
| Hopton Heath             | 31st March 2029 | Accredited |
| Johnston (Dyfed)         | 31st March 2029 | Accredited |
| Kidwelly                 | 31st March 2029 | Accredited |
| Kilgetty                 | 31st March 2029 | Accredited |
| Knighton                 | 31st March 2029 | Accredited |
| Knucklas                 | 31st March 2029 | Accredited |
| Lamphey                  | 31st March 2029 | Accredited |
| Leominster               | 31st March 2029 | Accredited |
| Lisvane and Thornhill    | 31st March 2029 | Accredited |
| Llanaber                 | 31st March 2029 | Accredited |
| Llanbedr                 | 31st March 2029 | Accredited |
| Llanbister Road          | 31st March 2029 | Accredited |
| Llanbradach              | 31st March 2024 | Accredited |
| Llandaf                  | 31st March 2024 | Accredited |
| Llandanwg                | 31st March 2029 | Accredited |
| Llandecwyn               | 31st March 2029 | Accredited |
| Llandeilo                | 31st March 2029 | Accredited |
| Llandovery               | 31st March 2029 | Accredited |
| Llandrindod              | 31st March 2029 | Accredited |
| Llandudno Junction       | 31st March 2029 | Accredited |
| Llandybie                | 31st March 2029 | Accredited |
| Llanelli                 | 31st March 2029 | Accredited |
| Llanfairfechan           | 31st March 2029 | Accredited |
| Llanfairpwll             | 31st March 2029 | Accredited |
| Llangadog                | 31st March 2029 | Accredited |
| Llangammarch             | 31st March 2029 | Accredited |
| Llangennech              | 31st March 2029 | Accredited |
| Llangynllo               | 31st March 2029 | Accredited |
| Llanharan                | 31st March 2029 | Accredited |

|                       |                 |            |
|-----------------------|-----------------|------------|
| Llanhilleth           | 31st March 2029 | Accredited |
| Llanishen             | 31st March 2024 | Accredited |
| Llanrwst              | 31st March 2029 | Accredited |
| Llansamlet            | 31st March 2029 | Accredited |
| Llantwit Major        | 31st March 2029 | Accredited |
| Llanwrda              | 31st March 2029 | Accredited |
| Llanwrtyd             | 31st March 2029 | Accredited |
| Llwyngwril            | 31st March 2029 | Accredited |
| Llwynypia             | 31st March 2024 | Accredited |
| Loudoun Square        | 31st March 2024 | Accredited |
| Ludlow                | 31st March 2029 | Accredited |
| Lydney                | 31st March 2029 | Accredited |
| Maesteg               | 31st March 2029 | Accredited |
| Maesteg (Ewenny Road) | 31st March 2029 | Accredited |
| Manorbier             | 31st March 2029 | Accredited |
| Merthyr Tydfil        | 31st March 2024 | Accredited |
| Merthyr Vale          | 31st March 2024 | Accredited |
| Milford Haven         | 31st March 2029 | Accredited |
| Minffordd             | 31st March 2029 | Accredited |
| Morfa Mawddach        | 31st March 2029 | Accredited |
| Mountain Ash          | 31st March 2024 | Accredited |
| Nantwich              | 31st March 2029 | Accredited |
| Narberth              | 31st March 2029 | Accredited |
| Neath                 | 31st March 2029 | Accredited |
| Neston                | 31st March 2029 | Accredited |
| Newbridge             | 31st March 2029 | Accredited |
| Newtown               | 31st March 2029 | Accredited |
| Ninian Park           | 31st March 2024 | Accredited |
| North Llanrwst        | 31st March 2029 | Accredited |
| Pantyyfynnon          | 31st March 2029 | Accredited |
| Pembrey & Burry Port  | 31st March 2029 | Accredited |
| Pembroke              | 31st March 2029 | Accredited |
| Pembroke Dock         | 31st March 2029 | Accredited |
| Penally               | 31st March 2029 | Accredited |
| Penarth               | 31st March 2024 | Accredited |
| Pencoed               | 31st March 2029 | Accredited |
| Pengam                | 31st March 2024 | Accredited |
| Penhelig              | 31st March 2029 | Accredited |
| Penmaenmawr           | 31st March 2029 | Accredited |
| Penrhiwceiber         | 31st March 2024 | Accredited |
| Penrhyndeudraeth      | 31st March 2029 | Accredited |
| Pensarn               | 31st March 2029 | Accredited |
| Pentre-Bach           | 31st March 2024 | Accredited |
| Pen-Y-Bont            | 31st March 2029 | Accredited |
| Penychain             | 31st March 2029 | Accredited |
| Penyffordd            | 31st March 2029 | Accredited |
| Pontarddulais         | 31st March 2029 | Accredited |
| Pontlottyn            | 31st March 2024 | Accredited |
| Pontyclun             | 31st March 2029 | Accredited |
| Pont-y-Pant           | 31st March 2029 | Accredited |
| Pontypool and New Inn | 31st March 2029 | Accredited |
| Pontypridd            | 31st March 2024 | Accredited |
| Port Talbot Parkway   | 31st March 2029 | Accredited |
| Porth                 | 31st March 2024 | Accredited |
| Porthmadog            | 31st March 2029 | Accredited |
| Prees                 | 31st March 2029 | Accredited |
| Pwllheli              | 31st March 2029 | Accredited |
| Pye Corner            | 31st March 2029 | Accredited |

|                          |                 |            |
|--------------------------|-----------------|------------|
| Pyle                     | 31st March 2029 | Accredited |
| Quaker's Yard            | 31st March 2029 | Accredited |
| Radyr                    | 31st March 2024 | Accredited |
| Rhiwbina                 | 31st March 2024 | Accredited |
| Rhoose (Cardiff Airport) | 31st March 2029 | Accredited |
| Rhosneigr                | 31st March 2029 | Accredited |
| Rhyl                     | 31st March 2029 | Accredited |
| Rhymney                  | 31st March 2024 | Accredited |
| Risca and Pontymister    | 31st March 2029 | Accredited |
| Rogerstone               | 31st March 2029 | Accredited |
| Roman Bridge             | 31st March 2029 | Accredited |
| Ruabon                   | 31st March 2029 | Accredited |
| Runcorn East             | 31st March 2029 | Accredited |
| Sarn                     | 31st March 2029 | Accredited |
| Saundersfoot             | 31st March 2029 | Accredited |
| Severn Tunnel Junction   | 31st March 2029 | Accredited |
| Shotton                  | 31st March 2029 | Accredited |
| Shrewsbury               | 31st March 2029 | Accredited |
| Skewen                   | 31st March 2029 | Accredited |
| Sugar Loaf               | 31st March 2029 | Accredited |
| Taffs Well               | 31st March 2024 | Accredited |
| Talsarnau                | 31st March 2029 | Accredited |
| Talybont                 | 31st March 2029 | Accredited |
| Tal-y-Cafn               | 31st March 2029 | Accredited |
| Tenby                    | 31st March 2029 | Accredited |
| The Flourish             | 31st March 2024 | Accredited |
| Tir-Phil                 | 31st March 2024 | Accredited |
| Ton Pentre               | 31st March 2024 | Accredited |
| Tondu                    | 31st March 2029 | Accredited |
| Tonfanau                 | 31st March 2029 | Accredited |
| Tonypandy                | 31st March 2024 | Accredited |
| Treforest                | 31st March 2024 | Accredited |
| Treforest Estate         | 31st March 2028 | Accredited |
| Trehafod                 | 31st March 2024 | Accredited |
| Treherbert               | 31st March 2024 | Accredited |
| Treorchy                 | 31st March 2024 | Accredited |
| Troed-Y-Rhiw             | 31st March 2024 | Accredited |
| Ty Croes                 | 31st March 2029 | Accredited |
| Ty Glas                  | 31st March 2024 | Accredited |
| Tygwyn                   | 31st March 2029 | Accredited |
| Tywyn                    | 31st March 2029 | Accredited |
| Upton                    | 31st March 2029 | Accredited |
| Valley                   | 31st March 2029 | Accredited |
| Waun-gron Park           | 31st March 2029 | Accredited |
| Welshpool                | 31st March 2029 | Accredited |
| Wem                      | 31st March 2029 | Accredited |
| Whitchurch (S Glamorgan) | 31st March 2029 | Accredited |
| Whitchurch (Salop)       | 31st March 2029 | Accredited |
| Whitland                 | 31st March 2029 | Accredited |
| Wildmill                 | 31st March 2029 | Accredited |
| Wrenbury                 | 31st March 2029 | Accredited |
| Wrexham Central          | 31st March 2029 | Accredited |
| Wrexham General          | 31st March 2029 | Accredited |
| Ynyswen                  | 31st March 2024 | Accredited |
| Yorton                   | 31st March 2029 | Accredited |
| Ystrad Mynach            | 31st March 2024 | Accredited |
| Ystrad Rhondda           | 31st March 2024 | Accredited |



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## 2 SECURE CAR PARKS ACCREDITATION

Current:

| <b>Station Car park</b>                    | <b>Accreditation</b> | <b>Status</b> |
|--|----------------------|---------------|
| <b>ABERGAVENNY</b>                         | Secure Car Park      | Accredited    |
| <b>BANGOR</b>                              | Secure Car Park      | Accredited    |
| <b>BRIDGEND</b>                            | Secure Car Park      | Accredited    |
| <b>CARDIFF CENTRAL -<br/>PENARTH ROAD</b>  | Secure Car Park      | Accredited    |
| <b>CARDIFF CENTRAL -<br/>RIVERSIDE</b>     | Secure Car Park      | Accredited    |
| <b>CARDIFF CENTRAL -<br/>SAUNDERS ROAD</b> | Secure Car Park      | Accredited    |
| <b>CARMARTHEN</b>                          | Secure Car Park      | Accredited    |
| <b>CHESTER EAST</b>                        | Secure Car Park      | Accredited    |
| <b>CHESTER WEST</b>                        | Secure Car Park      | Accredited    |
| <b>COLWYN BAY</b>                          | Secure Car Park      | Accredited    |
| <b>HEREFORD</b>                            | Secure Car Park      | Accredited    |
| <b>LLANDUDNO</b>                           | Secure Car Park      | Accredited    |
| <b>LUDLOW</b>                              | Secure Car Park      | Accredited    |
| <b>NEATH</b>                               | Secure Car Park      | Accredited    |
| <b>NEWPORT</b>                             | Secure Car Park      | Accredited    |
| <b>PORT TALBOT</b>                         | Secure Car Park      | Accredited    |
| <b>SEVERN TUNNEL JCT</b>                   | Secure Car Park      | Accredited    |
| <b>SHREWSBURY</b>                          | Secure Car Park      | Accredited    |
| <b>SWANSEA</b>                             | Secure Car Park      | Accredited    |
| <b>TENBY</b>                               | Secure Car Park      | Accredited    |

| Station Car park | Accreditation   | Status     |
|------------------|-----------------|------------|
| WREXHAM          | Secure Car Park | Accredited |

**Planned:**

| Station Car Park         | Planned Date   | Planned Status |
|--------------------------|----------------|----------------|
| Chester                  | 1st April 2025 | Accredited     |
| Newport (Gwent)          | 1st April 2025 | Accredited     |
| Bangor (Gwynedd)         | 1st April 2025 | Accredited     |
| Caerphilly               | 1st April 2025 | Accredited     |
| Shrewsbury               | 1st April 2025 | Accredited     |
| Swansea                  | 1st April 2025 | Accredited     |
| Abercynon                | 1st April 2025 | Accredited     |
| Port Talbot Parkway      | 1st April 2025 | Accredited     |
| Radyr                    | 1st April 2025 | Accredited     |
| Aber                     | 1st April 2025 | Accredited     |
| Severn Tunnel Junction   | 1st April 2025 | Accredited     |
| Cwmbran                  | 1st April 2025 | Accredited     |
| Barry                    | 1st April 2025 | Accredited     |
| Treforest                | 1st April 2025 | Accredited     |
| Milford Haven            | 1st April 2025 | Accredited     |
| Porthmadog               | 1st April 2025 | Accredited     |
| Bridgend                 | 1st April 2025 | Accredited     |
| Llandaf                  | 1st April 2025 | Accredited     |
| Rhyl                     | 1st April 2025 | Accredited     |
| Ebbw Vale Parkway        | 1st April 2025 | Accredited     |
| Llanfairpwll             | 1st April 2025 | Accredited     |
| Ystrad Mynach            | 1st April 2025 | Accredited     |
| Gobowen                  | 1st April 2025 | Accredited     |
| Risca and Pontymister    | 1st April 2025 | Accredited     |
| Taffs Well               | 1st April 2025 | Accredited     |
| Bargoed                  | 1st April 2025 | Accredited     |
| Lydney                   | 1st April 2025 | Accredited     |
| Carmarthen               | 1st April 2025 | Accredited     |
| Lisvane and Thornhill    | 1st April 2025 | Accredited     |
| Tenby                    | 1st April 2025 | Accredited     |
| Abergavenny              | 1st April 2025 | Accredited     |
| Llandudno Junction       | 1st April 2025 | Accredited     |
| Colwyn Bay               | 1st April 2025 | Accredited     |
| Newbridge                | 1st April 2025 | Accredited     |
| Betws-y-Coed             | 1st April 2025 | Accredited     |
| Pembroke                 | 1st April 2025 | Accredited     |
| Wrexham General          | 1st April 2025 | Accredited     |
| Blaenau Ffestiniog       | 1st April 2025 | Accredited     |
| Rhoose (Cardiff Airport) | 1st April 2025 | Accredited     |
| Neath                    | 1st April 2025 | Accredited     |
| Rogerstone               | 1st April 2025 | Accredited     |
| Cogan                    | 1st April 2025 | Accredited     |
| Welshpool                | 1st April 2025 | Accredited     |
| Pwllheli                 | 1st April 2025 | Accredited     |
| Hengoed                  | 1st April 2025 | Accredited     |

|                    |                |            |
|--------------------|----------------|------------|
| Conwy              | 1st April 2025 | Accredited |
| Llanhilleth        | 1st April 2025 | Accredited |
| Runcorn East       | 1st April 2025 | Accredited |
| Neston             | 1st April 2025 | Accredited |
| Llandudno          | 1st April 2025 | Accredited |
| Holyhead           | 1st April 2025 | Accredited |
| Wrexham Central    | 1st April 2025 | Accredited |
| Haverfordwest      | 1st April 2025 | Accredited |
| Aberdare           | 1st April 2025 | Accredited |
| Llanharan          | 1st April 2025 | Accredited |
| Llanishen          | 1st April 2025 | Accredited |
| Hereford           | 1st April 2025 | Accredited |
| Morfa Mawddach     | 1st April 2025 | Accredited |
| Llantwit Major     | 1st April 2025 | Accredited |
| Penmaenmawr        | 1st April 2025 | Accredited |
| Merthyr Tydfil     | 1st April 2025 | Accredited |
| Ludlow             | 1st April 2025 | Accredited |
| Wem                | 1st April 2025 | Accredited |
| Prestatyn          | 1st April 2025 | Accredited |
| Whitchurch (Salop) | 1st April 2025 | Accredited |
| Cadoxton           | 1st April 2025 | Accredited |
| Eastbrook          | 1st April 2025 | Accredited |
| Machynlleth        | 1st April 2025 | Accredited |
| Penally            | 1st April 2025 | Accredited |
| Llansamlet         | 1st April 2025 | Accredited |
| Chirk              | 1st April 2025 | Accredited |
| Skewen             | 1st April 2025 | Accredited |
| Deganwy            | 1st April 2025 | Accredited |
| Ruabon             | 1st April 2025 | Accredited |
| Shotton            | 1st April 2025 | Accredited |
| Ystrad Rhondda     | 1st April 2025 | Accredited |
| Aberdovey          | 1st April 2025 | Accredited |
| Frodsham           | 1st April 2025 | Accredited |
| Tywyn              | 1st April 2025 | Accredited |
| Johnston (Dyfed)   | 1st April 2025 | Accredited |
| Gowerton           | 1st April 2025 | Accredited |
| Baglan             | 1st April 2025 | Accredited |
| Rhymney            | 1st April 2025 | Accredited |
| Pontyclun          | 1st April 2025 | Accredited |
| Aberystwyth        | 1st April 2025 | Accredited |
| Pyle               | 1st April 2025 | Accredited |
| Caersws            | 1st April 2025 | Accredited |
| Pen-Y-Bont         | 1st April 2025 | Accredited |
| Craven Arms        | 1st April 2025 | Accredited |
| Newtown            | 1st April 2025 | Accredited |
| Helsby             | 1st April 2025 | Accredited |
| Pembroke Dock      | 1st April 2025 | Accredited |
| Clunderwen         | 1st April 2025 | Accredited |
| Pontarddulais      | 1st April 2025 | Accredited |
| Mountain Ash       | 1st April 2025 | Accredited |
| Llandovery         | 1st April 2025 | Accredited |
| North Llanrwst     | 1st April 2025 | Accredited |
| Llanbradach        | 1st April 2025 | Accredited |
| Llandrindod        | 1st April 2025 | Accredited |
| Hawarden           | 1st April 2025 | Accredited |
| Heswall            | 1st April 2025 | Accredited |
| Penyffordd         | 1st April 2025 | Accredited |
| Llanfairfechan     | 1st April 2025 | Accredited |

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|                       |                |            |
|-----------------------|----------------|------------|
| Penarth               | 1st April 2025 | Accredited |
| Leominster            | 1st April 2025 | Accredited |
| Talsarnau             | 1st April 2025 | Accredited |
| Llwyngwril            | 1st April 2025 | Accredited |
| Pontypool and New Inn | 1st April 2025 | Accredited |
| Tondu                 | 1st April 2025 | Accredited |
| Buckley               | 1st April 2025 | Accredited |
| Flint                 | 1st April 2025 | Accredited |
| Chepstow              | 1st April 2025 | Accredited |
| Dolwyddelan           | 1st April 2025 | Accredited |
| Maesteg               | 1st April 2025 | Accredited |
| Llwynypia             | 1st April 2025 | Accredited |
| Gwersyllt             | 1st April 2025 | Accredited |
| Trehafod              | 1st April 2025 | Accredited |
| Llanwrtyd             | 1st April 2025 | Accredited |
| Whitland              | 1st April 2025 | Accredited |
| Llandeilo             | 1st April 2025 | Accredited |
| Dinas (Mid Glamorgan) | 1st April 2025 | Accredited |
| Fairbourne            | 1st April 2025 | Accredited |
| Pontlloftyn           | 1st April 2025 | Accredited |
| Knighton              | 1st April 2025 | Accredited |
| Llandybie             | 1st April 2025 | Accredited |
| Treorchy              | 1st April 2025 | Accredited |
| Abergele & Pensarn    | 1st April 2025 | Accredited |
| Sarn                  | 1st April 2025 | Accredited |
| Cwmbach               | 1st April 2025 | Accredited |

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**Appendix 2 to Schedule 1.7**

**Form of Station Improvement Measures**

| <b>Table A</b>                    |                             |  |
|-----------------------------------|-----------------------------|--|
| <b>Column 1</b>                   | <b>Column 2</b>             | <b>Column 3</b>  |
| <b>Information to be provided</b> | <b>Information (format)</b> | <b>When information to be provided</b>   |
|                                   |                             | All information to be provided in accordance with paragraph 9.3 but subject to paragraph 9.4 of this Schedule 1.7. |

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**Appendix 3 to Schedule 1.7**

Station Improvement Plan

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**Appendix 4 to Schedule 1.7 – not used**

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**Appendix 5 to Schedule 1.7**

Draft Station Social and Commercial Development Plan



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**Appendix 6 to Schedule 1.7****South Wales Metro Stations**

|                   |                       |                                     |
|-------------------|-----------------------|-------------------------------------|
| Aber              | Fairwater             | Pontypridd                          |
| Abercynon         | Fernhill              | Porth                               |
| Aberdare          | Garth Mid Glam        | Pye Corner                          |
| Abergavenny       | Gilfach Fargoed       | Quakers Yard                        |
| Bargoed           | Grangetown (Cardiff)  | Radyr                               |
| Barry             | Heath High Level      | Rhiwbina                            |
| Barry Docks       | Heath Low Level       | Rhose Cardiff International Airport |
| Barry Island      | Hengoed               | Rhymney                             |
| Birchgrove        | Lisvane and Thornhill | Risca & Pontyminster                |
| Bridgend          | Llanbradach           | Rogerstone                          |
| Brithdir          | Llandaf               | Sarn                                |
| Cadoxton          | Llanharan             | Severn Tunnel Junction              |
| Caerphilly        | Llanhilleth           | Taffs Well                          |
| Caldicot          | Llanishen             | Tir phil                            |
| Cardiff Bay       | Llantwit Major        | Ton Pentre                          |
| Cardiff Central   | Llwynypia             | Tondu                               |
| Cardiff Queen St  | Maesteg               | Tonypandy                           |
| Cathays           | Maesteg Eweny Rd      | Trefforest                          |
| Chepstow          | Merthyr Tydfil        | Trefforest Estate                   |
| Cogan             | Merthyr Vale          | Trehafod                            |
| Coryton           | Mountain Ash          | Treherbert                          |
| Crosskeys         | Newbridge             | Treorchy                            |
| Cwmbach           | Newport Gwent         | Troed Y Rhiw                        |
| Cwmbran           | Ninian Park           | Ty Glas                             |
| Danescourt        | Penarth               | Waungron Park                       |
| Dinas Mid Glam    | Pencoed               | Whitchurch (Cardiff)                |
| Dinas Powys       | Pengam                | Wildmill                            |
| Dingle Road       | Penrhiwceiber         | Ynyswen                             |
| Eastbrook         | Pentre bach           | Ystrad Mynach                       |
| Ebbw Vale Parkway | Pontlottyn            | Ystrad Rhondda                      |
| Ebbw Vale Town    | Pontyclun             |                                     |
| Energlyn & C Pk   | Pontypool New Inn     |                                     |

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**Schedule 2**

Assets, Leases, Other Train Operators and Schemes

|               |  |
|---------------|--|
| Schedule 2.1: | Asset Vesting and Transfer   |
| Schedule 2.2: | Security of Access Agreements, Rolling Stock Leases, Stations and Depot Leases |
| Schedule 2.3: | Other Train Operators  |
| Schedule 2.4: | <b>NOT USED</b>  |
| Schedule 2.5: | Transport, Travel and Other Schemes  |
|               | Appendix 1: List of Transport, Travel and Other Schemes                        |

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**Schedule 2.1 - Asset Vesting and Transfer**

**1 VESTING OF PROPERTY LEASES AT THE START DATE**

1.1 The ODP shall not without the prior written consent of the Authority (such consent not to be unreasonably withheld), whether generally or on a case-by-case basis:

- (a) enter into any new Property Lease; or
- (b) effect any amendment to any Property Lease, except to the extent that the ODP is required to do so by virtue of any station or depot access conditions to which it is a party.

1.2 In respect of any new Property Leases with Network Rail, the ODP shall enter into such Property Leases:

- (a) with the intent that section 31 of the Act shall apply to such leases; and
- (b) in the agreed terms marked **SL** and **DL** (as appropriate).

1.3 The ODP shall enter into the following leases with Network Rail:

- (a) a lease of each Station, on or before the expiry of the Station Lease relating to each Station (each such lease, once granted, shall be a Station Lease for the purposes of the ODP Grant Agreement);
- (b) a lease of each Depot, on or before the expiry of the Depot Lease relating to each such Depot (each such lease, once granted, shall be a Depot Lease for the purposes of the ODP Grant Agreement);
- (c) a supplemental lease relating to any Station or Depot, as soon as practicable following the successful completion of any procedure (including obtaining any requisite approval from the ORR) for including additional land within the demise of each Station or Depot (as the case may be) and each such supplemental lease, once granted, shall be a Station Lease or a Depot Lease (as the case may be) for the purposes of this ODP Grant Agreement; and
- (d) a lease of any Network Rail owned station or depot, which:
  - (i) the Secretary of State or the Authority consents to or requires the ODP to be party to;
  - (ii) the ODP was not a party to on the date hereof, but which has been contemplated by the ODP Grant Agreement,

and the ODP shall enter into such lease as soon as practicable after its terms and form have been agreed and all applicable preconditions to its granting have been satisfied or waived (including obtaining any requisite approval of the ORR).

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Any such supplemental lease, once granted, shall be a Station Lease or Depot Lease (as the case may be) for the purposes of the ODP Grant Agreement and any such station or depot (as the case may be) shall be a Station or Depot for the purposes of the ODP Grant Agreement.

1.4 On or prior to the Planned CVL Asset Transfer Longstop Date, the ODP will enter into the following agreements:

- (a) the CVL Asset Lease in accordance with Schedule 3A.1 which, once granted, shall be a Property Lease for the purposes of the ODP Grant Agreement. The Authority shall procure that the landlord under the CVL Asset Lease will comply with all of its obligations pursuant to the CVL Asset Lease; and
- (b) subject to the CVL Asset Lease being entered into by the ODP and the landlord, with Network Rail, a deed of surrender in relation to any Stations (and any other premises (if any)) (then forming part of any Station Lease(s) or any other Property Lease(s)) which are to be demised to the ODP by the CVL Asset Lease.

1.5 The ODP shall not be in contravention of paragraph 1.3 if and to the extent that Network Rail refuses to enter into any such leases specified therein.

1.6 In respect of any assignment or amendment of any Property Lease(s) to which section 31 of the Act applied on its grant, each of the Authority and the ODP acknowledge that it is their intention that section 31 of the Act shall continue to apply to such assigned or amended lease.

1.7 The ODP shall use all reasonable endeavours to update the relevant Station Specific Appendices:

- (a) as soon as possible and in any event within one (1) calendar year of entering into the initial Station Lease(s) of the CVL; and
- (b) as soon as possible from time to time,

to ensure that all Station Specific Appendices of the CVL accurately record all fixtures and fittings in relation to all relevant Stations at all times.

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**Schedule 2.2 - Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases**

**1 NOVATION OF ACCESS AGREEMENTS DURING THE RAIL SERVICES TERM**

1.1 The ODP shall, to the extent so requested by the Authority (other than on termination of the ODP Grant Agreement or Partial Termination of the ODP Grant Agreement in respect of those ODP Services no longer to be provided by the ODP following such Partial Termination of the ODP Grant Agreement, for which the provisions of paragraph 1 of Schedule 15.4 (Provisions Applying on and after Termination) apply):

- (a) following receipt of a notice purporting to terminate any Access Agreement to which it is a party, in relation to such Access Agreement; or
- (b) following receipt of a notice purporting to terminate a Station Lease or Depot Lease in whole or in part or on becoming aware of any proceedings or any other steps having or purporting to have similar effect, in relation to any Access Agreement under which it is a Facility Owner by virtue of such Station Lease or Depot Lease,

novate its interest under any such relevant Access Agreement (and any related Collateral Agreement) to the Authority or as it may direct.

1.2 Such obligation to novate shall be subject to the agreement of any counterparty to such Access Agreement or Collateral Agreement and, to the extent applicable the ORR.

1.3 Such novation shall be on such terms as the Authority may reasonably require, including:

- (a) that the ODP shall not be released from any accrued but unperformed obligation, the consequences of any breach of the relevant agreement which is the subject of arbitration or litigation between the Parties thereto or any liability in respect of any act or omission under or in relation to the relevant agreement prior to, or as at the date of, any such novation (except to the extent that the Authority or the Authority's nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant novation); and
- (b) that neither the Authority nor the Authority's nominee shall be obliged, in connection with the novation, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 1.3(a),

but shall not, unless the ODP otherwise agrees, be on terms which release any counterparty to the relevant agreement from any liability to the ODP arising prior to the date of such novation.

1.4 The ODP shall, on the occurrence of any of the circumstances specified in paragraph 1.1 in relation to any other Train Operator who is a party to an Access Agreement to which

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the ODP is also party, agree to the novation of the relevant Train Operator's interest under the relevant Access Agreement to the Authority or as the Authority may direct, subject, to the extent applicable, to the consent of the ORR. The provisions of paragraph 1.3 shall apply to any such novation.

- 1.5 The ODP shall notify the Authority on becoming aware of any circumstances which might lead to the Authority being able to require the ODP to novate its interest or agree to the novation of another Train Operator's interest under this paragraph 1.

## **2 ROLLING STOCK RELATED CONTRACTS AND INSURANCE ARRANGEMENTS**

2.1 The ODP shall not:

- (a) execute any Rolling Stock Related Contract;
- (b) exercise any option or other discretion in any Rolling Stock Related Contract that would result in any increased payment or delay in delivery being made by or to the ODP or the relevant counterparty or which may result in it being reasonably likely to be unable to comply with the terms of the ODP Grant Agreement; or

- (c) amend or waive the terms of any Rolling Stock Related Contract,

without, in each case, the prior written consent of the Authority (not to be unreasonably withheld).

2.2 The ODP shall supply to the Authority a copy of all draft Rolling Stock Related Contracts at key stages of their drafting, and, immediately following execution, all executed Rolling Stock Related Contracts (including any agreement amending any Rolling Stock Related Contract) together with:

- (a) such other information or documentation relating to such Rolling Stock Related Contract and/or the relevant rolling stock as the Authority may request (which may include offer letters (original and final));
- (b) the terms proposed by any person providing finance in relation to the relevant rolling stock (including cash flows);
- (c) any agreement (in whatever form) to which the ODP (or an Affiliate of the ODP) is a party and which relates to the relevant rolling stock;
- (d) information relating to capital allowances, details of any changes in the terms (including rentals) on which the relevant rolling stock is proposed to be leased compared to the terms on which such rolling stock was previously leased; and
- (e) a detailed justification of the ODP's proposed maintenance strategy for the relevant rolling stock and/or the ODP's analysis of the whole life costs of the relevant rolling stock.

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- 2.3 Where the information or documentation required in paragraphs 2.2(a), 2.2(b) and 2.2(d) is not held by the ODP, the ODP shall use reasonable endeavours to obtain the relevant information or documentation from a third party (including any person from whom the ODP leases rolling stock).
- 2.4 The ODP shall not, without the prior written consent of the Authority:
- (a) amend the terms of any insurance arrangements which relate to rolling stock vehicles used by it in the provision of the Passenger Services to which it is a party on the Start Date; or
  - (b) enter into any new insurance arrangements after the Start Date which relate to rolling stock vehicles used or to be used by it in the provision of the Passenger Services (“**New Insurance Arrangements**”).
- 2.5 The ODP shall, in addition, if it enters into any New Insurance Arrangements, use all reasonable endeavours to ensure that the relevant insurers waive their rights of subrogation against any Train Operator which may have equivalent insurance arrangements providing for a similar waiver of rights of subrogation against the ODP, whether on a reciprocal basis or otherwise.
- 2.6 [REDACTED]
- 2.7 The Authority shall provide an undertaking to the relevant ROSCO in respect of the new CVL Rolling Stock in accordance with Section 54 of the Act to enable the ODP to obtain best value for money from third party financiers. The undertaking referred to in this paragraph 2.7 shall include a commitment to the relevant ROSCO that the new CVL Rolling Stock will be leased until the date which is 25 years after the earlier of:
- (a) the date on which the last of such new CVL Rolling Stock unit enters passenger service; and
  - (b) 31 December 2023.
- 2.8 If the Authority does not provide the undertaking referred to in paragraph 2.7 on or before the date on which the ODP and/or OpCo enters into the Rolling Stock Lease in respect of such new CVL Rolling Stock, there shall be a Change and such Change shall be deemed to be a Qualifying Change.

### **3 CASCADED ROLLING STOCK AND DELAYED CASCADE MITIGATION PLAN**

- 3.1 For the purpose of this paragraph 3:
- (a) “**Cascaded Rolling Stock**” means rolling stock proposed to be used by the ODP in the provision of the Passenger Services the availability of which is, in the opinion of the

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Authority, directly or indirectly dependent upon the successful introduction into service of any Relevant Rolling Stock by any other Train Operator;

- (b) “**Prior Train Operator**” means the Train Operator which used or is using the Cascaded Rolling Stock immediately prior to its proposed use by the ODP;
- (c) “**Relevant Delay**” means any delay to the successful introduction into service of any Relevant Rolling Stock; and
- (d) “**Relevant Rolling Stock**” means rolling stock to be acquired by another Train Operator which, when acquired, will initiate the “**cascade**” of rolling stock that directly or indirectly makes the Cascaded Rolling Stock available for use by the ODP.

3.2 Without limiting paragraph 2.1 (*Rolling Stock Related Contracts and Insurance Arrangements*), where the rolling stock to be leased by the ODP under any Rolling Stock Lease is Cascaded Rolling Stock the Authority may:

- (a) as a condition of giving consent to the ODP executing such Rolling Stock Lease, require that such Rolling Stock Lease contains a provision whereby, in the event of a Relevant Delay, the Authority may require that such Cascaded Rolling Stock can continue to be used by the Prior Train Operator during such period as the Authority shall specify. Without limitation this may include the ODP subleasing the Cascaded Rolling Stock back to the Prior Train Operator and/or a delay to the date on which the Cascaded Rolling Stock is required to be delivered to the ODP under such Rolling Stock Lease; and
- (b) where the Authority requires such a provision to be included in the relevant Rolling Stock Lease, if a Relevant Delay occurs, require the ODP to make the Cascaded Rolling Stock available for use by the Prior Train Operator during such period as the Authority may require.

3.3 Where the Authority exercises rights pursuant to paragraph 3.2(b) to make Cascaded Rolling Stock available for use by the Prior Train Operator during a specified period there shall be a Change and where this is a Qualifying Change the modifications to the methodology for calculating adjustment to the Rail Services Payment provided for in paragraph 3.2(a) shall not apply.

3.4 Where there is a Change pursuant to paragraphs 3.3 and any such Change is a Qualifying Change there shall be a further Change (which shall be a Qualifying Change irrespective of whether such Change meets the requirements of the definition of Qualifying Change) on the date that the last Cascaded Rolling Stock ceases to be retained by the Prior Train Operator.

3.5 NOT USED.



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- 3.6 Where the Authority exercises its rights pursuant to paragraph 3.2(b) to require the ODP to make the Cascaded Rolling Stock available for use by the Prior Train Operator during a specified period, the ODP shall not be liable for any failure to comply with its obligations under this Agreement to the extent that:
- (a) such failure to comply arises directly as a result of the ODP being unable to use the Cascaded Rolling Stock; and
  - (b) the ODP uses all reasonable endeavours to comply with the relevant obligations notwithstanding the unavailability of the Cascaded Rolling Stock.
- 3.7 The ODP shall notify the Authority as soon as reasonably practicable if it becomes aware of any material risk that a Relevant Delay will occur. If a Relevant Delay does occur the ODP shall use all reasonable endeavours to mitigate the impact on the delivery of the ODP Services of the unavailability of the Cascaded Rolling Stock at the expected time including by identifying and proposing value for money alternative sources of replacement rolling stock.
- 3.8 If a Relevant Delay has occurred or the Authority believes that there is a material risk that a Relevant Delay will occur the Authority may serve a notice on the ODP requiring it to produce a plan to a reasonable specification provided with the notice to remedy or mitigate the impact of the delayed availability of the Cascaded Rolling Stock ("**Delayed Cascade Mitigation Plan**"). Such specification may include measures to be implemented by the ODP to mitigate the direct or indirect impact of the Relevant Delay on the Prior Train Operator or any other affected Train Operator. The Delayed Cascade Mitigation Plan shall provide a comprehensive analysis backed by relevant data and assumptions of:
- (a) all cost and revenue and other financial implications of options contained within it including the potential implications for Rail Services Payment;
  - (b) the implications (if any) for the Benchmarks; and
  - (c) the likely impact of options within it for existing and future passenger journeys and journey opportunities.
- 3.9 The ODP shall meet with the Authority to discuss the Delayed Cascade Mitigation Plan and provide such further information or analysis and further iterations of the Delayed Cascade Mitigation Plan as the Authority shall reasonably require.
- 3.10 Where any rolling stock vehicles cease to be part of the Train Fleet but are acquired by another Train Operator for use in delivering passenger services the ODP shall:
- (a) ensure that:

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- (i) such rolling stock is in an acceptable redelivery condition consistent with the hand back terms agreed with the lessor;
  - (ii) a complete set of maintenance and mileage records are handed over in a suitable format; and
  - (iii) the Train Operator is given reasonable access to the relevant rolling stock prior to handover to assist with an effective hand over in relation to both operation and maintenance; and
- (b) use reasonable endeavours to ensure that:
- (i) the Train Operator is offered 'knowledge transfer' sessions to enable recipient engineers and operational personnel to learn from informed peers;
  - (ii) the Train Operator is offered on-train development programmes to train their maintenance staff to an appropriate level of competence; and
  - (iii) it offers medium-term support and advice in relation to such rolling stock including technical and operational support.

#### **4 ASSIGNMENT OF PROPERTY LEASES DURING THE RAIL SERVICES TERM**

- 4.1 The ODP shall (other than on termination of the ODP Grant Agreement or Partial Termination of the ODP Grant Agreement in respect of those ODP Services no longer to be provided by the ODP following such Partial Termination of the ODP Grant Agreement, for which the provisions of paragraph 4.5 of Schedule 15.4 (Provisions Applying on and after Termination) shall apply) following receipt of a notice purporting to terminate a Property Lease or on becoming aware of any proceedings or any other steps having or purporting to have similar effect, if requested by the Authority, assign its interest under all or any Property Leases to the Authority or as the Authority may direct, subject where applicable to the agreement of any other party to such Property Lease or the ORR.
- 4.2 Such assignment shall be on such terms as the Authority may reasonably require, including:
- (a) that the ODP shall not be released from any accrued but unperformed obligation, the consequences of any antecedent breach of a covenant or obligation in the Property Leases or any liability in respect of any act or omission under or in relation to the Property Lease prior to, or as at the date of, any such assignment (except to the extent that the Authority or the Authority's nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such antecedent breach in connection with the relevant assignment); and

- 
- (b) that neither the Authority nor the Authority's nominee shall be obliged, in connection with such assignment, to agree to assume responsibility for any unperformed obligation, liability or consequences of a contravention referred to in paragraph 4.2(a), and the ODP shall indemnify the Authority or the Authority's nominee, as the case may be, on an after-tax basis against any costs, losses, liabilities or expenses suffered or incurred in relation thereto.

4.3 The ODP shall, on the occurrence of any of the circumstances specified in paragraph 4.1 in relation to any other Train Operator who is a party to a Property Lease to which the ODP is also party, agree to the assignment of the relevant Property Lease to the Authority or as the Authority may direct, subject to the interest of such other Train Operator and, where applicable, to the consent of Network Rail. The provisions of paragraph 4.2 shall apply to any such assignment.

4.4 The ODP shall notify the Authority on becoming aware of any circumstances which might lead to the Authority being able to require the ODP to assign its interest or agree to the assignment of another Train Operator's interest under this paragraph 4.

## **5 STATION AND DEPOT LEASES**

5.1 The ODP shall at all times enforce its rights under each Station Lease and Depot Lease.

5.2 The ODP shall not:

- (a) terminate or agree to terminate in whole or in part, or take or omit to take any other action which might result in the termination of any Station Lease or Depot Lease;
- (b) assign all or part of its interest under any Station Lease or Depot Lease; or
- (c) sublet the whole or substantially the whole of the property comprised in any Station Lease or Depot Lease,

except to the extent that the Authority may otherwise agree from time to time (such agreement not to be unreasonably withheld if the ODP has made arrangements, reasonably satisfactory to the Authority, for the continued operation of such Station or Depot (as the case may be) for the remainder of the Rail Services Term or if consent to the Closure of the relevant Station or Depot has been granted).

## **6 STATION SUBLEASES**

6.1 Unless the Authority agrees otherwise, the ODP shall not sublet to any of its Affiliates any part of the property comprised in any Property Lease except on terms that any such subletting:

- 
- (a) (other than any subletting to any Affiliate which is a Train Operator, OpCo or InfraCo) is terminable without compensation immediately upon the termination of the ODP Grant Agreement; and
  - (b) is excluded from the provisions of Part II of the Landlord and Tenant Act 1954.

6.2 If so requested by the Authority, the ODP shall:

- (a) extend each Station Sublease on the same terms for such period as the Authority may request (including a period equivalent to the ODP Grant Agreement Term of the Train Operator who is the lessee under such Station Sublease, subject to such extension not being beyond a date which is 2 days before the last day of the term of the relevant Station Lease); and
- (b) if such Station Sublease terminates (which for the purposes of this paragraph 6.2(b) shall include the termination, at or around the time of termination of the Previous Franchise Agreement, of a station sublease in respect of which the ODP was the lessor), grant a new Station Sublease on the same terms to such Train Operator and for such period as the Authority may request (including a period equivalent to the franchise term of the Train Operator who is the lessee under such Station Sublease, subject to such re-grant not being beyond a date which is 2 days before the last day of the term of the relevant Station Lease),

subject, where required, to the consent of Network Rail (and, if required, the relevant sub-lessee).

6.3 The ODP shall notify the Authority immediately on it becoming aware of any event which might give the ODP a right to forfeit or terminate any Station Sublease. The ODP shall notify the Authority if it wishes to forfeit or terminate any such Station Sublease but shall not (without the Authority's prior written consent) effect such forfeiture or termination until the date which occurs three (3) months after the date of such notice.

## **7 CVL ASSET LEASE**

Once granted, the ODP shall observe and perform its covenants and obligations under the CVL Asset Lease.

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### **Schedule 2.3 - Other Train Operators**

#### **1 OTHER TRAIN OPERATORS**

- 1.1 If the franchise agreement of another Train Operator terminates or a railway administration order is made in respect of another Train Operator, the ODP shall co-operate with any reasonable request of the Authority to ensure:
- (a) that the services provided or operated by such other Train Operator may continue to be provided or operated by any successor Train Operator or the railway administrator; and
  - (b) that the benefit of any arrangements between the ODP and such other Train Operator which were designated as a key contract under such franchise agreement immediately prior to its termination or to a railway administration order being made will continue to be provided to any successor Train Operator or to the railway administrator.
- 1.2 The benefit of any arrangements of the type referred to in paragraph 1.1(b) shall be provided on substantially the same terms as previously obtained by the relevant Train Operator, subject to clause 14.8 (Arm's length dealings) and paragraph 1.3 of this Schedule 2.3, provided that the Authority may exclude or modify any terms agreed or amended by such Train Operator in the twelve (12) months preceding the date on which such Train Operator's franchise agreement was terminated or the date on which the relevant railway administration order was made which were, in the Authority's reasonable opinion, to the material detriment of such Train Operator's business. The benefit of such arrangements shall be provided for such period as the Authority may reasonably require to allow the relevant Train Operator or railway administrator to renegotiate such arrangements or make alternative arrangements.
- 1.3 The ODP shall notify the Authority of its intention to terminate any contract with any other Train Operator which is designated as a Key Contract under that Train Operator's franchise agreement and shall give that Train Operator sufficient notice to enable it to make suitable alternative arrangements for its passengers without causing disruption to the railway passenger services provided by such Train Operator.
- 1.4 If the franchise agreement of another Train Operator terminates in contemplation of the entry into or entry into effect of a new franchise agreement with the same Train Operator in respect of all or a material part of the relevant railway passenger services, the ODP shall waive any event of default or other right it may have to terminate any agreement with such franchisee arising out of such termination, provided that the entry into or entry into effect of such new franchise agreement takes place.

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**Schedule 2.4 - (Not used)**

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## Schedule 2.5 - Transport, Travel and Other Schemes

### 1 LOCAL AUTHORITY CONCESSIONARY TRAVEL SCHEMES

1.1 The ODP shall:

- (a) subject to paragraph 1.2, participate in and comply with its obligations under:
  - (i) the concessionary travel schemes listed in Appendix 1 (List of Transport, Travel and Other Schemes) to this Schedule 2.5; and
  - (ii) any other concessionary travel scheme which the ODP is required to participate in during the Rail Services Term pursuant to paragraph 1.1(b); and
- (b) subject to paragraph 1.3, if so requested by the Authority, participate in and comply with its prospective obligations under:
  - (i) any concessionary travel scheme listed in the ODP Grant Agreement the terms of which have been amended since the date of the ODP Grant Agreement; and
  - (ii) such other concessionary travel schemes as any relevant Local Authority may require or request it to participate in.

1.2 Subject to the terms of the relevant concessionary travel scheme, the ODP shall be entitled to cease to participate in any scheme referred to in paragraph 1.1(a) where, in the reasonable opinion of the Authority:

- (a) the ODP's continuing participation in such scheme; and/or
  - (b) the obligations assumed by the relevant Local Authority in connection therewith,
- each pursuant to Part II of the Travel Concession Schemes Regulations 1986 (SI 1986/77) (the "**Regulations**"), would fail to leave the ODP financially no worse off (following consideration of the application of the reimbursement test in paragraph 5(2) of the Regulations) than it was immediately following the Start Date.

1.3 The Authority shall not require the ODP to participate in any scheme referred to in paragraph 1.1(b) where the Authority is reasonably satisfied that:

- (a) the reimbursement arrangements with respect to the ODP's participation in any such scheme; and/or
- (b) the obligations to be assumed by such Local Authority in connection therewith,

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each pursuant to the Regulations would fail to leave the ODP financially no worse off (following consideration of the application of the reimbursement test in paragraph 5(2) of the Regulations) as a result of such participation.

- 1.4 The Authority shall consult the ODP before making any request of the ODP to participate in any amended or new concessionary travel scheme pursuant to paragraph 1.1(b) and shall allow the ODP a reasonable opportunity to make representations to the Authority with respect to any such participation.
- 1.5 The ODP shall supply to the Authority, in respect of any concessionary travel schemes referred to in paragraph 1.1(b), such information within such period as the Authority may reasonably require for the purposes of determining whether or not the ODP is or will be financially no worse off (following consideration of the application of the reimbursement test in paragraph 5(2) of the Regulations) as a consequence of its participation in any such scheme, and/or the obligations assumed by such Local Authority in connection therewith.
- 1.6 If the Authority and the ODP are unable to agree whether the ODP will be financially no worse off (following consideration of the application of the reimbursement test in paragraph 5(2) of the Regulations), the Authority and the ODP may resolve such dispute in accordance with the Dispute Resolution Rules.

## **2 MULTI-MODAL FARES SCHEMES**

2.1 The ODP shall:

- (a) subject to paragraph 2.2, participate in and comply with its obligations under:
- (i) the multi-modal fares schemes set out in paragraph 2 of Appendix 1 (List of Transport, Travel and Other Schemes) to this Schedule 2.5; and
  - (ii) any other multi-modal fares scheme which the ODP is required to participate in during the Rail Services Term pursuant to paragraph 2.1(b);

including by co-operating in the implementation of any smart card technology pursuant to any such multi modal fares schemes; and

- (b) subject to paragraph 2.3, if so requested by the Authority, participate in and comply with its prospective obligations under:
- (i) any multi-modal fares scheme set out in paragraph 2 of Appendix 1 (List of Transport, Travel and Other Schemes) to this Schedule 2.5, the terms of which have been amended since the date of signature of this Agreement; and



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- (ii) such other multi-modal fares schemes as any relevant Local Authority may require or request it to participate in.
- 2.2 Subject to the terms of the relevant multi-modal fares scheme, the ODP shall be entitled to cease to participate in any scheme referred to in paragraph 2.1(a) where, in the reasonable opinion of the Authority:
- (a) the ODP's continuing participation in such scheme; and/or
- (b) the obligations assumed by the relevant Local Authority in connection therewith, would fail, by way of distribution of income or otherwise, to render the ODP financially no worse off.
- 2.3 The Authority shall not require the ODP to participate in any scheme referred to in paragraph 2.1(b) where the Authority is reasonably satisfied that the ODP's participation in any such scheme and/or the obligations to be assumed by the relevant Local Authority in connection therewith, would fail, by way of distribution of income or otherwise, to render the ODP financially no worse off.
- 2.4 In determining whether the ODP shall, pursuant to paragraph 2.2, continue to participate or, pursuant to paragraph 2.3, participate in any multi-modal fares scheme, the Authority shall construe the term **"financially no worse off"** to mean:
- (a) in respect of any multi-modal fares scheme set out in paragraph 2 of Appendix 1 (List of Transport, Travel and Other Schemes) to this Schedule 2.5, that the ODP incurs no greater financial loss than the financial loss (if any) incurred by the ODP at the Start Date under that scheme, as adjusted by reference to any change in the level of prices according to the Retail Prices Index since such date;
- (b) in respect of any multi-modal fares scheme which replaces and (in the Authority's reasonable opinion) is reasonably similar to any such scheme as may be set out in paragraph 2 of Appendix 1 (List of Transport, Travel and Other Schemes) to this Schedule 2.5, that the ODP incurs no greater financial loss than the financial loss (if any) incurred by the ODP at the Start Date under the replaced scheme, as adjusted by reference to any change in the level of prices according to the Retail Prices Index since such date; and
- (c) in respect of any multi-modal fares scheme which does not replace or which does replace but which is not (in the Authority's reasonable opinion) reasonably similar to any such scheme or schemes as may be set out in paragraph 2 of Appendix 1 (List of Transport, Travel and Other Schemes) to this Schedule 2.5, such reimbursement arrangements as agreed by the relevant parties to such multi-modal fares schemes (or on failure to agree, as determined by the Authority).

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- 2.5 The Authority shall consult the ODP before making any request of the ODP to participate in any amended or new multi-modal fares scheme pursuant to paragraph 2.1(b) and shall allow the ODP a reasonable opportunity to make representations to it with respect to any such participation.
- 2.6 The ODP shall supply to the Authority, in respect of any multi-modal fares schemes referred to in paragraph 2.1 such information within such period as the Authority may reasonably require for the purposes of determining whether or not the ODP is or will be financially no worse off as a consequence of its participation in any such scheme and/or the obligations to be assumed by the relevant Local Authority in connection therewith.
- 2.7 If the Authority and the ODP are unable to agree whether the ODP will be financially no worse off, the Authority and the ODP may resolve such dispute in accordance with the Dispute Resolution Rules.
- 2.8 The ODP shall monitor the number, start points and destinations, date and times of travel, Fares and other relevant information of journeys made through concessionary travel schemes and multi-modal fares schemes and shall provide such information to the Authority each Reporting Period. The ODP shall conduct an annual review of the concessionary travel schemes and multi-modal fares schemes and shall provide an annual report each Reporting Year to the Authority to include patronage, future marketing plans, risks, issues and any proposed changes to the concessionary travel schemes and multi-modal fares schemes for the following ODP Year. In each annual report the ODP shall consider extension to the scope and coverage of the concessionary travel schemes to utilise available unused capacity or to otherwise offer value to the Authority.

### **3 DISCOUNT FARE SCHEMES**

- 3.1 If the Secretary of State and/or the Authority:
- (a) effects, or proposes to effect, an amendment to a Discount Fare Scheme;
  - (b) introduces any new Discount Fare Scheme; or
  - (c) ceases to approve a Discount Fare Scheme,
- for the purposes of section 28 of the Act, such amendment, intended amendment, introduction or cessation of approval shall be a Change.
- 3.2 The Authority shall use reasonable endeavours to procure that the Secretary of State shall provide a reasonable opportunity to the ODP to make representations to the Authority or the Secretary of State (as applicable) before amending, introducing or ceasing to approve a Discount Fare Scheme pursuant to paragraph 3.1.

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3.3 The ODP shall supply to the Secretary of State and/or the Authority, in respect of any Discount Fare Scheme referred to in paragraph 3.1, such information within such period as the Secretary of State and/or the Authority may reasonably require for the purposes of determining the financial effect of any such amendment, intended amendment, introduction or cessation of approval.

#### **4 INTER-OPERATOR SCHEMES**

4.1 The ODP shall participate in and comply with its obligations under the terms of each of the Inter-Operator Schemes.

4.2 Without limiting paragraphs 4.1 and 4.3, the ODP agrees to be bound by Parts IV and V of Chapter 4 of the Ticketing and Settlement Agreement and shall not amend, or agree or propose to amend, the Ticketing and Settlement Agreement without the prior written consent of the Secretary of State.

4.3 The ODP shall not amend, or agree or propose to amend, any Inter-Operator Scheme other than in accordance with its terms.

4.4 The ODP shall:

- (a) provide reasonable notice to the Authority of any proposal to amend any Inter-Operator Scheme which it intends to make or of which it receives notification and which, in its opinion, is reasonably likely to materially affect the provision of the ODP Services; and
- (b) have regard to the Authority's views in respect of any such proposal.

4.5 If an amendment is effected or proposed to be effected to an Inter-Operator Scheme which requires the consent or approval of the Secretary of State and/or the Authority in accordance with the terms thereof, such amendment shall be treated as a Change to the extent and only to the extent that the ODP makes a saving as a consequence of such amendment or proposed amendment.

**Appendix 1 to Schedule 2.5**

List of Transport, Travel and Other Schemes

**1 LOCAL AUTHORITY CONCESSIONARY TRAVEL SCHEMES**

1.1 Each of the following schemes:

- (a) Welsh Concessionary Travel – Cerdyn Cymru (Local authority issued pass for buses which can be used with trains with Welsh Government’s Concessionary Rail schemes) and/or any successor scheme for the Cardiff and Valley Lines, Conwy Valley Line, Wrexham to Hawarden Bridge, Cambrian Coast, the Heart of Wales Line and any other included routes as set out in Table 1 (Concessionary Travel Schemes) to this Appendix 1; and
- (b) any other concessionary travel scheme which the ODP is required to participate in during the Rail Services Term pursuant to paragraph 1.1(b) to this Schedule 2.5.

1.2 In the event of any amendment to a Timetabled Service set out below in Column 2 (*Where can it be used*) of Table 1 (*Concessionary Travel Schemes*) to this Appendix 1, Column 3 (*Validity and Restrictions*) and Column 4 (*Other Information*) of Table 1 (*Concessionary Travel Schemes*) to this Appendix 1 shall apply equally to the amended Timetabled Service.

**Table 1 – Concessionary Travel Schemes**

| <b>Column 1</b>             | <b>Column 2</b>              | <b>Column 3</b>  | <b>Column 4</b>  |
|-----------------------------|------------------------------|--|--|
| <b>Concessionary Scheme</b> | <b>Where can it be used</b>  | <b>Validity and Restrictions</b>   | <b>Other Information</b>   |
| Conwy Valley Line           | Blaenau Ffestiniog-Llandudno | Free travel to any holder of a pass issued by any Welsh Local Authority                          | Journey Llandudno-Llandudno Junction can also use the services on the mainline (to Manchester Piccadilly)                        |
| Cambrian Coast Line         | Pwllheli-Machynlleth         | Free travel between 01/10-31/03 only. For holders of a pass issued by any Welsh Local Authority. | Not valid on the following-<br>07.46 Barmouth to Tywyn<br>07.55 Penrhyndeudraeth to Harlech<br>14.20 Harlech to Penrhyndeudraeth |

|   |  |   |  |
|---|--|---|--|
|   |  |   | 15.25 Tywyn to Barmouth  |
| Heart of Wales Line                       | Shrewsbury-Swansea (via Heart of Wales Line) | Free travel between 01/10-31/03 only. For holders of a pass issued by any Welsh Local Authority | Passengers cannot use for stations between Shrewsbury-Bucknell or Gowerton-Swansea only, they must tag this onto either end of a journey within Knighton- Llanelli |
| Borderlands Line                          | Wrexham-Hawarden Bridge                      | Free Travel for holders of a pass issued by any Welsh Local Authority                           | Passengers may not use the service due 07.53 Wrexham-Hawarden Bridge for free travel.  |
| WAGC (Cardiff and Local)                  | Cardiff Valleys and Local routes             | 1/3 off any day ticket issued by any Welsh Local Authority                                      | After 09.30 Mon-Fri, anytime weekends and Bank Holidays. 1 discounted ticket per pass.   |
| West Midlands Combined Authority (Centro) | Birmingham-Wolverhampton                     | Free Travel for holders of passes issued by WMCA/Centro   | Free travel only permitted after 09.30 Mon-Fri, anytime weekends and Bank Holidays   |
| Merseytravel                              | Newton Le Willows-Earlestown                 | Free travel after 09.30 to holders of passes issued by Merseytravel.                            | Free travel is only permitted between these stations. Passes valid into Chester from Merseyside but not beyond.  |

## 2 MULTI-MODAL FARES SCHEMES

2.1 Each of the following schemes:

- (a) SailRail (train with ship - national offer);
- (b) PlusBus (train with bus - national offer);
- (c) North Wales Rover (bus and trains in North Wales);

- 
- (d) Explore Wales Pass which includes the two cheaper derivatives of North Wales and South Wales passes (bus and trains);
  - (e) Valley Lines Day Explorer (bus and trains)
  - (f) Ffestiniog Round Robin (train with private railway);
  - (g) Explore Gower (bus and trains);
  - (h) Rail Link Bus Ystrad Mynach to Blackwood (dedicated bus funded by Caerphilly County Borough Council into/out of trains at Ystrad Mynach);
  - (i) Rail link bus from Rhose Cardiff International Airport station to Cardiff International Airport;
  - (j) other airports' rail link buses including Heathrow Railair link (national offer);
  - (k) the schemes detailed in Appendix 2 to this Schedule 2.5; and
  - (l) any other multi-modal fares travel scheme which the ODP is required to participate in during the Rail Services Term pursuant to paragraph 2.1(b) to this Schedule 2.5.

### **3 DISCOUNT FARE SCHEMES**

#### 3.1 Each of the following schemes:

- (a) ATOC Disabled Persons Railcard Scheme dated 23 July 1995 between the participants therein;
- (b) ATOC Young Persons Railcard Scheme dated 23 July 1995 between the participants therein;
- (c) ATOC Senior Railcard Scheme dated 23 July 1995 between the participants therein;
- (d) Two Together Railcard;
- (e) Family and Friends Railcard;
- (f) Network Railcard;
- (g) HM Forces Railcard;
- (h) Heart of Wales Railcard which is valid for journeys between Swansea/Llanelli to Shrewsbury via Llandrindod Wells. The railcard provides a thirty-four percent (34%) discount on local rail travel and is available to residents, aged sixteen (16) or over, living in selected postcodes along the route of the Heart of Wales line. Travel must be via Heart of Wales Line;

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- (i) ATW's Seniors' Railcard for people aged sixty (60) or over, which gives a fifty percent (50%) discount on 'Anytime' or 'Off Peak Day Return' fares on the Cardiff and Valleys network valid to arrive into Cardiff after 09.29 excluding weekends and Bank Holidays. Valid for travel on Cardiff Valleys and Local routes. Not valid between Cardiff, Newport and Cheltenham;
  - (j) Student Railcard Valleys and Cardiff Local Routes, which gives 26% off all day tickets and ten percent (10%) of all 'Season' tickets on ATW's services on certain Cardiff and Valleys network. Valid for travel on Valleys and selected local routes only. Also valid for discounts on season tickets;
  - (k) Cambrian Railcard, which offers at least one third off most individual 'Standard Class' rail fares on the Cambrian Lines. Valid for travel between Pwllheli and Shrewsbury only;
  - (l) Pembrokeshire Railcard, which is available on all journeys within Pembrokeshire and extends to Swansea via Carmarthen. The railcard provides a thirty-four percent (34%) discount on local rail travel and is available to residents, aged sixteen (16) or over, living in selected postcodes in Pembrokeshire Valid for travel between Fishguard Harbour and Swansea; or
  - (m) any other discount fare scheme approved from time to time by the Authority or by the Secretary of State for the purposes of section 28 of the Act,

in each case until such time as it may cease to be approved by the Authority or by the Secretary of State for the purposes of section 28 of the Act.

#### **4 INTER-OPERATOR SCHEMES**

4.1 Each of the following schemes which relate to arrangements between the ODP and other participants in the railway industry:

- (a) ATOC Staff Travel Scheme dated 23 July 1995 between the participants named therein;
- (b) Ticketing and Settlement Agreement;
- (c) ATOC LRT Scheme dated 23 July 1995 between the participants named therein;
- (d) Travelcard Agreement dated 15 October 1995 between London Regional Transport and the parties named therein;
- (e) Through Ticketing (Non-Travelcard) Agreement dated 15 October 1995 (as amended and restated) between London Regional Transport and the parties named therein;
- (f) National Rail Enquiry Scheme dated 11 June 1996 between the participants named therein;

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- (g) InterRail Pass;
  - (h) Britrail Pass;
  - (i) any other scheme, agreement and/or contract of a similar or equivalent nature as may from time to time during the Rail Services Term amend, replace or substitute, in whole or in part, any of such schemes, agreements and/or contracts; and
  - (j) any Discount Fare Scheme.



**Appendix 2 to Schedule 2.5**

|      |                     |   |  |
|------|---------------------|---|--|
| H043 | CAERPHILLY BUS      | Stagecoach                                  | Stagecoach in South Wales C9, C16, C17, 50, 120, A,B,C,D,E,F   |
| H717 | CARDIFF AIR BUS     | First Bus Cymru                             | Service operates every 20 minutes to/from the airport starting at 04.10 until 23.40.   |
| H759 | CAERNARFON BUS      | Arriva Bus Wales                            | Journey Time: Approximately 28 minutes.  |
| J684 | LPOOL AIRPRT BUS    | Merseytravel                                | Merseytravel: 0151 236 7676  |
| J729 | TREDEGAR BUS<br>CDF | Stagecoach                                  | Route X4   |
| K275 | CARDIFF CAP CRD     | Cardiff Bus                                 | From Valleys Lines Zones 1 to 6<br><br>Days of operation: Mondays to Saturdays-regular service between 0800 and 1800, with additional services outside these hours. Limited service operates on Sundays. |
| K342 | OSWESTRY BUS        | Arriva Midlands                             |  |
| K500 | BUCKLEY CTR BUS     | Cymru Connect (Arriva Cymru)                | Service Nos – 3, 4, X44, X55   |
| K501 | DENBIGH BUS         | Cymru Connect (Arriva Cymru)                | Service Nos – X52  |
| K502 | RUTHIN BUS          | Cymru Connect (operated by GHA)             | Service No's – x50, x52  |
| K504 | MOLD BUS            | Cymru Connect (operated by P&O Lloyd)       | Service No's – X18   |
| K507 | LAMPETER BUS<br>AYW | Cymru Connect (operated by Arriva Cymru)    |  |
| K530 | PONTARDAWE BUS      | Cymru Connect (operated by First Bus Cymru) | Service No's – 120, 125  |

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|      |                 |   |                       |
|------|-----------------|---|-----------------------|
| K531 | BRECON LLO BUS  | Cymru Connect (operated by Stagecoach in South wales)   | Service No's – 704    |
| K532 | BRECON NWT BUS  | Cymru Connect (operated by Stagecoach in South wales)   | Service No's – 704    |
| K534 | CARDIGAN<br>BUS | AYW Cymru Connect operated by Richards Brothers   | Service No's: X50/550 |
| K602 | RUTHIN WRX BUS  | Cymru Connect (operated by GHA)   |                       |
| K604 | RUTHIN WXC BUS  | Cymru Connect (operated by GHA)   |                       |
| K625 | DENBIGH WRX BUS | Cymru Connect (operated by GHA).  |                       |
| K626 | DENBIGH WXC BUS | Cymru Connect (operated by GHA).  |                       |
| K726 | CHESTER ZOO&BUS | <a href="#"><u>(Arriva Buses) from Chester Bus Exchange and the X8 (Stagecoach Buses) from Chester Station.</u></a> |                       |

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**Schedule 3A**

**Infrastructure Manager Services**

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**Schedule 3B**

Infrastructure Services and ODP Infrastructure Works

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**Schedule 4**

Accessibility and Inclusivity

|             |   |
|-------------|---|
| Schedule 4: | Accessibility and Inclusivity                 |
|             | Appendix 1: Minor Works                       |
|             | Appendix 2: Accessible Transport Arrangements |

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## **Schedule 4**

### Accessibility and Inclusivity

#### **1 RELATIONSHIP WITH OTHER OBLIGATIONS RELATING TO PERSONS WITH DISABILITIES**

1.1 The ODP acknowledges that its obligations in this Schedule 4 are in addition to and do not limit its obligations to comply with:

- (a) the EA and any regulations imposed by it;
- (b) any applicable condition(s) in any of its Licences (including in respect of persons with disabilities); and
- (c) any other requirements of the ODP Grant Agreement.

1.2 This Schedule 4 sets out:

- (a) specific arrangements which apply in respect of physical alterations to stations to facilitate accessibility and use by Disabled Persons; and
- (b) specific obligations of the ODP directed at meeting the needs of persons with disabilities including those persons with learning disabilities.

#### **2 PHYSICAL ALTERATIONS AND ACCESSIBILITY OF STATIONS**

2.1 In respect of physical alteration works at stations to facilitate accessibility and use by Disabled Persons, it is acknowledged by the ODP that:

- (a) there is limited funding available to the Authority to assist the ODP and/or rail passenger operators with the carrying out of those works;
- (b) consequently, there is a need for such works to be carried out over a period of time to reflect the availability of funding, and for such works to be prioritised with regard to where there is the greatest need and/or where physical alterations can have the greatest effect; and
- (c) the Secretary of State's national programme of works of physical alterations at stations and any subsequent Authority programme of works address these issues in a structured way.

2.2 The ODP shall:

- (a) co-operate reasonably with and assist the Authority in the development and furtherance by the Authority of the programmes described in paragraph 2.1(c) by providing to the Authority:

- 
- (i) information concerning the usage of Stations (including, where and to the extent reasonably practicable, usage of Stations by Disabled Persons); and
    - (ii) advice as to the most economical way in which accessibility for Disabled Persons could, in the ODP's reasonable opinion, be improved at Stations;
  - (b) co-operate reasonably with other Train Operators and/or Network Rail to seek to ensure that, where it would be advantageous to do so, having regard to the needs of Disabled Persons, any planned work on the Stations to facilitate accessibility and use by Disabled Persons is, so far as reasonably practicable, co-ordinated with other work to be carried out at the Stations and/or other parts of the network; and
  - (c) use all reasonable endeavours to secure sources of grant funding (other than from itself or an Affiliate) for improving accessibility for Disabled Persons at Stations (in addition to any funding secured through the Authority pursuant to paragraph 2.5); including from Local Authorities, local development agencies and the National Lottery Commission. The ODP shall notify the Authority of:
    - (i) any such additional funding which it secures; and
    - (ii) the terms on which such additional funding has been granted.
- 2.3 In participating in any multi-modal fares scheme, the ODP shall use all reasonable endeavours to secure, through the planning and development of such scheme, improvements in disabled access to the entrances of any relevant station, including within and in the immediate proximity of such station and improvements in disabled access to any transport interchange at that station and in the immediate proximity of such transport interchange.
- 2.4 If, during the Rail Services Term:
- (a) the ODP has complied with its obligations in Section 20(4) and Section 20(9), as varied by paragraph 2(3) of Schedule 2, of the EA (to take such steps as are reasonable to provide a reasonable alternative method of making services at a Station accessible to a Disabled Person to avoid a Disabled Person being placed at a substantial disadvantage by a physical feature at a Station) and its obligations in paragraph 2.7 concerning Minor Works; and
  - (b) notwithstanding such compliance, the ODP reasonably considers it is still required to carry out or procure physical works of alteration at a Station in order to comply with the EA Requirements in respect of that Station, and, in so carrying out or procuring, would incur expenditure which it would not otherwise have an obligation to incur,

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the ODP may seek funding from the Authority in respect of that expenditure.

2.5 If the ODP seeks funding from the Authority under paragraph 2.4, and demonstrates to the Authority's satisfaction that the criteria in paragraph 2.4 have been satisfied, then the Authority may agree to adjust the amount of any Rail Services Payments in respect of some or all of the works and/or expenditure. In considering its response to any such request, the Authority will have regard to the availability of funding and the priorities set out in the national programme described in paragraph 2.1(c), together with any other available sources of funding described in paragraph 2.2(c). If and to the extent the Authority agrees to adjust any Rail Services Payments in accordance with this paragraph 2.5 in any ODP Year:

- (a) the Authority shall make such adjustment to the Rail Services Payments; and
- (b) the ODP shall spend such additional funds:
  - (i) in order to comply with the EA Requirements referred to in paragraph 2.4(b); and
  - (ii) in accordance with any conditions the Authority may notify the ODP of.

2.6 If and to the extent the ODP is required to pay any increased access charges as a result of additional expenditure required to be incurred by another station Facility Owner for the purpose of complying with the EA Requirements in respect of an ODP Access Station, provided that the ODP:

- (a) notifies the Authority within seven (7) days of becoming aware of any proposal for the increase in such charges (or the works to which they relate); and
- (b) complies with the Authority's reasonable directions regarding the exercise of any rights the ODP may have in respect thereof,

the imposition of the increased access charges shall be a Change.

2.7 The ODP shall:

- (a) establish and manage the Minor Works' Budget to fund the carrying out of Minor Works. For the purposes of this paragraph 2.7, Minor Works means small scale physical alterations or additions to improve accessibility of Stations to Disabled Persons, not involving substantial works of construction or reconstruction. The Minor Works:
  - (i) may include, but not be limited to, the Minor Works described in Appendix 1 (Minor Works) to this Schedule 4;



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- (ii) shall not include any works which Network Rail, the ODP or any other person has a separate obligation to carry out, except where:
    - (A) such obligation is an obligation of the ODP under the EA; or
    - (B) the inclusion of such works would lead to the acceleration of the timescale for their completion and the Authority gives its consent pursuant to paragraph 2.7(a)(iii);
  - (iii) shall only include works other than those permitted by paragraphs 2.7(a)(i) and 2.7(a)(ii) with the prior consent of the Authority; and
  - (iv) must comply with the standards provided for in the Code of Practice, unless otherwise agreed with the prior consent of the Authority;
- (b) as soon as reasonably practicable (and in any event within four (4) months) after the Start Date and thereafter before the start of each ODP Year:
- (i) develop a Minor Works' Programme and consult with the Disabled Persons Transport Advisory Committee and Transport Focus in relation thereto;
  - (ii) in conjunction with its activities in paragraph 2.7(b)(i), and, consistent with its obligations under paragraph 2.2(b), liaise with Network Rail and other Train Operators as necessary with regard to the determination and implementation of each Minor Works' Programme; and
  - (iii) following the consultation and liaison described in paragraphs 2.7(b)(i) and 2.7(b)(ii), obtain the Authority's prior approval (such approval not to be unreasonably withheld) of each Minor Works' Programme;
- (c) carry out or procure the carrying out of the Minor Works' Programme in each ODP Year and in doing so, spend at least the amount of the Minor Works' Budget for the relevant ODP Year in such ODP Year (unless otherwise agreed by the Authority);
- (d) report progress to the Authority in determining and carrying out the Minor Works' Programme no less than once every three (3) Reporting Periods; and
- (e) co-operate, as the Authority may reasonably require, with Network Rail or any other person seeking to carry out or procure Minor Works at the Stations or any other stations.

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### 3 DEALING WITH CLAIMS RELATING TO STATIONS

3.1 If the ODP receives notification of a claim under the EA in respect of any alleged non-compliance with the EA Requirements or otherwise in respect of any Station (an "**EA Claim**") then the ODP shall:

- (a) notify the Authority within seven (7) days of receiving notification of the EA Claim. The ODP shall at the same time notify the Authority of any reasonable alternative methods of making services at the Station accessible to Disabled Persons that it has considered and/or put in place pursuant to Section 20(4) and Section 20(9), as varied by paragraph 2(3) of Schedule 2, of the EA;
- (b) if required by the Authority, defend the EA Claim or any aspect of the EA Claim (which may include appealing the judgment). The Authority will, subject to paragraph 3.4, pay the ODP's reasonable costs of:
  - (i) any defence or appeal required by the Authority; and/or
  - (ii) compliance with the Authority's instructions in accordance with paragraph 3.1(c); and
- (c) act in accordance with the reasonable instructions of the Authority to defend the EA Claim (or any aspect of it) as required under paragraph 3.1(b) and shall not (without the prior consent of the Authority) settle or enter into any compromise in relation to the EA Claim (or the relevant aspect of it), including by entering into mediation.

3.2 If, in the reasonable opinion of the ODP, it will be more cost effective to settle the EA Claim rather than act in accordance with the Authority's requirement under paragraph 3.1, it shall produce for the Authority's approval a settlement proposal, setting out the terms of the ODP's proposals to make an offer to the Disabled Person making the EA Claim and its reasons for making such offer (the "**Settlement Proposal**").

3.3 If the Authority does not accept the Settlement Proposal and still requires the ODP to defend the EA Claim (or any aspect of it) then the ODP shall defend the EA Claim in accordance with paragraph 3.1.

3.4 If the ODP is required to defend an EA Claim where it has submitted a Settlement Proposal to the Authority and an award is made in respect of the EA Claim in favour of the person bringing it which is higher than the figure set out in the Settlement Proposal, then, subject to paragraph 3.5, the Authority shall pay to the ODP:

- (a) the difference between such an award and the figure set out in the Settlement Proposal; and

- 
- (b) the further reasonable costs incurred or payable by the ODP in defending the EA Claim, to the extent that such costs have not already been paid by the Authority under paragraph 3.1(b).

3.5 The Authority shall not have any obligation to make the payments described in paragraphs 3.1(b) or 3.4 where it is determined or, if no declaration or determination by the court on this point has been sought or made, the Authority, in its reasonable opinion, considers that the ODP has not taken such steps as it is reasonable, in all the circumstances of the case, for it to take to provide a reasonable alternative method of making services at the Station accessible to Disabled Persons.

#### **4 SPECIFIC ADDITIONAL OBLIGATIONS RELATING TO PERSONS WITH DISABILITIES**

4.1 The ODP shall establish and implement procedures necessary to:

- (a) record the making of reservations for seating accommodation for and/or the provision of assistance to, persons with disabilities which are made through the Passenger Assistance (or whatever service may replace it from time to time for the purposes of ORR's most recent guidance on Disabled People's Protection Policies);
- (b) record whether such seating accommodation and/or assistance is actually provided; and
- (c) provide such records to the Authority on its request.

4.2 Any helpline established by the ODP for the purposes of making reservations for seating accommodation for and/or the provision of assistance to, persons with disabilities shall be provided free of charge.

4.3 The ODP shall provide and maintain a Disabled People's Protection Policy (DPPP) for the duration of the Rail Services Term. The DPPP shall address, amongst other matters, the following:

- (a) availability of travel assistance for persons with disabilities to support origin to destination travel;
- (b) availability of intermodal ticketing for persons with disabilities to support origin to destination travel;
- (c) availability, support and development of existing and new reduced price and free travel schemes for Disabled Persons;

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- (d) sufficient priority seating is available for persons with disabilities or persons that experience restricted mobility or other seating needs;
  - (e) accessibility at Stations in respect of physical access (and any identified enhancements to such accessibility), including step free access as well as measures to ensure accessibility that meets the needs of persons with sensory loss and people with learning difficulties;
  - (f) Station and Train Fleet safety to reduce the risk of trips and falls for persons with disabilities, elderly persons and persons who experience restricted mobility;
  - (g) access to suitable toilet and changing facilities for persons with disabilities;
  - (h) support for and improvement of the passenger assistance programme enabling persons with disabilities to travel using ODP Services without the need to book twenty-four (24) hours in advance of travel at all staffed Stations and to ensure where reasonably practicable that the ODP has arrangements in place to ensure that onward travel is also supported by other Train Operators;
  - (i) support for and extension of schemes to allow Disabled Persons or other persons with specific travel needs to identify themselves to ODP Services Employees, including the existing "Orange Wallet" scheme;
  - (j) support for equality and diversity training for ODP Services Employees;
  - (k) recognition of the role that the ODP should play in changing public attitudes towards Disabled Persons; and
  - (l) the inclusion of and engagement with equality groups (including "Disability Wales") and other representatives of Disabled Persons and their interests in the development of ODP Services and in customer panels, user groups and other relevant fora.

4.4 Where the ODP's Disabled People's Protection Policy:

- (a) has been established before the date of the ODP Grant Agreement; and
- (b) has not been revised and approved by the ORR to take into account the ORR's most recent published guidance on Disabled People's Protection Policies as at the date of the ODP Grant Agreement,

the ODP shall within six (6) months of the date of the ODP Grant Agreement revise its Disabled People's Protection Policy such that it complies with that guidance, and obtain the ORR's approval of the revised version.

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- 4.5 The ODP shall comply with the requirements set out in Appendix 2 (Accessible Transport Arrangements) to this Schedule 4 in respect of the provision of accessible transport arrangements for persons with disabilities.
- 4.6 The ODP shall ensure that accessibility measures include support for the needs of persons with additional learning needs.
- 4.7 The ODP shall ensure that accessibility measures include support for the needs of persons with mental health impairments that require support to access the Rail Services.

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## **Appendix 1 to Schedule 4**

### **Minor Works**

- 1** Providing additional signage, where it does not currently exist, to allow better way finding around the Station by Disabled Persons.
- 2** Removing:
  - (a) thresholds (above 15 millimetres) which do not comply with the Code of Practice;  
or
  - (b) fewer than three steps,from the entrances to booking halls or platforms to enable those facilities to have step-free access.
- 3** Providing contrasting manifestations on glazed areas where contrasting manifestations do not currently exist.
- 4** Providing additional handrails around the Station where handrails do not currently exist and where the ODP reasonably believes they may be required by a Disabled Person.
- 5** Providing new accessible stair nosings where stair nosings do not currently exist.
- 6** Providing new tactile surfaces, including at the top and bottom of flights of steps (but excluding at platform edges) where tactile surfaces do not currently exist.
- 7** Providing additional seating that is accessible to Disabled Persons, but not replacing existing seating.
- 8** Providing induction loops for ticket office windows where induction loops do not currently exist.
- 9** Replacing non-standard fittings with fittings that are compliant with the Code of Practice in existing disabled toilets, which would include replacing non-standard fittings in respect of toilet bowls and sinks, but would not include making major changes to plumbing or to the dimensions of the toilet area.
- 10** Providing dropped kerbs at drop off/set down points or Station car parks to enable access/egress thereto where dropped kerbs do not currently exist.
- 11** Marking out existing car-parking bays for use by persons with disabilities which comply with the Code of Practice, where such car parking bays do not currently comply.

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## Appendix 2 to Schedule 4

### Accessible Transport Arrangements

- 1 References in this Appendix 2 to Schedule 4 (Accessibility and Inclusivity) to passengers are references to passengers with disabilities who are wheelchair users or otherwise severely mobility impaired.
- 2 Subject to paragraph 4, where:
  - (a) a passenger wants to travel on a Passenger Service; and
  - (b) the design of the station at which the passenger's journey on such Passenger Service is to start (the "**Departure Station**") or finish (the "**Destination Station**") prevents the passenger from using that station to access or disembark from that Passenger Service,the ODP shall provide accessible transport arrangements for that passenger in accordance with paragraph 3.
- 3 The ODP shall provide accessible transport arrangements for the passenger referred to in paragraph 2:
  - (a) from the Departure Station to the next station at which the Passenger Service is scheduled to call and at which it is possible for the passenger to access that Passenger Service;
  - (b) to the Destination Station, from the station closest to such station at which the Passenger Service is scheduled to call and which it is possible for the passenger to use to disembark from that Passenger Service; and/or
  - (c) to or from such other station as the ODP may, having regard to the journey and the needs of the passenger, agree,and, in any case, at no cost additional to the price of the Fare which would otherwise be payable for the passenger's rail journey.
- 4 The ODP's obligations under this Appendix 2 to Schedule 4 (Accessibility and Inclusivity) are subject to:
  - (a) reasonable prior notice of the passenger's requirement for accessible transport arrangements; and
  - (b) the availability of suitable accessible transport arrangements (provided that the ODP has used all reasonable endeavours to ensure that it has arrangements in place to meet requirements for the provision of such accessible transport arrangements).

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**Schedule 5**

**Fares and Smart Ticketing**

|               |  |
|---------------|--|
| Schedule 5.1: | Purpose, Structure and Construction              |
| Schedule 5.2: | ODP's Obligation to Create Fares                 |
| Schedule 5.3: | Allocation of Fares to Fares Baskets             |
| Schedule 5.4: | Regulation of Fares Basket Values                |
| Schedule 5.5: | Regulation of Individual Fares                   |
| Schedule 5.6: | Exceeding the Regulated Value or Regulated Price |
| Schedule 5.7: | Changes to Fares and Fares Regulation            |
| Schedule 5.8: | Fares Regulation Information and Monitoring      |
| Schedule 5.9: | Smart Ticketing                                  |



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**Schedule 5.1 - Purpose, Structure and Construction**

**1 PURPOSE OF SCHEDULE 5**

**Purpose of provisions relating to Creating Fares**

- 1.1 The purpose of Schedule 5.2 (ODP's Obligation to Create Fares) is to ensure that Commuter Fares and Protected Fares are Created in accordance with the Ticketing and Settlement Agreement and to place appropriate restrictions on the ODP's ability to Create Fares.

**Purpose of Fares Regulation**

- 1.2 The purpose of Schedule 5.3 (Allocation of Fares to Fares Baskets) to Schedule 5.8 (Fares Regulation Information and Monitoring) (inclusive) is to provide for the regulation of Fares by the Authority pursuant to section 28 of the Act.

- 1.3 For the purpose of regulating Fares, each Fare that is to be regulated shall be allocated in accordance with this Schedule 5.1 to one of the following Fares Baskets:

- (a) the Commuter Fares Basket;
- (b) the Protected Fares Basket B; or
- (c) the Protected Fares Basket C.

- 1.4 The Authority's regulation of Fares places a limit on the Price of each Fare that is allocated by the Authority to a Fares Basket. The limit on the Price of each Fare is set by reference to:

- (a) the overall increase of the Prices of all Fares in a Fares Basket; and
- (b) the individual increase in the Price of each Fare in a Fares Basket.

- 1.5 Subject to the more detailed provisions of Schedule 5.4 (Regulation of Fares Basket Values) and Schedule 5.5 (Regulation of Individual Fares):

- (a) the overall increase of the Prices of all Fares in a Fares Basket may not exceed the Retail Prices Index + k percent per annum in respect of each Fare Year; and
- (b) save for any Fares that are subject to Fares Flex pursuant to paragraph 9.5(a) of Schedule 5.7 (Changes to Fares and Fares Regulation), the increase in the Price of any individual Fare in a Fares Basket may not exceed the Retail Prices Index + k percent + f percent per annum in respect of each Fare Year.

For the purposes of paragraph 1.5(a), "k" has the meaning given to it in paragraph 4.2 of Schedule 5.4 (Regulation of Fares Basket Values) and for the purposes of paragraph

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1.5(b) “k” and “f” shall each have the meaning given to each such term in paragraph 2.2 of Schedule 5.5 (Regulation of Individual Fares).

- 1.6 The Authority may alter these limits, and other aspects of the regulation of Fares, in accordance with the more detailed provisions of Schedule 5.7 (Changes to Fares and Fares Regulation).

## **2 STRUCTURE OF SCHEDULE 5**

- 2.1 Schedule 5.2 (ODP’s Obligation to Create Fares) sets out or refers to the ODP’s obligations to Create Fares.

- 2.2 Schedule 5.3 (Allocation of Fares to Fares Baskets) sets out the allocation of Fares to Fares Baskets.

- 2.3 Schedule 5.4 (Regulation of Fares Basket Values) sets out the limits applicable to the overall increase in Prices of all Fares in a Fares Basket.

- 2.4 Schedule 5.5 (Regulation of Individual Fares) sets out the limits applicable to the increase in the Price of any individual Fare in a Fares Basket.

- 2.5 Schedule 5.6 (Exceeding the Regulated Value or Regulated Price) sets out the consequences of the ODP exceeding:

- (a) the Regulated Value of any Fares Basket; or
- (b) the Regulated Price of any Fare.

- 2.6 Schedule 5.7 (Changes to Fares and Fares Regulation) sets out the Authority’s ability to vary the foregoing provisions.

- 2.7 Schedule 5.8 (Fares Regulation Information and Monitoring) sets out Fares regulation information and monitoring provisions.

- 2.8 Schedule 5.9 (Smart Ticketing) sets out provisions relating to the introduction of smart ticketing.

## **3 CONSTRUCTION**

### **References to "Fare"**

- 3.1 For the purposes of:

- (a) Schedule 5.2 (ODP’s Obligation to Create Fares), Fare has the wide meaning given to it in paragraph (a) of that definition; and

- 
- (b) Schedule 5.3 (Allocation of Fares to Fares Baskets) to Schedule 5.8 (Fares Regulation Information and Monitoring) (inclusive), Fare shall have the narrow meaning given to it in paragraph (b) of that definition.

3.2 References in this Schedule 5 to a Fare shall, except to the extent the context otherwise requires, be construed as references to the Fare which is or can be Created by the Lead Operator for the Flow to which the Fare relates or, if such Flow is not a Compulsory Inter-available Flow, any Fare which the ODP has Created or can Create in respect of that Flow as the Authority may specify.

#### **Fares Documents**

3.3 In the event that, in the Authority's reasonable opinion, there is an immaterial inconsistency between the Fares or the maximum Price (as the case may be) for any Fare recorded by RSP in 2010 or the 2010 Nominal Ticket Sales:

- (a) described in or determined in accordance with this Schedule 5; and
- (b) described in the relevant Fares Document,

the relevant Fares Document shall prevail.

3.4 In the event that, in the Authority's reasonable opinion, there is a material inconsistency between the Fares or the maximum Price (as the case may be) for any Fare recorded by RSP in 2010 or the 2010 Nominal Ticket Sales:

- (a) described in or determined in accordance with this Schedule 5; and
- (b) described in the relevant Fares Document,

this Schedule 5 shall prevail.

#### **Setting of Child Prices**

3.5 Any requirement under this Schedule 5 to set a Child Price in respect of a Fare shall be satisfied by the ODP Creating either:

- (a) a Fare which is only valid for use by persons under the age of 16; or
- (b) a Fare which is valid for use:
  - (i) by any person at a price; and
  - (ii) by persons under the age of 16 at a discounted price relative to the price set pursuant to paragraph 3.5(b)(i).

#### **New Stations**

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3.6 Subject to paragraph 3.2, the Authority may include within the definitions of:

- (a) Fares Basket;
- (b) Commuter Fare; and
- (c) Protected Fare,

Fares to or from any New Station, on such basis as the Authority may, after consultation with the ODP, reasonably determine and references in this Schedule 5 to Fares Basket, Commuter Fare, Protected Fare and Fares and other relevant definitions shall be construed accordingly.

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**Schedule 5.2 - ODP's Obligation to Create Fares**

**1 CREATION OF COMMUTER FARES AND PROTECTED FARES**

The ODP shall ensure that each Commuter Fare and each Protected Fare has been Created, to the extent it is entitled or obliged to do so under the terms of the Ticketing and Settlement Agreement.

**2 RESTRICTIONS ON CREATION OF FARES**

- 2.1 The ODP shall set the Child Price for any Fare that it Creates so that that Fare may be purchased by or for a person under the age of 16 for an amount which is no greater than fifty percent (50%) of the Price of the relevant Fare.
- 2.2 The ODP shall not Create or agree to Create any Fare or Discount Card with a validity of thirteen (13) or more months without the consent of the Authority (such consent not to be unreasonably withheld).

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**Schedule 5.3 - Allocation of Fares to Fares Baskets**

**1 ALLOCATION OF FARES TO FARES BASKETS**

- 1.1 On or prior to the Start Date, the Authority shall allocate each Commuter Fare and each Protected Fare to the relevant Fares Basket in accordance with this Schedule 5.3.
- 1.2 Subject to paragraph 2, each:
- (a) Commuter Fare shall be allocated by the Authority to the Commuter Fares Basket;
  - (b) Protected Fare identified as a Fare to be allocated to the Protected Fares Basket B in the Protected Fares Document shall be allocated by the Authority to the Protected Fares Basket B; and
  - (c) Protected Fare identified as a Fare to be allocated to the Protected Fares Basket C in the Protected Fares Document shall be allocated by the Authority to the Protected Fares Basket C.

**2 DESIGNATION OF NON FARES BASKET FARES**

- 2.1 On or prior to the Start Date, the Authority shall:
- (a) separately (or in aggregate with other Fares of the same type in the opposite direction or for similar journeys that have the same Price) rank, in descending order according to their Gross Revenue for the period of twelve (12) months which ended on 31 March 2010:
    - (i) all Commuter Fares; and
    - (ii) all Protected Fares;
  - (b) aggregate, following such ranking;
    - (i) those Commuter Fares with the lowest Gross Revenue until the total of the aggregated Gross Revenue of such fares accounts for up to five percent (5%) of the aggregate Reference Revenue of all Commuter Fares; and
    - (ii) those Protected Fares with the lowest Gross Revenue, until the total of the aggregated Gross Revenue of such fares accounts for up to five percent (5%) of the aggregate Reference Revenue of all Protected Fares; and
  - (c) designate, following such aggregation;

- 
- (i) those Commuter Fares referred to in paragraph 2.1(b)(i) as Non Fares Basket Fares; and
  - (ii) those Protected Fares referred to in paragraph 2.1(b)(ii) as Non Fares Basket Fares.

2.2 Without prejudice to the Authority's right to require the content of a Fares Basket to change at any time prior to the Start Date, or, thereafter, prior to the commencement of any Fares Setting Round, pursuant to paragraph 1 of Schedule 5.7 (Changes to Fares and Fares Regulation), any Commuter Fare or Protected Fare that is also designated as a Non Fares Basket Fare shall not be allocated to the relevant Fares Basket.

2.3 The Authority may de-designate any Non Fares Basket Fare pursuant to paragraph 1.1(d) (iii) of Schedule 5.7 (Changes to Fares and Fares Regulation).

**Schedule 5.4 - Regulation of Fares Basket Values**

**1 VALUE OF FARES BASKET NOT TO EXCEED REGULATED VALUE**

Subject to paragraph 1.3 of Schedule 5.6 (Exceeding the Regulated Value or Regulated Price), the ODP shall procure that the Value of a Fares Basket at any time in any Fare Year does not exceed its Regulated Value for that Fare Year.

**2 VALUE**

The Value of a Fares Basket at any time shall be the aggregate of the Projected Revenue of each Fare in that Fares Basket at that time.

**3 PROJECTED REVENUE**

The Projected Revenue of any Fare at any time shall be an amount equal to:

|                                      |   |          |  |          |
|--------------------------------------|---|----------|--|----------|
| <b>P x 2010 Nominal Ticket Sales</b> |   |          |  |          |
| Where:                               |   |          |  |          |
| <b>P</b>                             | is the Price or Child Price (as the case may be) of that Fare at that time; and   |          |  |          |
| <b>2010 Nominal Ticket Sales</b>     | is the number of nominal ticket sales of that Fare for 2010, ascertained as follows:  |          |  |          |
|                                      | $\frac{A}{B}$   |          |  |          |
|                                      | where:  |          |  |          |
|                                      | <table border="1"> <tr> <td><b>A</b></td> <td>is the aggregate Gross Revenue recorded by RSP as attributable to sales of that Fare and any other Fare with which it was aggregated under paragraph 2.1(a) of Schedule 5.3 (Allocation of Fares to Fares Baskets) for the period of twelve (12) months which ended 31 March 2010; and</td> </tr> <tr> <td><b>B</b></td> <td>is the Price or Child Price (as the case may be) for that Fare recorded by RSP in February 2010.</td> </tr> </table> | <b>A</b> | is the aggregate Gross Revenue recorded by RSP as attributable to sales of that Fare and any other Fare with which it was aggregated under paragraph 2.1(a) of Schedule 5.3 (Allocation of Fares to Fares Baskets) for the period of twelve (12) months which ended 31 March 2010; and | <b>B</b> |
| <b>A</b>                             | is the aggregate Gross Revenue recorded by RSP as attributable to sales of that Fare and any other Fare with which it was aggregated under paragraph 2.1(a) of Schedule 5.3 (Allocation of Fares to Fares Baskets) for the period of twelve (12) months which ended 31 March 2010; and  |          |  |          |
| <b>B</b>                             | is the Price or Child Price (as the case may be) for that Fare recorded by RSP in February 2010.  |          |  |          |

**4 REGULATED VALUE**

4.1 The Regulated Value of a Fares Basket for any Fare Year shall be an amount equal to:



|                                   |   |   |
|-----------------------------------|---|---|
| <b>2010 Ticket Revenue x PPAI</b> |   |   |
| <b>Where:</b>                     |   |   |
| <b>2010 Ticket Revenue</b>        | is the aggregate Gross Revenue recorded by RSP as attributable to sales of all Fares in that Fares Basket for the period of twelve (12) months which ended 31 March 2010; |   |
| <b>PPAI</b>                       | is:   |   |
|                                   | where:  |   |
|                                   | (a)   | in respect of the Fare Year commencing in 1 January 2010, the Permitted Aggregate Increase for that Fare Year; and  |
|                                   | (b)   | in respect of each Fare Year commencing on or after 2010, the product of the Permitted Aggregate Increase for each Fare Year between that Fare Year and the Fare Year which began 1 January 2010 (inclusively). |

4.2 The Permitted Aggregate Increase in any Fare Year shall be an amount equal to:

|                        |  |
|------------------------|--|
| <b>PAI =</b>           | $PAI = \frac{(100 \times RPI) + k}{100}$   |
| <b>Where:</b>          |  |
| <b>PAI</b>             | is the Permitted Aggregate Increase in that Fare Year;                                     |
| <b>RPI</b>             | is an amount equal to:   |
|                        | $RPI_2$  |
|                        | $RPI_1$  |
|                        | where:   |
| <b>RPI<sub>1</sub></b> | is the Retail Prices Index for the July of the calendar year preceding that Fare Year; and |

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|          |                        |   |
|----------|------------------------|---|
|          | <b>RPI<sub>2</sub></b> | is the Retail Prices Index for the July of the calendar year preceding the calendar year referred in the definition of RPI <sub>1</sub> ; and                             |
| <b>k</b> |                        | is equal to zero (0) for each Fare Year until the Fare Year commencing on 1 January 2021 where it will be equal to plus one (+ 1) per annum for any Fare Year thereafter. |

**Schedule 5.5 - Regulation of Individual Fares**

**1 PRICE NOT TO EXCEED REGULATED PRICE**

1.1 Subject to paragraph 9 of Schedule 5.7 (Changes to Fares and Fares Regulation), the ODP shall procure that the Price of:

- (a) each Commuter Fare included in the Commuter Fares Basket; and
- (b) each Protected Fare included in the Protected Fares Basket B or the Protected Fares Basket C,

in any Fare Year does not exceed the Regulated Price for such Fare in that Fare Year.

1.2 The ODP shall procure that the Price of any Season Ticket Fare shall be the same in both directions.

**2 REGULATED PRICE**

2.1 The Regulated Price for any Fare in any Fare Year shall be an amount equal to the greater of:

|                                    |  |
|------------------------------------|--|
| (a)                                | Preceding Year Ticket Price + £0.10p; and  |
| (b)                                | Preceding Year Ticket Price x PII  |
| <b>Where:</b>                      |  |
| <b>Preceding Year Ticket Price</b> | for the Fare Year commencing 1 January 2010, is the maximum Price for that Fare recorded by RSP in 2010 and, for any subsequent Fare Year, is the maximum Price recorded by RSP in the Fare Year preceding that Fare Year, provided that such maximum Price complied with the requirements of this Schedule 5. If such maximum Price did not so comply, then such maximum Price shall be the last Price recorded by RSP which did so comply; and |
| <b>PII</b>                         | is the Permitted Individual Increase in any Fare Year, as determined in accordance with paragraph 2.2.   |

2.2 The Permitted Individual Increase in any Fare Year shall be an amount equal to:

|              |  |
|--------------|--|
| <b>PII =</b> | $\frac{(100 \times RPI) + k + f}{100}$ |
|--------------|--|

|                        |  |                        |  |                        |
|------------------------|--|------------------------|--|------------------------|
| <b>Where:</b>          |  |                        |  |                        |
| <b>PII</b>             | is the Permitted Individual Increase in that Fare Year;  |                        |  |                        |
| <b>RPI</b>             | is an amount equal to:   |                        |  |                        |
|                        | $\frac{RPI_1}{RPI_2}$  |                        |  |                        |
|                        | where:   |                        |  |                        |
|                        | <table border="1"> <tr> <td><b>RPI<sub>1</sub></b></td> <td>is the Retail Prices Index for the July of the calendar year preceding that Fare Year; and</td> </tr> <tr> <td><b>RPI<sub>2</sub></b></td> <td>is the Retail Prices Index for the July of the calendar year preceding the calendar year referred in the definition of RPI<sub>1</sub>;</td> </tr> </table> | <b>RPI<sub>1</sub></b> | is the Retail Prices Index for the July of the calendar year preceding that Fare Year; and | <b>RPI<sub>2</sub></b> |
| <b>RPI<sub>1</sub></b> | is the Retail Prices Index for the July of the calendar year preceding that Fare Year; and   |                        |  |                        |
| <b>RPI<sub>2</sub></b> | is the Retail Prices Index for the July of the calendar year preceding the calendar year referred in the definition of RPI <sub>1</sub> ;  |                        |  |                        |
| <b>k</b>               | is equal to zero (0) for each Fare Year until the Fare Year commencing on 1 January 2021 where it will be equal to plus one (+ 1) per annum for any Fare Year thereafter; and  |                        |  |                        |
| <b>f</b>               | is equal to zero (0) unless otherwise agreed pursuant to paragraph 9 of Schedule 5.7 (Changes to Fares and Fares Regulation) .   |                        |  |                        |

2.3 Where:

- (a) the ODP sets the Price of any Commuter Fare or Protected Fare in any Fare Year; and
- (b) the Authority reasonably determines that the Price of such Commuter Fare or Protected Fare was set solely for the purpose of increasing the value of the Preceding Year Ticket Price in the next Fare Year,

the Preceding Year Ticket Price for the purposes of determining the Regulated Price pursuant to paragraph 2.1 in the next Fare Year shall be the maximum Price prior to such setting that complied with the requirements of this Schedule 5, as recorded by RSP in the relevant preceding Fare Year.

**3 COMPULSORY INTER-AVAILABLE FLOWS**

3.1 Where the ODP:

- (a) as Lead Operator for a Compulsory Inter-available Flow, is responsible for setting the Price of a Commuter Fare for that Flow; and

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(b) has notified RSP of the Price of that Commuter Fare in any Fares Setting Round, the ODP shall not increase the Price of that Commuter Fare in the same Fares Setting Round without the consent of either the Authority or each other Train Operator which provides railway passenger services for such Flow.

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**Schedule 5.6 - Exceeding the Regulated Value or Regulated Price**

**1 EXCEEDING THE REGULATED VALUE**

1.1 If the ODP is in contravention of paragraph 1 of Schedule 5.4 (Regulation of Fares Basket Values) in respect of the Commuter Fares Basket, the Protected Fares Basket B or the Protected Fares Basket C:

- (a) it shall reduce the Price of Fares in the relevant Fares Basket at the next available opportunity and, in any event, at the next Fares Setting Round, so as to comply with the requirements of paragraph 1 of Schedule 5.4 (Regulation of Fares Basket Values) from such date; and
- (b) the Authority may adjust Rail Services Payments by an amount equivalent in its opinion to the sum of:
  - (i) any additional gross revenue accruing to the ODP or any person selling Fares on its behalf as a result of the Value of any Fares Basket exceeding its Regulated Value permitted under Schedule 5.4 (Regulation of Fares Basket Values); and
  - (ii) any costs incurred by the Authority in determining the amount of such additional gross revenue.

1.2 Any adjustment to Rail Services Payments by the Authority pursuant to paragraph 1.1:

- (a) shall not be treated as a Change; and
- (b) shall be without prejudice to any other rights or remedies of the Authority under the Act or the ODP Grant Agreement in respect of such contravention.

1.3 It shall not be a contravention of paragraph 1 of Schedule 5.4 (Regulation of Fares Basket Values) if and to the extent that:

- (a) the Value of the Commuter Fares Basket exceeds its Regulated Value in any Fare Year;
- (b) such excess is caused by the Price of any relevant Commuter Fare being set pursuant to the terms of the Ticketing and Settlement Agreement by another person (other than an Affiliate); and
- (c) the ODP does not have a reasonable opportunity, under any procedure for consulting or notifying Train Operators of alterations to the Prices of Fares under the Ticketing and Settlement Agreement or otherwise, to alter some or all of the other Commuter Fares in the Commuter Fares Basket so as to avoid the Value of the Commuter Fares Basket exceeding its Regulated Value.

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1.4 If and to the extent that the circumstances described in paragraph 1.3 prevail in any Fare Year, the ODP shall not subsequently increase during that Fare Year, or any subsequent Fare Year, the Price of any Commuter Fare in the Commuter Fares Basket which it is entitled to set pursuant to the terms of the Ticketing and Settlement Agreement, unless, following such increase, the ODP would, otherwise than under paragraph 1.3, comply with the provisions of paragraph 1 of Schedule 5.4 (Regulation of Fares Basket Values) in relation to the Commuter Fares Basket.

1.5 Where circumstances described in paragraph 1.3 prevail in any Fare Year, the ODP shall not be required to reduce the Price of any other Commuter Fare at any time during that Fare Year, or any subsequent Fare Year, where such Price has previously been set in a Fares Setting Round.

## **2 EXCEEDING THE REGULATED PRICE**

2.1 If the ODP is in contravention of paragraph 1 of Schedule 5.5 (Regulation of Individual Fares):

(a) it shall reduce the Price of any relevant Fare at the next available opportunity and, in any event, at the next Fares Setting Round, so as to comply with the requirements of paragraph 1 of Schedule 5.5 (Regulation of Individual Fares) from such date; and

(b) the Authority may adjust the Rail Services Payments by an amount equivalent in its opinion to the sum of:

(i) any additional gross revenue accruing to the ODP or any person selling Fares on its behalf as a result of the sale of Fares at Prices in excess of the relevant amounts permitted under Schedule 5.5 (Regulation of Individual Fares); and

(ii) any costs incurred by the Authority in determining the amount of such additional gross revenue.

2.2 Any adjustment to Rail Services Payments by the Authority pursuant to paragraph 2.1:

(a) shall not be a Change; and

(b) shall be without prejudice to any other rights or remedies of the Authority under the Act or the ODP Grant Agreement in respect of such contravention.

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**Schedule 5.7 - Changes to Fares and Fares Regulation**

**1 CHANGES TO FARES BASKETS**

1.1 The Authority may require the content of the Commuter Fares Basket, Protected Fares Basket B or Protected Fares Basket C (as the case may be) to change in accordance with the following:

(a) where the Authority is not satisfied that the Price of any Non Fares Basket Fare is reasonably constrained by the Price of other Fares which:

(i) have been set in respect of the same, or part of the same, Flow as such Non Fares Basket Fare, or a Flow which is reasonably proximate to the Flow on which such Non Fares Basket Fare has been set; and

(ii) have been included in the relevant Fares Basket,

the Authority may de-designate any Non Fares Basket Fare and include such Non Fares Basket Fare in the relevant Fares Basket;

(b) where any Commuter Fare for a Flow has been included in the Commuter Fares Basket, the Authority may require the inclusion in the Commuter Fares Basket of any Weekly Season Ticket, Monthly Season Ticket, Quarterly Season Ticket, Annual Season Ticket, unrestricted Single Fare or unrestricted Return Fare that existed on that Flow in February 2010;

(c) where any Protected Fare for a Flow has been included in the Protected Fares Basket B or the Protected Fares Basket C, the Authority may require the inclusion in the Protected Fares Basket B or the Protected Fares Basket C of any Protected Return Fare or Protected Weekly Season Ticket that existed on that Flow in February 2010; and/or

(d) where the Authority changes the Reference Revenue and/or the Gross Revenue of any Fare pursuant to paragraphs 3.1(a) and/or 3.1(b) then, in relation to the Fares Basket in which such Fare is or would be included, and without limiting paragraphs 1.1(a) to (c) inclusive, the Authority may also:

(i) make any of the changes to such Fares Basket contemplated by this paragraph 1.1;

(ii) designate any Fare as a Non Fares Basket Fare in accordance with the provisions (other than the requirement that such designation occurs on or prior to the Start Date) of paragraph 2 of Schedule 5.3 (Allocation of Fares to Fares Baskets); and/or



- 
- (iii) de-designate any Non Fares Basket Fare and include such Non Fares Basket Fare in the relevant Fares Basket.

1.2 The Authority shall serve notice in writing on the ODP:

- (a) at any time prior to the Start Date; and
- (b) thereafter, no later than the commencement of any Fares Setting Round, to require any Fare to be included in a Fares Basket or to designate any Fare as a Non Fares Basket Fare pursuant to paragraph 1.1.

## **2 CHANGES TO THE 2010 NOMINAL TICKET SALES**

2.1 The ODP may, in the event of any significant change to the pattern of travel on the Passenger Services during the Rail Services Term, apply to the Authority for the **value of factors A and/or B** in the formula for determining 2010 Nominal Ticket Sales in paragraph 3 of Schedule 5.4 (Regulation of Fares Basket Values) to be adjusted to take account of such changes, such that:

- (a) the **value of factor A** is re calculated by using the Gross Revenue in respect of the sales of the relevant Fares for the most recently completed period of twelve (12) months ending 31 March; and/or
- (b) the **value of factor B** is recalculated by using the Price of the relevant Fares recorded by RSP in the month of February during such period.

2.2 The Authority shall act reasonably in relation to any such application but shall not under any circumstances be obliged to accept any such application in whole or in part. The Authority shall be entitled to impose conditions upon any such acceptance, including conditions requiring that the **value of both factors A and B** are adjusted and/or are adjusted in respect of any or all Fares in the relevant Fares Basket.

## **3 CHANGES TO THE REFERENCE REVENUE, GROSS REVENUE, 2010 NOMINAL TICKET SALES AND/OR 2010 TICKET REVENUE**

3.1 The Authority may, by notice in writing served on the ODP no later than the date of commencement of any Fares Setting Round, require:

- (a) the Reference Revenue of any Fares Basket to be calculated by reference to a different reference period for the purpose of paragraph 2 of Schedule 5.3 (Allocation of Fares to Fares Baskets) than the period of twelve (12) months ended 31 March 2010; and/or
- (b) the Gross Revenue of all Commuter Fares and Protected Fares to be recalculated for the purpose of paragraph 2 of Schedule 5.3 (Allocation of Fares to Fares

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Baskets) by reference to a different reference period than the period of twelve (12) months ended 31 March 2010; and/or

- (c) the value of factor A in the formula for determining the 2010 Nominal Ticket Sales in paragraph 3 of Schedule 5.4 (Regulation of Fares Basket Values) to be recalculated in respect of any Fare by reference to a different reference period than the period of twelve (12) months ended 31 March 2010; and/or
- (d) the value of factor B in the formula for determining the 2010 Nominal Ticket Sales in paragraph 3 of Schedule 5.4 (Regulation of Fares Basket Values) to be recalculated in respect of any Fare by reference to a different reference date other than February 2010; and/or
- (e) the 2010 Ticket Revenue in respect of any Fares Basket to be recalculated for the purpose of paragraph 4 of Schedule 5.4 (Regulation of Fares Basket Values) by reference to a different reference period than the period of twelve (12) months ended 31 March 2010.

3.2 Where, in accordance with paragraph 3.1(e), the 2010 Ticket Revenue in respect of any Fares Basket is recalculated by reference to a different reference period, the value of "PPAI" in paragraph 4 of Schedule 5.4 (Regulation of Fares Basket Values) shall be determined solely by reference to the product of the Permitted Aggregate Increase for each Fare Year beginning after the end of such reference period.

3.3 Any revision pursuant to paragraphs 3.1 or 3.2 shall take effect upon commencement of the next Fare Year to commence after the Fares Setting Round referred to in paragraph 3.1.

#### **4 CHANGES TO PRICES**

The ODP may request permission from the Authority from time to time to increase any Prices beyond the levels permitted under Schedule 5.4 (Regulation of Fares Basket Values) and Schedule 5.5 (Regulation of Individual Fares) in connection with any proposed or actual improvement in any aspect of the Passenger Services relating to such Fares. The Authority shall act reasonably in relation to any such request but shall not, under any circumstances, be obliged to accept any such request in whole or in part.

#### **5 CHANGES TO FARES REGULATION**

The Parties agree that the Authority shall have the power at any time and on more than one occasion during the Rail Services Term to alter the obligations of, and restrictions on, the ODP under Schedule 5.1 (Purpose, Structure and Construction) to Schedule 5.8 (Fares Regulation Information and Monitoring) inclusive for any Fare Year, or part thereof (including alteration of the **value of "k"** and/or the applicable index under paragraph 4.2

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of Schedule 5.4 (Regulation of Fares Basket Values) and/or paragraph 2.2 of Schedule 5.5 (Regulation of Individual Fares) and/or alteration of the **value of "f"** under paragraph 2.2 of Schedule 5.5 (Regulation of Individual Fares)). The exercise by the Authority of its powers under this paragraph 5 shall be a Change.

## **6 CHANGES TO COMPULSORY INTER-AVAILABLE FLOWS**

6.1 Where:

- (a) pursuant to Clause 4 to 7 of the Ticketing and Settlement Agreement, the consent of the Authority is requested for the abolition of a Compulsory Inter-available Flow (the "**Reference Flow**") in respect of which any Fare Created would be a Commuter Fare or a Protected Fare (the "**Reference Fare**"); and
- (b) a Flow exists, which, in the Authority's opinion, is substantially similar to the Reference Flow (the "**Equivalent Flow**"),

the Authority may, as a condition of granting its consent to the abolition of the Reference Flow, by written notice to the ODP, require any Fare Created in respect of the Equivalent Flow which has substantially the same characteristics as the Reference Fare to be included in a Fares Basket ("**Equivalent Fare**").

6.2 The Authority shall not issue any such notice in respect of an Equivalent Fare unless the provisions of such notice have first been approved by the Ticketing and Settlement Scheme Council (as defined in the Ticketing and Settlement Agreement) or a delegate of such council.

6.3 The Price of any Equivalent Fare in the first Fare Year in which it is to be introduced shall be no greater than the maximum permitted Price in that Fare Year of the relevant Reference Fare, as if such Reference Fare had not been abolished.

## **7 CHANGE OF LEAD OPERATOR/MAJOR FLOW OPERATOR**

7.1 The ODP shall not without the Authority's prior approval, agree to any request under the Ticketing and Settlement Agreement that it cease to be Lead Operator in respect of any Flow.

7.2 The ODP shall inform the Authority if it becomes the Lead Operator in respect of any Flow. Upon the ODP becoming the Lead Operator in respect of any Flow, the Authority may without limiting paragraph 3, exercise its rights pursuant to paragraph 3 in relation to the relevant Fares Basket.

7.3 The ODP shall inform the Authority if it ceases to be a Major Flow Operator in respect of any Flow.

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## 8 CHANGES TO FARES DOCUMENTS

8.1 Following:

- (a) any allocation of Fares to any Fares Basket pursuant to Schedule 5.3 (Allocation of Fares to Fares Baskets); or
- (b) any subsequent adjustment thereof pursuant to this Schedule 5.7,

the Authority shall set out in the Commuter Fares Document and/or Protected Fares Document (as the case may be) all Fares then included in the relevant Fares Basket and, as soon as reasonably practicable thereafter, the Authority shall issue or reissue (as the case may be) such Fares Document(s) to the ODP.

## 9 FARES FLEX

9.1 For the purposes of this paragraph 9, the “**Fares Flex Objectives**” shall be to:

- (a) encourage use of travel on Off-Peak Passenger Services and lightly-used routes where capacity is available;
- (b) encourage travel on Passenger Services operating to, from and within economically disadvantaged areas as determined by the Authority, with reference to the Welsh Index of Multiple Deprivation, from time to time as notified to the ODP by the Authority;
- (c) provide clear and consistent pricing to all passengers, enabling them to buy tickets more easily, thereby encouraging them to do so;
- (d) promote use of the Rail Services by part time workers;
- (e) promote flexible and innovative Fares; and
- (f) encourage the adoption of smart ticketing.

9.2 Not less than three (3) months in advance of the start of each Fare Year or at the request of the Authority, the ODP shall submit to the Authority a written proposal setting out the Fares that it wishes to implement in that Fare Year and any subsequent Fare Year in order to achieve one or more of the Fares Flex Objectives or alternative proposals to achieve the Fare Flex Objectives (the “**Fares Flex Proposal**”). The Fares Flex Proposal may include increases to the Price of individual Fares within a Fares Basket in excess of the limits set out in paragraph 1 of Schedule 5.5 (Regulation of Individual Fares) provided that in no circumstances shall the aggregate increase of the Price of all Fares within a Fares Basket exceed the limits set out in paragraph 1 of Schedule 5.4 (Regulation of Fares Basket Values).

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9.3 The ODP shall:

- (a) provide any supporting information requested by the Authority in connection with the Fares Flex Proposal; and
- (b) confirm in writing to the Authority that the Fares Flex Proposal can be implemented in that Fare Year in accordance with the terms of the Ticketing and Settlement Agreement.

9.4 As soon as reasonably practicable following receipt of the Fares Flex Proposal, the Authority shall confirm in writing to the ODP whether it accepts the Fares Flex Proposal. The Authority shall not in any circumstances be obliged to accept the Fares Flex Proposal in whole or in part.

9.5 Where the Authority accepts the Fares Flex Proposal in accordance with paragraph 9.4:

- (a) the Fares set out in such proposal shall be deemed to be subject to “**Fares Flex**” and the value of “f” in paragraph 2.2 of Schedule 5.5 (Regulation of Individual Fares) shall be updated accordingly; and
- (b) the ODP shall ensure that the Fares that are subject to Fares Flex are Created (to the extent applicable) in accordance with the Ticketing and Settlement Agreement and made available for sale in the next Fare Year.

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## **Schedule 5.8 - Fares Regulation Information and Monitoring**

### **1 INFORMATION**

- 1.1 The ODP shall provide to the Authority by no later than week twelve (12) of each Fares Setting Round, a summary (to such level of detail or generality as the Authority may reasonably require) of the Prices of the Commuter Fares or Protected Fares it is intending to set.
- 1.2 The ODP shall notify, or procure the notification to, the Authority of any proposed increase to the Price of any Commuter Fare or Protected Fare and shall provide such details of any such proposal at such times (including before and during each Fares Setting Round) and in such form (including by electronic data transfer) as the Authority may reasonably request from time to time.
- 1.3 The ODP shall make available, or procure that RSP makes available, to the Authority, for any Fares Setting Round during the Rail Services Term, such details (including the proposed Prices or Child Prices) of the Initial Permanent Fare of any Commuter Fare or Protected Fare for each such Fares Setting Round as the Authority may reasonably request from time to time.

### **2 MONITORING**

- 2.1 The ODP shall provide to the Authority:
- (a) such access as the Authority may require to information pertaining to the Prices of Commuter Fares and Protected Fares from time to time; and
  - (b) such further information as the Authority may require for the purpose of determining the Gross Revenue of the ODP in relation to any particular Fare or Fares or any particular period.
- 2.2 By no later than week seventeen (17) of each Fares Setting Round, the ODP will provide to the Authority written confirmation from a statutory director of the ODP of whether the ODP has complied with its obligations under this Schedule 5 (Fares and Smart Ticketing) during each such Fares Setting Round. It shall be a contravention of the ODP Grant Agreement if any such written confirmation from a statutory director of the ODP is, in the reasonable opinion of the Authority, in any material respect, untrue, inaccurate and/or misleading.
- 2.3 The ODP shall take such action as the Authority may require following receipt of any details from the ODP pursuant to paragraph 1 in order to ensure that the ODP will comply with the provisions of Schedule 5.2 (ODP's Obligation to Create Fares) to this Schedule 5.8 (inclusive).

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**Schedule 5.9 - Smart Ticketing**

**1 SMART TICKETING**

1.1 For the purposes of this Schedule 5.9, the following words and expressions shall have the following meanings unless otherwise set out in clause 3 (*Definitions*):

- “EMV”** means contactless payment cards that conform to the international standards issued by EMVCo (owned by American Express, Discover, JCB, MasterCard, UnionPay and Visa) which manages, maintains and enhances the EMV1 integrated circuit card specifications;
- “ITSO”** means (as the context may require) both:
- (a) the non profit distributing organisation run by its members for the benefit of members and users of smartcards, supported by the Department for Transport (“**DfT**”); and
  - (b) the common specification such non-profit distributing organisation has created to enable the use of interoperable smartcards in transport and other areas;
- “ITSO Certified Smartmedia”** means the contactless smartcards, devices or other media designed to hold fare and travel information with the monetary or other value encoded which have been fully certified by ITSO;
- “ITSO Operating Licence”** means the licence granted to operators by ITSO which, among other things, permits them to issue ITSO-compliant cards and issue, sell and accept ITSO products;
- “ITSO Smartmedia Ticketing Scheme”** means a Smart Ticketing Scheme that utilises ITSO Certified Smartmedia;
- “Previous Franchisee ITSO Smartmedia Ticketing Scheme”** means any ITSO Smartmedia Ticketing Scheme operated by the Previous Franchisee prior to the Start Date;
- “RSPS3002”** means the RSP document with reference RSPS3002, version 02.01 re-published on 6 May 2015 which specifies standards for issuing, checking and validating rail products on ITSO Certified Smartmedia and defines the rail specific rules required to ensure interoperability across the rail network; and

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**“Smart Ticketing Scheme”**

means an electronic based system (not including the current “magstripe system”) that evidences the purchase of a Fare by a passenger.

1.2 The ODP shall:

- (a) join and comply with any ATOC approved Smart Ticketing Schemes relevant to some or all of the Passenger Services;
- (b) fully and effectively co-operate with Network Rail, other Train Operators and relevant Local Authorities, including in relation to the provision any required equipment, to implement and operate Smart Ticketing Schemes; and
- (c) fully and effectively co-operate with other Train Operators and relevant Local Authorities in relation to proposals to apply Smart Ticketing Schemes to new or existing multi modal fares schemes including in the implementation of any smart card technology pursuant to any multi-modal fares schemes that it may participate in pursuant to its obligations under paragraph 2.1 of Schedule 2.5 (Transport, Travel and Other Schemes); and
- (d) prepare and submit a report to the Authority in advance of each ODP Services Performance Meeting (in such form as the Authority may reasonably require) setting out:
  - (i) the level of take-up and usage of Smart Ticketing Schemes by users of the Passenger Services, for each completed Reporting Period during the Rail Services Term; and
  - (ii) the steps that the ODP is taking to increase take-up of Smart Ticketing Schemes operated by the ODP and increase usage of Smart Ticketing Schemes by users of the Passenger Services,

and the ODP shall present the report at the ODP Services Performance Meeting.

1.3 The ODP shall ensure, with effect from the Start Date in relation to any Previous Franchisee ITSO Smartmedia Ticketing Scheme and from the date of commissioning in relation to any ITSO Smartmedia Ticketing Scheme introduced by it, that from such relevant date until the end of the ODP Grant Agreement Term, or until any such date as agreed between the ODP and the Authority:

- (a) it continues to provide, make available and promote (and where applicable effectively maintain) such ITSO Smartmedia Ticketing Scheme (including any associated infrastructure);
- (b) all components of the ITSO Smartmedia Ticketing Scheme (and any amendment, extension or replacement thereof) inherited, used or introduced by the ODP (whether on a permanent or a trial basis) are at all times compliant with:



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- (i) version 2.1.4 of ITSO and the ITSO Operating Licence; and
  - (ii) the RSPS3002,

or such subsequent versions as the ODP and the Authority may agree;

- (c) any ITSO Certified Smartmedia readers introduced by the ODP (whether on a permanent or temporary basis) shall conform to EMV level 1 certification (Hardware) and be capable of being upgraded whilst in operation to EMV level 2 (Application);
- (d) it pays all costs of participating in the relevant ITSO Smartmedia Ticketing Scheme including the costs of maintaining all required scheme components to the standards specified in this Schedule 5.9; and
- (e) the RSP owned product set is used.

1.4 Where the Previous Franchisee was a participant in any ATOC approved Smart Ticketing Scheme, the ODP shall take such action as may be required to ensure that there is an orderly handover process so that the ODP participates in such Smart Ticketing Scheme from the Start Date without any disruption to the continuity of service received by passengers.

1.5 Without prejudice to its other obligations pursuant to this Schedule 5.9, the ODP shall undertake such further actions as the Authority may reasonably require in connection with the introduction of Smart Ticketing Schemes.

1.6 The Authority shall reimburse the reasonable costs incurred by the ODP in complying with any such requirement of the Authority pursuant to paragraph 1.5 subject to the ODP obtaining the prior written approval of the Authority to the incurring of any such cost and provided that the ODP shall not have the right to be reimbursed any costs to the extent that:

- (a) it has already been reimbursed for such costs pursuant to any other provision of the ODP Grant Agreement or other arrangements with the Authority; and/or
- (b) it has the right or ability to recover such costs from any third party.

1.7 The ODP shall ensure that as part of its Smart Ticketing Scheme, it implements revenue protection technology that is capable of hotlisting and blocking Welsh Government concessionary travel cards across the network, where such cards are invalid.

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**Schedule 6**

**Rail Services Specific Obligations and Committed Obligations**

|               |  |
|---------------|--|
| Schedule 6.1: | Rail Services Specific Obligations                     |
| Schedule 6.2: | Committed Obligations                                  |
|               | Part 1: Committed Obligations                          |
|               | Part 2: Special Terms related to Committed Obligations |
| Schedule 6.3: | Service Improvements                                   |
|               | Part 1: Not used                                       |
|               | Part 2: Special Terms related to Service Improvements  |

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## Schedule 6.1 - Rail Services Specific Obligations

### Part 1 – Previous Franchisee’s Committed Obligations

#### 1 APPLICATION OF SPECIAL TERMS

1.1 The provisions of Part 2 (*Special Terms related to Committed Obligations*) of Schedule 6.2 (*Committed Obligations*) shall apply in respect of the obligations of the ODP specified in this Part 1 provided that references to a ‘Committed Obligation’ in Part 2 (*Special Terms related to Committed Obligations*) of Schedule 6.2 (*Committed Obligations*) shall be construed as references to the ODP’s obligations under this Part 1.

#### 2 CO-OPERATION WITH THIRD PARTY SCHEMES

2.1 Where instructed to do so by the Authority the ODP shall fully and effectively co-operate with the Authority, Network Rail and any relevant Local Authority in relation to any scheme to reopen or divert any rail route.

2.2 The ODP shall at all times during the ODP Grant Agreement Term fully and effectively co-operate with the Authority, Network Rail, any Local Authority or any relevant third party in the development and implementation of plans and proposals to:

- (a) enhance existing stations;
- (b) open new stations; and
- (c) open new rail routes, or
- (d) re-open existing rail routes that are not currently used to operate regular passenger services.

2.3 The obligation to co-operate pursuant to paragraph 2.2 shall include the ODP carrying out in a timely manner all the activities and actions reasonably required to be carried out or taken by a Train Operator who:

- (a) in the case of paragraph 2.2(a) only, is the Facility Owner at the relevant station;
- (b) in any of cases of paragraphs 2.2(a), 2.2(b), 2.2(c), or 2.2(d), is or is likely to be a provider of passenger services at the station or on the route in question.

2.4 Without limiting the above, the obligation to co-operate pursuant to paragraph 2.2 shall also include:

- (a) attending meetings with the Authority, Network Rail, a Local Authority or a relevant third party (as the case may be);

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- (b) reviewing and commenting on the implementation and programme plans for the development of a brand new station;
  - (c) providing analysis and advice to any of the above parties in relation to station location and design, timetabling, staffing, marketing, rolling stock and other relevant operational and practical issues;
  - (d) negotiating in good faith with the Authority or relevant scheme promoter with a view to reaching agreement with that person in relation to the terms (including price) for provision of Passenger Services at any new station or on any new or re-opened rail route;
  - (e) maintaining records of usage and financial performance of passenger services calling at the relevant stations or operating on the relevant routes;
  - (f) making available those records to the Authority or relevant scheme promoter;
  - (g) cooperating with any reasonable request by the Authority or relevant scheme promoter to undertake a review of the operational and financial performance of the Passenger Services at the relevant stations or on the relevant routes (including their value for money); and
  - (h) in the case of paragraph 2.2(a) or 2.2(b) above only, using reasonable endeavours to achieve any necessary amendments to any Station Lease or enter into new station leases as may be required for the purposes of the development and implementation of any such new station.

### **3 DEVELOPMENT OF PROPOSALS FOR SERVICE ENHANCEMENTS**

3.1 Where the ODP is required to produce a report pursuant to paragraph 3.3, the ODP shall undertake a feasibility study for the purposes of identifying options (the "Passenger Services Enhancement Options") for delivering enhanced Passenger Services on Routes where such improvements can be delivered including by:

- (a) implementing changes to the existing infrastructure;
- (b) improving rolling stock capability or reliability including through the modification of rolling stock or employing efficient maintenance arrangements; and/or
- (c) implementing changes in service patterns.

3.2 The ODP shall, as part of the feasibility study required pursuant to paragraph 3.1 and as a minimum:

- (a) consult with passengers, other train operators licensed under the Act who operate along the affected Routes, relevant user groups and other relevant Stakeholders;

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- (b) work with Network Rail with a view to considering the feasibility of implementing any of the Passenger Services Enhancement Options where Network Rail input is required or where implementation of such Passenger Services Enhancement Options will require changes to the infrastructure or the Timetable. The ODP shall robustly challenge Network Rail to identify efficient and cost-effective ways by which such Passenger Services Enhancement Options could be implemented and provide evidence that it has complied with this requirement in the report to be submitted to the Authority pursuant to paragraph 3.3;
- (c) prepare an initial assessment of the likely costs and benefits of implementing the Passenger Services Enhancement Options; and
- (d) engage with third party funders (including Local Authorities and local development agencies) to identify opportunities to secure grant funding for the purposes of implementing some or all of the Passenger Services Enhancement Options.
- 3.3 At the request of the Authority, the ODP shall submit to the Authority within the timescales specified in any such request (or such other timescales as may be agreed by the Authority and the ODP) a report which sets out the outcomes of the feasibility study undertaken pursuant to paragraph 3.1, such report to include information relating to the matters set out in paragraphs 3.2(a) to 3.2(d).
- 3.4 Following the submission of the report required pursuant to paragraph 3.3 the ODP shall:
- (a) promptly respond to the Authority's reasonable queries in relation to such report (including the provision of such assistance as the Authority may reasonably require in connection with the verification of any information contained in such report); and
- (b) upon reasonable notice, attend any such meeting as the Authority may reasonably require for the purposes of discussing the contents of such report.
- 3.5 The ODP shall, at the request of the Authority, co-operate with Network Rail and other relevant Stakeholders to undertake further development and, if appropriate, implementation of any or all of the Passenger Services Enhancement Options. The Authority and the ODP acknowledge and agree that if any or all of the Passenger Services Enhancement Options are to be implemented this will be by way of amendment to the Train Service Requirement or by the Authority proposing a Variation pursuant to paragraph 1.1(a) of Schedule 9.3 (Variations to the ODP Grant Agreement and Incentivising Beneficial Changes).

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## Part 2 – ODP Grant Agreement Specific Obligations

### 1 PORT TALBOT PARKWAY STATION

- 1.1 Without prejudice to the rights of the Authority pursuant to paragraph 7 of Schedule 14.3 (Key Contracts), the ODP shall use all reasonable endeavours to enter into a deed of variation to the Station Lease for the Station at Port Talbot Parkway in the form otherwise agreed between the ODP and Network Rail to bring the new footbridge within the demise of that Station Lease by no later than six (6) months following the Start Date.

### 2 DIGITAL RAILWAY PROGRAMME

- 2.1 The ODP shall co-operate in good faith with Network Rail, any relevant ROSCO and any other relevant third party in connection with the development by Network Rail of a plan for the implementation and operational introduction on the routes of:

- (a) the Connected Driver Advisory System ("**C-DAS**");
- (b) the Combined Performance and Safety System ("**COMPASS**");
- (c) such similar system(s) which may be developed to succeed C-DAS or COMPASS; or
- (d) any system which is intended to provide interconnectivity between the European Train Control System ("**ETCS**"), C-DAS and COMPASS for the purposes of improving capacity management, performance, and safety.

- 2.2 In respect of any plan developed by Network Rail pursuant to paragraph 2.1 above, the ODP shall:

- (a) use all reasonable endeavours to provide assistance to Network Rail, any relevant ROSCO and any other relevant third party in connection with the development of the elements of the plan relating to:
  - (i) C-DAS;
  - (ii) COMPASS; and/or
  - (iii) such similar system(s) which may be developed to succeed C-DAS or COMPASS; and
- (b) use reasonable endeavours to provide assistance to Network Rail, any relevant ROSCO and any other relevant third party in connection with the development of the elements of the plan relating to any system which is intended to provide interconnectivity between ETCS, C-DAS and COMPASS for the purposes of improving capacity management, performance, and safety.

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### **3 DELAY REPAY**

#### **3.1 The ODP shall:**

- (a) by no later than 31 January 2019, set the rate of Delay Repay compensation for delays of:
  - (i) between fifteen (15) and twenty-nine (29) minutes at the rate of twenty five percent (25%) of the applicable single Fare or twenty five percent (25%) of the cost of the relevant portion of the return ticket for delays of between fifteen (15) and twenty-nine (29) minutes, where for the purposes of paragraphs 3.1(a)(i), 3.1(a)(ii) and 3.1(a)(iii) relevant portion means the outward or return portion of a return ticket depending on whether the delay was on the outward or return journey;
  - (ii) between thirty (30) and fifty-nine (59) minutes at the rate of:
    - (A) fifty percent (50%) of the applicable single Fare; or
    - (B) fifty percent (50%) of the cost of the relevant portion of the return ticket;
  - (iii) between sixty (60) and one hundred and nineteen (119) minutes at the rate of one hundred percent (100%) of the applicable single Fare or one hundred percent (100%) of the cost of the relevant portion of the return ticket; and
  - (iv) one hundred and twenty (120) minutes or longer at the rate of one hundred percent (100%) of the applicable single Fare or one hundred percent (100%) of the cost of the return ticket; and
- (b) by no later than the expiry of the second ODP Year, implement an automatic claims process for advance purchase train-specific Fare tickets booked and/or purchased via the ODP website and Communications Platforms.

### **4 BORDERS BUSINESS UNIT**

- 4.1 By no later than the Start Date the ODP shall create (and maintain throughout the ODP Grant Agreement Term) a dedicated business unit within the ODP's organisation in the form of the Borders Business Unit.
- 4.2 The Borders Business Unit shall in relation to the English Services and those Stations served by English Services:
  - (a) consult with DfT, passengers, Local Authorities, and other relevant Stakeholders in England;

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- (b) provide Marketing and Communications Services for Stakeholders in England; and
- (c) undertake any other relevant activities as the Authority may reasonably specify from time to time.
- 4.3 In addition to any other reporting obligations contained within the ODP Grant Agreement (including without limitation Schedule 11), the ODP shall provide in relation to the English Services and those Stations served by English Services the following operational information for each Reporting Period:
- (a) the number of actual Passenger Services per Reporting Period and on a moving annual average basis;
- (b) the percentage of: Passenger Services achieving the Right Time Measure; up to 4 minutes 59 seconds late; Passenger Services Cancelled; or over 20 Delay Minutes each on a per Reporting Period basis and on a moving annual average basis;
- (c) the most recent National Rail Passenger Surveys results and details of any other additional survey relating to customer satisfaction carried out; and
- (d) a report in relation to ticket office opening hours containing a record of actual hours opened against the planned hours of opening for each ticket office at each Station.
- 4.4 In addition to any other reporting obligations contained within this ODP Grant Agreement, where the ODP is required to provide reporting and operational information to the Authority where practicable such information shall be provided in respect of the English Services and those Stations served by English Services, including as a minimum:
- (a) the amount of money spent in carrying out or procuring the carrying out of the Minor Works' Programme no less than once every three (3) Reporting Periods;
- (b) the information required pursuant to and in accordance with the provisions of Schedule 1.5 (Information about Passengers);
- (c) where operationally efficient, the management information required pursuant to and in accordance with Schedule 11.2 (Management Information); and
- (d) any other information as the Authority may reasonably specify from time to time.
- 4.5 If so requested by the Authority the ODP shall upon reasonable notice, attend meetings with the Authority and/or Secretary of State to discuss and provide an opinion on any relevant issues.



**Schedule 6.2 - Committed Obligations**

**Part 1 - Committed Obligations**

| Committed<br>Obligation<br>Reference<br>(CO) | Committed Obligation |  |
|--|----------------------|--|
| <b>Stations</b>                              |                      |  |
| <b>CO1</b>                                   | <b>1</b>             | <b>INITIAL STATION REFRESH PROGRAMME</b>   |
|  | 1.1                  | In ODP Year 1 the ODP shall incur a minimum expenditure of [REDACTED] carrying out activities under the Initial Station Refresh Programme (as defined in the Service Improvement Plan).  |
|  | 1.2                  | In ODP Year 2 the ODP shall incur a minimum expenditure of [REDACTED] carrying out activities under the Initial Station Refresh Programme (as defined in the Service Improvement Plan).  |
| <b>CO2</b>                                   | <b>2</b>             | <b>GATELINE MONITORING</b>   |
|  | 2.1                  | By no later than 31 March 2020, the ODP shall incur a minimum expenditure of [REDACTED] to carry out the installation of new gateline remote video monitoring equipment at a minimum of five (5) Stations as set out in SI136 of the Service Improvement Plan. |

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| <b>CO3</b> | <p><b>3 STATION GATES AND INFORMATION SCREENS</b></p> <p>3.1 The ODP shall:</p> <p>(a) by no later than 31 March 2022, incur a minimum expenditure of [REDACTED] to install seventeen (17) new gates at Stations in accordance with the Service Improvement Plan, including by the end of the 2<sup>nd</sup> ODP Year a new gateline at Bangor station;</p> <p>(b) by no later than 31 March 2021, incur a minimum expenditure of [REDACTED] to install the following screens, all of which shall provide bi-lingual content in Wales:</p> <p style="padding-left: 40px;">(i) a minimum of one hundred and seventy six (176) new industry-leading digital passenger information screens at WCB Stations to be used to impart specific messages, including real time information, calling patterns and portion working information. The ODP shall maintain the full operation of such screens for the duration of the ODP Grant Agreement Term; and</p> <p style="padding-left: 40px;">(ii) a minimum of ten (10) mobile passenger information screens at Hub stations which can be used to support special events and at times of significant disruption at selected locations.</p> <p>3.2 Where the ODP is unable to deliver the new gateline at Bangor because the cost exceeds [REDACTED], the ODP shall incur expenditure of such amount in a minimum of [REDACTED] additional Revenue Protection Officers for the North Wales area.</p> |
| <b>CO4</b> | <p><b>4 STATION IMPROVEMENT FUND</b></p> <p>4.1 The ODP shall incur expenditure of [REDACTED] such expenditure to be incurred in accordance with its Station Improvement Plan.</p>   |
| <b>CO5</b> | <b>Flagship Programme</b>  |

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|                   | <p>4.2 As part of the amount set out in 4.1 above, the ODP shall deliver the “Flagship” programme (Type F) to improve station capacity and customer facilities by committing to spend a minimum of [REDACTED], with the intention to seek further funding from external parties:</p> <ul style="list-style-type: none"> <li>(a) Cardiff Central: [REDACTED]</li> <li>(b) Chester : [REDACTED]</li> <li>(c) Shotton: [REDACTED]</li> <li>(d) Llanelli: [REDACTED]</li> <li>(e) Wrexham General: [REDACTED]</li> <li>(f) Abergavenny: [REDACTED]</li> <li>(g) Blaenau Ffestiniog: [REDACTED]</li> <li>(h) Carmarthen: [REDACTED]</li> <li>(i) Chepstow: [REDACTED]</li> <li>(j) Machynlleth: [REDACTED]</li> <li>(k) Merthyr Tydfil: [REDACTED]</li> </ul> |
| <p><b>CO6</b></p> | <p><b>Green Stations and Art Work</b></p> <p>4.3 As part of the amount set out in 4.1 above, from the beginning of the 6<sup>th</sup> ODP Year until the Expiry Date, the ODP shall incur expenditure of [REDACTED] in Green Stations and Art Work to ensure stations are characterful, and promote reflect their local landmarks.</p>   |

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| <b>CO7</b>  | <p><b>Station Accessibility</b></p> <p>4.4 As part of the amount set out in 4.1 above, the ODP shall incur a minimum expenditure of [REDACTED] throughout the ODP Grant Agreement Term in enhancements approved by the Authority to make Stations more accessible.</p>  |
| <b>CO8</b>  | <p><b>Station Wi-Fi</b></p> <p>4.5 As part of the amount set out in 4.1 above, by no later than 31 December 2020, the ODP shall ensure that its Wi-Fi delivery solution delivers Wi-Fi coverage to all stations and shall invest, as a minimum, [REDACTED] in these deployment works.</p>   |
| <b>CO9</b>  | <p><b>Passenger Information Screens</b></p> <p>4.6 By no later 1 April 2021, the ODP shall augment the existing CIS with DIS at all category A, B and C1 WCB Stations, which provides a large format screen (either 32" or 46" screen) using a content management system to deliver relevant, timely information to customers, be more flexible than the existing display screens and will be able to be used in different 'modes'.</p> |
| <b>CO10</b> | <p><b>5 TREFOREST ESTATE STATION</b></p> <p>5.1 The ODP shall no later than 31 October 2025, deliver new Treforest Estate Station at a site where it can meet customer demand or commit to spend a minimum of [REDACTED] on other RV Assets to be agreed with the Authority at the time (if planning permission for the new station is not granted).</p>  |
| <b>CO11</b> | <p><b>6 GABALFA STATION</b></p> <p>6.1 The ODP shall, no later than 31 March 2027, deliver a new Gabalfa station or commit to spend a minimum of [REDACTED] on other RV Assets to be agreed with the Authority at the time (if planning permission for the new station is not granted).</p>   |

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| <b>CO12</b>              | <b>7</b>  | <b>ENTERPRISE SHOWCASES</b>  |
|                          | 7.1       | <p>The ODP shall invest:</p> <p>by no later than 31 March 2020, [REDACTED]; and</p> <p>by no later than 31 March 2026, [REDACTED],</p> <p>to introduce Enterprise Showcases as defined in the Station Social and Commercial Development Plan.</p>  |
| <b>Service Quality</b>   |           |  |
| <b>CO13</b>              | <b>8</b>  | <b>HOT SPOT MITIGATION FUND</b>  |
|                          | 8.1       | <p>From the Start Date, the ODP shall in each ODP Year (such sum pro-rated in ODP Year 1) incur a minimum expenditure of [REDACTED] from a fund (being the "<b>Hot Spot Mitigation Fund</b>") on initiatives, agreed in collaboration with Network Rail, to improve infrastructure performance, prevent external incidents and delays at hot spot locations on the network serving the CVL Services.</p> |
| <b>CO14</b>              | <b>9</b>  | <b>ACCESS PLANNING DECISION SUPPORT TOOL</b>   |
|                          | 9.1       | <p>On and from 1 April 2019, the ODP shall incur expenditure of [REDACTED] throughout the ODP Grant Agreement Term in respect of the [REDACTED] (or equivalent) Restrictions of use Decision Support Tool access planning tool in accordance with Annex C of Schedule 13.1 to the ODP Grant Agreement.</p>   |
| <b>CO15</b>              | <b>10</b> | <b>RAIL SERVICES PERFORMANCE MANAGEMENT AND BUSINESS INTELLIGENCE</b>  |
|                          | 10.1      | <p>The ODP shall incur expenditure of [REDACTED] during the ODP Grant Agreement Term on measures designed to improve Rail Services performance management and business intelligence including those set out in SI164 and SI182.</p>  |
| <b>Train Performance</b> |           |  |

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| <b>CO16</b> | <p><b>11 ROLLING STOCK RELIABILITY</b></p> <p>11.1 By no later than 1 April 2020, the ODP shall carry out the works in relation to class 150, 153 and 158 units in accordance with SI48, SI71 and SI95.</p> <p>11.2 Throughout the ODP Grant Agreement Term, the ODP shall incur expenditure of [REDACTED] (nominal, not to be indexed) in respect of the works set out in 11.1 above.</p>  |
| <b>CO17</b> | <p><b>12 CLEANING AND REFURBISHMENT PROGRAMME</b></p> <p>12.1 By no later than 31 March 2020, the ODP shall spend no less than [REDACTED] on initiatives including:</p> <ul style="list-style-type: none"> <li>(a) exterior and interior initial deep cleans of all rolling stock;</li> <li>(b) replace faulty PIS/PA, faulty CCTV and lamps;</li> <li>(c) repairs to floors and upholstery; and</li> <li>(d) removal of all outstanding graffiti and etching.</li> </ul> <p>12.2 In addition, the ODP shall spend no less than:</p> <ul style="list-style-type: none"> <li>(a) [REDACTED] (nominal, not to be indexed) on PRM modifications; and</li> <li>(b) [REDACTED] (nominal, not to be indexed) on a refurbishment programme as described in SI67, to be carried out to all units (excluding Pacers).</li> </ul> |

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| <b>CO18</b> | <p><b>13 NON-ROSCO IMPROVEMENT SOLUTIONS</b></p> <p>13.1 By no later than 31 March 2020, the ODP shall incur a minimum of [REDACTED] for non-ROSCO improvement solutions.</p>   |
| <b>CO19</b> | <p><b>14 FLEET FUTURE PROOFING</b></p> <p>14.1 From 1 April 2025 until the Expiry Date, the ODP shall incur a minimum expenditure of [REDACTED] each and every ODP Year to implement performance improvement and future proofing modifications across all fleets over and above modifications that have positive business cases shall be delivered through interventions jointly developed with the TMMs.</p> |
| <b>CO20</b> | <p><b>15 NEW ROLLING STOCK</b></p> <p>15.1 The ODP shall, subject to the availability of such product, on or after 31 December 2028 and prior to the Expiry Date, replace class 67 locomotives with locomotives that produce less emissions (such as [REDACTED]), and the ODP shall incur expenditure of at least [REDACTED] (nominal, not to be indexed) for this purpose.</p>                               |
| <b>CO21</b> | <p><b>16 INSTALLATION OF WI-FI ON ROLLING STOCK</b></p> <p>16.1 The ODP shall ensure that the on train Wi-Fi system is installed on all newly built and cascaded rolling stock and that an expenditure of at least [REDACTED] (nominal, not to be indexed) is incurred for this purpose.</p>  |

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| <b>CO22</b> | <p><b>17 FIRST CLASS AND PREMIER MEAL OFFERING</b></p> <p>17.1 The ODP shall ensure that:</p> <p>(a) by no later than 1 January 2020, there is a Premier class meal offering on all Cardiff to Holyhead services operated by Mk III and MkIV coaching stock; and</p> <p>(b) by no later than 1 January 2025, there is the provision of first class carriage and facilities on all Cardiff – Manchester services operated by long distance DMUs.</p> |
| <b>CO23</b> | <p><b>18 TRAIN PLAN</b></p> <p>18.1 By 31 December 2019, the ODP shall remove all Class 142s and Class 143s from the Train Plan.</p>  |
| <b>CO24</b> | <p><b>19 CLASS 170 REFURBISHMENT</b></p> <p>19.1 By no later than 31 December 2027, the ODP shall complete refurbishment of Class 170 fleet in accordance with SI67.</p>  |
| <b>CO25</b> | <p><b>20 BUSINESS INTELLIGENCE SUITE</b></p> <p>20.1 By no later than 14 October 2020, the ODP shall incur a minimum expenditure of [REDACTED] delivering the business intelligence suite, which will also act as short formation monitoring system.</p>  |
| <b>CO26</b> | <p><b>21 SEASONAL APPROACH</b></p> <p>21.1 By no later than 30 June 2019, the ODP shall create a joint seasonal preparation approach agreed with Network Rail. The ODP shall work with Network Rail on:</p>   |



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|                                 |           | <p>(a) rail head treatment of train circuits;</p> <p>(b) areas for de-vegetation; and</p> <p>(c) utilising technology on the ODP's on-train monitoring system to highlight when wheel slide protection has been activated due to low adhesion (in real-time).</p>                                     |
| <b>CO27</b>                     | <b>22</b> | <p><b>ISO 55001 ACCREDITATION</b></p> <p>22.1 By no later than 31 October 2021, the ODP shall obtain ISO 55001 certification for rolling stock asset management and shall maintain such accreditation for the remainder of the ODP Grant Agreement Term.</p>  |
| <b>CO28</b>                     | <b>23</b> | <p><b>SELECTIVE DOOR OPENING</b></p> <p>23.1 By no later than 31 December 2022, the ODP shall incur a minimum expenditure of [REDACTED] deploying the selective door opening beacons system to enable the operation of both 4-car and 5-car trains between Manchester and West Wales.</p>             |
| <b>Stakeholder and Supplier</b> |           |   |
| <b>CO29</b>                     | <b>24</b> | <p><b>STAKEHOLDER AND SUPPLIER ENGAGEMENT</b></p> <p>24.1 Throughout the ODP Grant Agreement Term, the ODP shall incur a minimum expenditure of [REDACTED] on Stakeholder and supplier engagement activities (in addition to the CRP Amount), including as set out in SI359 to SI365 (inclusive).</p> |
| <b>CO30</b>                     | <b>25</b> | <p><b>SCDP</b></p> <p>25.1 Throughout the ODP Grant Agreement Term, the ODP shall incur a minimum expenditure of [REDACTED] in respect of SCDP annual review and consultation costs.</p>  |

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| <b>CO31</b> | <p data-bbox="376 236 925 260"><b>26 CLASS 142 AND 143 REBRANDING</b></p> <p data-bbox="376 308 2033 379">26.1 By no later than 31 March 2019, the ODP shall have completed the rebrand Class 142 and Class 143 into a “Change is Coming Soon” or equivalent livery in accordance with the Brand Guidelines and as agreed with the Authority.</p> |
| <b>CO32</b> | <p data-bbox="376 427 1099 451"><b>27 REBRAND OF CLASS 150, 153, 158, 175 AND 769</b></p> <p data-bbox="376 499 2033 571">27.1 By no later than 31 March 2021, the ODP shall have completed the full rebrand (interior and exterior) of CI150, CI153, CI158, CI175 and CI769 in accordance with the Branding Guidelines.</p>                      |
| <b>CO33</b> | <p data-bbox="376 619 819 643"><b>28 HUB STATIONS REBRAND</b></p> <p data-bbox="376 691 2033 762">28.1 By no later than 31 March 2021, the ODP shall have completed the activities required to rebrand all Hub Stations and Interchange Stations in accordance with the Brand Guidelines.</p>   |
| <b>CO34</b> | <p data-bbox="376 810 920 834"><b>29 CATEGORY C STATION REBRAND</b></p> <p data-bbox="376 882 2033 954">29.1 By no later than 31 March 2024, the ODP shall have completed the activities required to rebrand all Category C Stations in accordance with the Brand Guidelines.</p>   |
| <b>CO35</b> | <p data-bbox="376 1002 920 1026"><b>30 CATEGORY D STATION REBRAND</b></p> <p data-bbox="376 1074 2033 1145">30.1 By no later than 31 March 2024, the ODP shall have completed the activities required to rebrand all Category D Stations in accordance with the Brand Guidelines.</p>   |

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| <b>CO36</b>      | <b>31</b> | <b>NEW ROLLING STOCK BRANDING</b>   |
|                  | 31.1      | By no later than 31 March 2024, the ODP shall have completed the activities to brand all new and cascaded trains coming into service in accordance with the Brand Guidelines and ODP rolling stock strategy.  |
| <b>Car park</b>  |           |   |
| <b>CO37</b>      | <b>32</b> | <b>CAR PARK CAPACITY EXPANSION</b>  |
|                  | 32.1      | By no later than 31 March 2025, the ODP shall incur a minimum expenditure of [REDACTED] on car park capacity expansions across all Stations of a minimum 1,500 car parking spaces, including, by no later 31 March 2021, completion of a decked car park expansion at Newport station, in accordance with SI11.             |
| <b>Ticketing</b> |           |   |
| <b>CO38</b>      | <b>33</b> | <b>TICKET OFFICES</b>   |
|                  | 33.1      | By no later than 31 March 2021, the ODP shall invest a minimum of [REDACTED] in refreshing the [REDACTED] (or equivalent) desktop ticketing system used by the ODP Services Employee and, by 31 March 2023, providing tablet versions so that the ODP Services Employee can serve customers from any area of the concourse. |
| <b>CO39</b>      | <b>34</b> | <b>TICKET OFFICE REDEVELOPMENT</b>  |
|                  | 34.1      | By no later than 31 March 2022, the ODP shall incur a minimum expenditure of [REDACTED] to redevelop ticket offices at a minimum of six (6) Stations, being: <ul style="list-style-type: none"> <li>(a) Cardiff Queen Street;</li> <li>(b) Cardiff Central;</li> </ul>  |

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|             | <p>(c) Chester;</p> <p>(d) Swansea;</p> <p>(e) Newport; and</p> <p>(f) Shrewsbury,</p> <p>in accordance with the Station Improvement Plan.</p> <p>34.2 By no later than 31 March 2022, the ODP shall replace all existing ticket vending machines (as at date of this Agreement) with new ticket vending machines.</p>  |
| <b>CO40</b> | <p><b>35 TICKET VENDING MACHINES</b></p> <p>35.1 By no later than 31 March 2020:</p> <p>(a) the ODP shall install a minimum of eighty five (85) new ticket vending machines at Stations which as at the date of this Agreement do not have ticket vending machines; and</p> <p>(b) subject to the approval of the SFO, the ODP shall use all reasonable endeavours to install two (2) branded ticket vending machines at each of Manchester Piccadilly Station and Birmingham New Street Station.</p> |
| <b>CO41</b> | <p><b>36 SMART TICKETING SCHEME</b></p> <p>36.1 By no later than 1 April 2019, the ODP shall introduce a Smart Ticketing Scheme that complies with the requirements set out in Schedule 5.9 (Smart Ticketing) and the ODP shall:</p> <p>(a) support functionality on gateline ITSO equipment, ticket office machine and ticket vending machines; and</p>  |

|  |   |
|--|---|
|  | <p>(b) provide staff training and project management in respect of such smart card scheme.</p> <p>36.2 By no later than 1 April 2020, the ODP shall introduce a pay as you go facility for smart card users in the South Wales Metro area.</p> <p>36.3 By no later than 1 April 2021, the ODP shall launch a pay as you go facility for mobile ticket users on WCB Services.</p> <p>36.4 Throughout the ODP Grant Agreement Term, the ODP shall incur a minimum expenditure of [REDACTED] in developing smart ticketing.</p>  |
| <b>CO42</b>                              | <p><b>37 PARTNERSHIP WITH CONVENIENCE STORES</b></p> <p>37.1 By no later than 31 March 2020, the ODP shall incur a minimum expenditure of [REDACTED]:</p> <p>(a) establishing a partnership with a network of convenience store retailers to introduce rail ticket sales including entering into contracts with [REDACTED ]to provide retail services to a network of over [REDACTED] (or similar coverage if similar company) convenience stores in Wales, to offer a rail ticket retail and fulfilment service; and</p> <p>(b) ensuring customers will be able to purchase tickets on line and pick them up at a store, buy in store (barcode retail and collection) and fulfil ticket to smartcards.</p> |
| <b>Traffic and Disruption Management</b> |   |
| <b>CO43</b>                              | <p><b>38 TRAFFIC AND DISRUPTION MANAGEMENT SYSTEMS</b></p> <p>38.1 The ODP shall during the ODP Grant Agreement Term, incur expenditure of [REDACTED] in aggregate:</p> <p>(a) on new systems and processes designed to increase the speed of response to disruptive incidents, including as set out in SI99 and SI181; and</p>   |

|   |           |   |
|---|-----------|---|
|   | (b)       | between 1 April 2020 and 31 March 2024, on disruption management improvements, including an accelerated rollout of Traffic Management systems in South Wales and on the Marches up to Crewe.  |
| <b>Infrastructure</b>                   |           |   |
| <b>CO44</b>                             | <b>39</b> | <b>SIGNALLING IMPROVEMENTS</b>  |
|   | 39.1      | By no later than 31 December 2023, the ODP shall incur a minimum expenditure of [REDACTED] to install an intermediate block signal between Wrexham General and Gobowen, to be delivered in conjunction with Network Rail, to split a twelve (12) mile absolute block section and facilitate services between Cardiff and Liverpool. |
| <b>CO45</b>                             | <b>40</b> | <b>AUDIT OF UNUSED SITES</b>  |
|   | 40.1      | By no later than 31 March 2019, the ODP shall incur a minimum expenditure of [REDACTED] carrying out an audit of two hundred and fifty (250) unused sites across the network on which the Rail Services are delivered (" <b>Initial Audit of Unused Sites</b> ").   |
|   | 40.2      | The ODP shall incur a minimum expenditure of [REDACTED] carrying out subsequent audits every two years until OPD Year 13.   |
| <b>CO46</b>                             | <b>41</b> | <b>BRITISH TRANSPORT POLICE RESOURCING</b>  |
|   | 41.1      | By no later than 1 April 2019, the ODP shall incur a minimum expenditure of [REDACTED] on additional BTP resource. The ODP shall incur a minimum expenditure of [REDACTED] each ODP Year thereafter on such additional BTP resource.  |
| <b>Website, Customer App and Phones</b> |           |   |
| <b>CO47</b>                             | <b>42</b> | <b>WEBSITE AND PASSENGER APP DEVELOPMENT</b>  |
|   | 42.1      | Throughout the ODP Grant Agreement Term, the ODP shall incur a minimum expenditure of [REDACTED] in web and Passenger app development that shall improve the presentation of fares to customers, specifically the information on the validity of fares, including:  |

|                   |   |
|-------------------|---|
|                   | <ul style="list-style-type: none"> <li>(a) by no later than 30 September 2019, in launching a new website to improve customer digital channels;</li> <li>(b) by no later than 30 November 2019, in launching a Passenger app to improve customer digital channels;</li> <li>(c) from 1 April 2020 to the end of the ODP Grant Agreement Term, in deploying the in-app push notification platform; and</li> <li>(d) from the end of ODP Year 1 and throughout the ODP Grant Agreement Term, in developing in-app fault reporting.</li> </ul> |
| <b>CO48</b>       | <p><b>43 DATA MANAGEMENT</b></p> <p>43.1 During the ODP Grant Agreement Term, the ODP shall incur a minimum expenditure of [REDACTED] in:</p> <ul style="list-style-type: none"> <li>(a) providing an API software platform for use by third parties;</li> <li>(b) integrating the data sources required under Schedule 1.5, paragraph 9, and additional relevant data sources; and</li> <li>(c) engaging with communities to drive usage of such data collected.</li> </ul>  |
| <b>CO49</b>       | <p><b>44 SMARTPHONES</b></p> <p>44.1 By no later than 31 March 2020, the ODP shall incur a minimum expenditure of [REDACTED] procuring smart devices as described in SI248 of the Service Improvement Plan.</p>   |
| <b>CO50</b>       | <p><b>45 PHONE CONNECTIVITY IMPROVEMENTS</b></p> <p>45.1 Throughout the ODP Grant Agreement Term, the ODP shall incur a minimum expenditure of [REDACTED] in total to improve mobile phone connectivity to reduce not spots across the network.</p>   |
| <b>Innovation</b> |   |

|                       |           |  |
|-----------------------|-----------|--|
| <b>CO51</b>           | <b>46</b> | <b>AUTONOMOUS VEHICLES</b>   |
|                       | 46.1      | In each of ODP Year 2 and ODP Year 3, the ODP shall incur a minimum expenditure of [REDACTED] to pilot the use of two (2) [REDACTED] (or equivalent) autonomous vehicles.  |
| <b>CO52</b>           | <b>47</b> | <b>WALES AND BORDERS INNOVATION LABS</b>   |
|                       | 47.1      | By no later than 31 March 2020, the ODP shall incur a minimum expenditure of [REDACTED] in establishing a new innovation centre, in partnership with a Welsh university, (the "Wales & Borders Innovation (WBI) Labs"). For each ODP Year thereafter the ODP shall incur a minimum expenditure of [REDACTED] continuing to support the Wales & Borders Innovation (WBI) Labs in accordance with the ODP's Innovation Strategy. |
| <b>CO53</b>           | <b>48</b> | <b>ACTIVE TRAVEL FUND</b>  |
|                       | 48.1      | Between 1 April 2019 and 31 March 2027, the ODP shall incur a minimum expenditure of [REDACTED] on activities to promote active travel.  |
| <b>CO54</b>           | <b>49</b> | <b>PASSENGER INFORMATION INNOVATION FUND</b>   |
|                       | 49.1      | By 1 April 2025, the ODP shall create a dedicated Passenger Information Innovation Fund and from this date spend [REDACTED] each ODP Year to promote innovative technologies.  |
| <b>Staff Location</b> |           |  |
| <b>CO55</b>           | <b>50</b> | <b>DESIGN OFFICE</b>   |
|                       | 50.1      | By no later than 1 September 2019, the ODP shall procure that Amey Consulting shall employ a minimum of fifty (50) persons exclusively by Amey Consulting to develop the CVL Transformation shall be located at an office in Cardiff (the " <b>Design Office</b> ").   |



|              |  |
|--------------|--|
| <b>CO56</b>  | <p><b>51 KEOLIS HEADQUARTERS</b></p> <p>51.1 By no later than 1 January 2020, Keolis UK Headquarters shall be located exclusively in Wales.</p>  |
| <b>CO57</b>  | <p><b>52 KEOLIS GLOBAL RAIL DIVISION HEADQUARTERS</b></p> <p>52.1 By no later than 31 December 2020, the ODP shall ensure that Keolis Global Rail Division Headquarters shall be exclusively located in Wales.</p>   |
| <b>CO58</b>  | <p><b>53 STAFF FACILITIES</b></p> <p>53.1 By no later than 14 October 2019, the ODP shall incur a minimum expenditure of [REDACTED] to improve staff break-out areas and mess-room facilities.</p>   |
| <b>CO59</b>  | <p><b>54 SERVICE CENTRES</b></p> <p>54.1 By no later than 31 March 2021, the ODP shall establish and operate a shared service centre in Wales which shall carry out activities (including human resource administration, finances, customer relations and information technology support) for the benefit of the ODP, KeolisAmey subsidiaries and other affiliated entities (the "<b>Shared Service Centre</b>").</p> <p>54.2 By no later than 31 March 2024, the ODP shall establish a customer service contact centre in Cardiff Valleys employing a minimum of ten (10) persons (the "<b>Customer Service Contact Centre</b>").</p> |
| <b>Fares</b> |  |
| <b>CO60</b>  | <p><b>55 DELAY REPAY NOTIFICATION SYSTEM</b></p> <p>55.1 By 31 March 2020, the ODP shall implement a system for automated notification of Delay Repay entitlement in respect of advance purchase train-specific fare tickets and/or purchased via the ODP website and Communication Platforms.</p>   |

| Depots      |           |   |
|-------------|-----------|---|
| <b>CO61</b> | <b>56</b> | <b>NEW WHEEL LATHES</b>   |
|             | 56.1      | By no later than 1 January 2021, the ODP shall procure and put into operation use a new wheel lathe at Canton depot.                                |
|             | 56.2      | By no later than 31 March 2024, the ODP shall procure and put into operation use a new wheel lathe at Chester depot.                                |
| <b>CO62</b> | <b>57</b> | <b>TAFF'S WELL DEPOT</b>  |
|             | 57.1      | By no later than 31 August 2021, the ODP shall complete the construction of a depot at Taff's Well as described in the RV Asset scheme.             |
| <b>CO63</b> | <b>58</b> | <b>ADDITIONAL DMUS</b>  |
|             | 58.1      | By no later than 28 February 2025, the ODP shall have completed testing, commissioning and introduction of seven (7) additional DMUs (Rural Lot2a). |

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## **Part 2 - Special Terms Related to Committed Obligations**

This Part 2 of Schedule 6.2 sets out further provisions which shall apply to the Committed Obligations contained in this ODP Grant Agreement and these provisions shall be construed as supplemental to the related provisions set out in Part 1 of this Schedule 6.2 and elsewhere in this ODP Grant Agreement.

### **1 CONTINUATION OF AVAILABILITY**

1.1 Where the ODP is obliged under this Schedule 6.2 to provide, implement or install something (whether a service, facility or otherwise) the ODP shall ensure that once the same is provided, implemented or installed that it continues to be provided and made available (and where relevant, effectively maintained) for the remainder of the ODP Grant Agreement Term unless the contrary is expressly stated.

1.2 Where Part 1 to Schedule 6.2 (Committed Obligations) includes a commitment:

- (a) regarding the maintenance of certain facilities or activities or other similar analogous matters which are the subject of the Committed Obligations, the ODP shall not be regarded as having contravened the relevant obligation due to any temporary non-availability of the facility or activity (as the case may be) due to accidental damage or vandalism or maintenance, repair or replacement activities; or
- (b) regarding staffing requirements or particular appointments the ODP is required to make and maintain, the obligation of the ODP shall not be regarded as being contravened by:
  - (i) temporary absences (for example for sickness or holiday); or
  - (ii) temporary non-fulfilment of a relevant post whilst the ODP is recruiting for that post,

providing always that the ODP is using all reasonable endeavours to keep the duration of:

- (c) any non-availability of a facility or activity; or
- (d) vacant or unfulfilled post or appointment

(as the case may be) as short as reasonably practicable.

### **2 EXPENDITURE COMMITMENTS**

#### **2.1 Annual Expenditure**

Where Part 1 to Schedule 6.2 (Committed Obligations) provides for the expenditure of an annual amount (or an amount over some other period) by the ODP, that amount:

- 
- (a) is assessed net of Value Added Tax; and
- (b) is the amount required to be expended by the ODP itself or procured by the ODP to be expended.

## 2.2 Expenditure Commitments in real amounts

All expenditure commitments set out in Part 1 to Schedule 6.2 (Committed Obligations), to the extent they have not already been incurred by the ODP, shall be indexed by the Retail Prices Index (in the same way as variable costs are indexed in Appendix 1 (Annual Rail Services Payments) to Schedule 8.1 (Rail Services Payments)).

## 2.3 Expenditure by Network Rail

All amounts which the ODP has committed (whether unconditionally or otherwise) pursuant to Part 1 to Schedule 6.2 (Committed Obligations) to expend in connection with improvements to track or Stations shall be in addition to any expenditure made by Network Rail as part of its infrastructure improvements or maintenance programme to the extent such expenditure is not directly funded or reimbursed by the ODP.

## 2.4 Underspend

- (a) Where in relation to any Committed Obligation that is expressed in terms of a requirement to spend not less than a specified sum in fulfilling its stated objective, the ODP is able to achieve that stated objective without incurring the full amount referred to in that Committed Obligation, whether because of cost savings or otherwise, the ODP shall notify the Authority, together with a statement of the costs it has incurred (excluding any third party funding) in delivering the relevant obligations and a reconciliation against the amount it had committed to spend (excluding any third party funding) ("**Underspend**").
- (b) The Parties shall, acting reasonably, seek to agree an additional scheme or schemes which would give rise to benefits to passengers using the Passenger Services to be funded using one or more Underspends and, once agreed, the ODP shall apply such relevant Underspend to the delivery of the agreed scheme(s). In circumstances only where, despite having used reasonable endeavours, the Parties fail to agree additional scheme in relation to which relevant Underspend will be applied within three (3) months of notification of such Underspend, the aggregated amount of such Underspend shall be repaid to the Authority as soon as reasonably practicable.

## 3 NATURE OF COMMITMENT

- 3.1 Any commitment in terms of Part 1 to Schedule 6.2 (Committed Obligations) shall be in addition to any obligation of the ODP elsewhere in this Agreement and nothing in this

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Schedule 6.2 (Committed Obligations) shall limit or restrict an obligation imposed on the ODP elsewhere in this Agreement.

3.2 Save as expressly provided in Part 1 to Schedule 6.2 (Committed Obligations), each Committed Obligation is a separate obligation from any other Committed Obligation and satisfaction of or steps taken towards the satisfaction of one Committed Obligation will not amount to or contribute towards satisfaction of any other Committed Obligation.

3.3 Where in Part 1 to Schedule 6.2 (Committed Obligations), references are made to particular manufacturers or suppliers of equipment or services, the ODP may fulfil its relevant commitment by using reasonable equivalents.

#### **4 REVIEW OF COMPLIANCE**

4.1 Progress with Committed Obligations shall be considered and discussed at ODP Services Performance Meetings.

4.2 In addition to its obligation under paragraph 4.1, the ODP shall from time to time promptly provide such evidence of its compliance with any Committed Obligation as the Authority may reasonably request.

#### **5 CONSEQUENCES OF LATE COMPLETION OR NON-DELIVERY OF COMMITTED OBLIGATIONS**

5.1 If the ODP fails to deliver in full a Committed Obligation in accordance with and by the timeframe specified for its delivery specified for the Rail Services Milestone of which it is a Rail Services Milestone Deliverable in Schedule 18 (Rail Services Milestones and Implementation), the terms concerning late delivery of such Rail Services Milestone as set out in Schedule 18 shall apply.

5.2 Subject to the ODP's entitlement to relief under Schedule 18 (Rail Services Milestones and Implementation), any such late, partial or non-delivery of such Committed Obligation shall constitute a contravention of the ODP Grant Agreement.

#### **6 SPECIMEN SCHEMES**

6.1 The ODP has proposed certain schemes as set out in the Service Improvement Plan in respect of the future development of certain ODP Services.

6.2 The parties acknowledge and agree that the Specimen Schemes shall only be committed to by the ODP following receipt of instructions by the Authority to implement the relevant Specimen Scheme provided always that such instruction shall be deemed to be a Change and the cost of such Change shall be based upon the costings and principles set out in the relevant Specimen Scheme.

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## 7 THIRD PARTY CONSENTS, AGREEMENT AND CONDITIONS

7.1 A Committed Obligation may be expressed to be conditional upon the satisfaction of any condition (including the occurrence of any event or the obtaining of any third party consent and/or entering into any agreement or arrangement with a third party) (“**Committed Obligation Pre-condition**”). Where a Committed Obligation is subject to a Committed Obligation Pre-condition and, despite having used all reasonable endeavours, the ODP is not able to satisfy such Committed Obligation Pre-condition within such timescales (if any) as are required to enable the ODP to deliver such Committed Obligation in accordance with its terms then the Authority and the ODP shall agree (or on failure to agree, the Authority shall reasonably determine) such modifications to such Committed Obligation as may be necessary to allow the ODP to deliver a scheme which would give rise to benefits to passengers using the Passenger Services similar to (but not necessarily the same as) those benefits which would have arisen if the ODP had delivered such Committed Obligation.

7.2 Subject to the ODP’s entitlement to relief under Schedule 18 (Rail Services Milestones and Implementation), if the ODP and the Authority agree (or on failure to agree, the Authority reasonably determines) a modification to a Committed Obligation pursuant to paragraph 7.1 then to the extent that the ODP delivers such modified Committed Obligation by the date agreed by the Parties (or, on failure to agree reasonably determined by the Authority) then the ODP shall not be in breach of the ODP Grant Agreement.

## 8 DESIGNATION OF ASSETS COMPRISED IN COMMITTED OBLIGATIONS AS PRIMARY RAIL SERVICES ASSETS

8.1 The Authority may at any time designate as a Primary Rail Services Asset any asset (other than those designated as RV Assets) introduced by the ODP by way of a Committed Obligation (the “**Designated CO Primary Rail Services Assets**”). Such designation shall take effect from the date on which the Authority delivers to the ODP a notice designating the relevant asset as a Designated CO Primary Rail Services Asset.

8.2 The transfer value in relation to any Designated CO Primary Rail Services Asset, which at the end of the ODP Grant Agreement Term is:

- (a) not de-designated as a Primary Rail Services Asset pursuant to paragraph 10 of Schedule 14.4 (Designation of Primary Rail Services Assets); and
- (b) transferred to a Successor Operator (whether pursuant to the Transfer Scheme or otherwise),

shall (unless otherwise agreed by the Authority) be nil.

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## **9 OBLIGATIONS ON DELIVERY OF A COMMITTED OBLIGATION**

9.1 By no later than thirty (30) days after the date of delivery of a Committed Obligation the ODP shall provide to the Authority a certificate (in such form as may be specified by the Authority from time to time) signed by a statutory director of the ODP or other authorised representative of the ODP as agreed by the Authority confirming that such Committed Obligation has been delivered in full and in accordance with its terms, together with such supporting information as may be requested by the Authority from time to time.

## **10 ADJUSTMENT TO COMMITTED OBLIGATIONS**

10.1 The Parties acknowledge that the Authority has elected to contractualise initiatives from the initiatives contained within the ITSFT Bid Response into Committed Obligations.

10.2 The Authority shall have the right to instruct the ODP not to proceed with any Committed Obligations at any time prior to their delivery subject to such instruction not to proceed:

- (a) not being made by the Authority after the date identified in such Committed Obligation as the commencement of incurred costs for the relevant Committed Obligation; and
- (b) not being made to a Committed Obligation which other Committed Obligations that are not adjusted are dependent upon.

10.3 Where the Authority requires such removal of the Committed Obligations:

- (a) the Rail Services Payments shall be adjusted by the amount of the Rail Services Payment associated with such Committed Obligation within the Record of Assumptions and any inputs used to populate the FTFM for each Committed Obligation; and
- (b) the obligation to deliver such Committed Obligation shall be removed from the ODP Services,

such removal of Committed Obligations and subsequent adjustment to the Rail Services Payment shall be progressed as a Change within Schedule 9.

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**Schedule 6.3**

**Part 1 – [not used]**



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## **Part 2 - Special Terms Related to Service Improvements**

This Part 2 of Schedule 6.3 sets out provisions which shall apply to the Service Improvements contained in the Service Improvement Plan.

### **1 CONTINUATION OF AVAILABILITY**

1.1 Where the ODP is obliged under the Service Improvement Plan to provide, implement or install something (whether a service, facility or otherwise) the ODP shall ensure that once the same is provided, implemented or installed that it continues to be provided and made available (and where relevant, effectively maintained) for the remainder of the Rail Services Term unless the contrary is expressly stated.

1.2 Where any Service Improvement includes a commitment:

- (a) regarding the maintenance of certain facilities or activities or other similar analogous matters which are the subject of the Service Improvements, the ODP shall not be regarded as having contravened the relevant obligation due to any temporary non-availability of the facility or activity (as the case may be) due to accidental damage or vandalism or maintenance, repair or replacement activities; or
- (b) regarding staffing requirements or particular appointments the ODP is required to make and maintain, the obligation of the ODP shall not be regarded as being contravened by:
  - (i) temporary absences (for example for sickness or holiday); or
  - (ii) temporary non-fulfilment of a relevant post whilst the ODP is recruiting for that post,

providing always that the ODP is using all reasonable endeavours to keep the duration of:

- (c) any non-availability of a facility or activity; or
- (d) any vacant or unfulfilled post or appointment

(as the case may be) as short as reasonably practicable.

### **2 EXPENDITURE COMMITMENTS**

#### **2.1 Annual Expenditure**

Where any Service Improvement provides for the expenditure of an annual amount (or an amount over some other period) by the ODP, that amount:

- (a) is assessed net of Value Added Tax; and

- 
- (b) is the amount required to be expended by the ODP itself or procured by the ODP to be expended.

## 2.2 Expenditure Commitments in real amounts

All expenditure commitments set out in the Service Improvement Plan, to the extent they have not already been incurred by the ODP, shall be indexed by the Retail Prices Index (in the same way as variable costs are indexed in Appendix 1 (Annual Rail Services Payments) to Schedule 8.1 (Rail Services Payments)).

## 2.3 Expenditure by Network Rail

All amounts which the ODP has committed (whether unconditionally or otherwise) pursuant to the Service Improvement Plan to expend in connection with improvements to track or Stations shall be in addition to any expenditure made by Network Rail as part of its infrastructure improvements or maintenance programme to the extent such expenditure is not directly funded or reimbursed by the ODP.

## 2.4 Underspend

- (a) Where in relation to any Service Improvement that is expressed in terms of a requirement to spend not less than a specified sum in fulfilling its stated objective, the ODP is able to achieve that stated objective without incurring the full amount referred to in that Service Improvement, whether because of cost savings or otherwise, the ODP shall notify the Authority, together with a statement of the costs it has incurred (excluding any third party funding) in delivering the relevant obligations and a reconciliation against the amount it had committed to spend (excluding any third party funding) ("**Underspend**").
- (b) The Parties shall, acting reasonably, seek to agree an additional scheme or schemes which would give rise to benefits to passengers using the Passenger Services to be funded using one or more Underspends and, once agreed, the ODP shall apply such relevant Underspend in the delivery of the agreed scheme(s). In circumstances only where, despite having used reasonable endeavours the Parties fail to agree additional scheme in relation to which relevant Underspend will be applied, the aggregated amount of such Underspend shall be repaid to the Authority as soon as reasonably practicable.

## 3 NATURE OF COMMITMENT

- 3.1 Any commitment under the Service Improvement Plan shall be in addition to any obligation of the ODP elsewhere in this Agreement and nothing in this Schedule 6.3 (Special Terms Related to Service Improvements) shall limit or restrict an obligation imposed on the ODP elsewhere in this Agreement.

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3.2 Save as expressly provided in any Service Improvement, each Service Improvement is a separate obligation from any other Service Improvement and satisfaction of or steps taken towards the satisfaction of one Service Improvement will not amount to or contribute towards satisfaction of any other Service Improvement.

3.3 Where, in any Service Improvements, references are made to particular manufacturers or suppliers of equipment or services, the ODP may fulfil its relevant commitment by using reasonable equivalents.

#### **4 REVIEW OF COMPLIANCE**

4.1 Progress with Service Improvements shall be considered and discussed at ODP Services Performance Meetings.

4.2 In addition to its obligation under paragraph 4.1, the ODP shall, from time, to time promptly provide such evidence of its compliance with any Service Improvement as the Authority may reasonably request.

#### **5 THIRD PARTY CONSENTS, AGREEMENT AND CONDITIONS**

5.1 A Service Improvement may be expressed to be conditional upon the satisfaction of any condition (including the occurrence of any event or the obtaining of any third party consent and/or entering into any agreement or arrangement with a third party) ("**Service Improvement Pre-condition**"). Where a Service Improvement is subject to a Service Improvement Pre-condition and, despite having used all reasonable endeavours, the ODP is not able to satisfy such Service Improvement Pre-condition within such timescales (if any) as are required to enable the ODP to deliver such Service Improvement in accordance with its terms then the Authority and the ODP shall agree (or on failure to agree, the Authority shall reasonably determine) such modifications to such Service Improvement as may be necessary to allow the ODP to deliver a scheme which would give rise to benefits to passengers using the Passenger Services similar to (but not necessarily the same as) those benefits which would have arisen if the ODP had delivered such Service Improvement.

5.2 If the ODP and the Authority agree (or on failure to agree, the Authority reasonably determines) a modification to a Service Improvement pursuant to paragraph 5.1 then to the extent that the ODP delivers such modified Service Improvement by the date agreed by the Parties (or, on failure to agree reasonably determined by the Authority) then the ODP shall not be in breach of the ODP Grant Agreement.

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**6 DESIGNATION OF ASSETS COMPRISED IN SERVICE IMPROVEMENTS AS PRIMARY RAIL SERVICES ASSETS**

6.1 The Authority may at any time designate as a Designated CO Primary Rail Services Asset any asset (other than those designated as RV Assets) introduced by the ODP by way of a Service Improvement. Such designation shall take effect from the date on which the Authority delivers to the ODP a notice designating the relevant asset as a Designated CO Primary Rail Services Asset.

**7 SERVICE IMPROVEMENT PLAN MAINTENANCE**

7.1 The Parties shall review the Service Improvement Plan and the Service Improvements contained therein on a quarterly basis or at some such other frequency as may be agreed by the Parties.

7.2 Either Party may propose amendments to Service Improvements within the Service Improvement Plan. Such amendments may include:

- (a) removal of a Service Improvement from the Service Improvement Plan;
- (b) change to the definition or scope of a Service Improvement; or
- (c) addition of new Service Improvements for inclusion within the Service Improvement Plan, always subject to the aggregate of such amendments to the Service Improvement Plan being of equivalent or greater value taking into account the value of the Service Improvements as recorded in the Record of Assumptions.

7.3 Changes to the Service Improvement Plan proposed in accordance with paragraph 7.2 of this Schedule 6.3, shall be by agreement of the Parties and shall not constitute a Change according to the process described in Schedule 9. Failing such agreement changes to the Service Improvement Plan shall be reasonably determined by the Authority taking into consideration the conditions set out in paragraph 7.2 of this Schedule 6.3. The approval of the Authority may not be unreasonably withheld.

7.4 The ODP shall deliver the Service Improvements included within the Service Improvement Plan.

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## Schedule 7

### Schedule 7.1 - Operational Performance

**1 DEFINITIONS, CHARGING REVIEW, TRACK ACCESS AGREEMENT, CHANGES TO BENCHMARKS AND ANNUAL BENCHMARKS AND NOTICE OF PERFORMANCE RESULTS**

1.1 For the purposes of this Schedule 7.1 (*Operational Performance*) only, the following words and expressions shall have the following meanings:

**“Ancillary Movements”** has the meaning ascribed to it in Part D of the Network Code;

**“Annual Operational Service Level”** means, in relation to an Annual Short Formation Benchmark for any ODP Year, the number set out in Column 3 (Annual Operational Service Level) of the Annual Short Formation Benchmark Table for that ODP Year;

**“Annual Short Formation Benchmark Table”** means the table set out in Part 2 (*Annual Short Formation Benchmark Table*) of Appendix 1 (*Short Formation Benchmarks and Annual Short Formation Benchmarks*) of Schedule 7.1 (*Operational Performance*);

**“Annual Short Formation Benchmark”** means, for each ODP Year, each of the benchmarks specified in the Annual Short Formation Benchmark Table for that ODP Year;

**“Annual Short Formation Payment Table”** means the table set out in Part 3 (*Annual Short Formation Payment Table*) of Appendix 1 (*Short Formation Benchmarks and Annual Short Formation Benchmarks*) of Schedule 7.1 (*Operational Performance*);

**“Bonus Rate”** means, for each ODP Year, the rate set out in the Passenger Time Lost Delay Performance Bonus Payment Table in Part 2 of Appendix 2 for:

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|                                 |  |
|---------------------------------|--|
|                                 | (a) Wales and Cross Border Lines in column 3; and  |
|                                 | (b) Core Valley Lines in column 4.   |
| <b>“Cancellation Minutes”</b>   | has the meaning given in Schedule 8 of the Track Access Agreement;   |
| <b>“Cancellation”</b>           | means a Passenger Service: <ul style="list-style-type: none"> <li>(a) which is included in the Enforcement Plan of the Day and which is cancelled for reasons attributed to the ODP pursuant to its Track Access Agreement; or</li> <li>(b) which is included in the Enforcement Plan of the Day and which operates less than fifty percent (50%) of its scheduled mileage (as prescribed in the Enforcement Plan of the Day) for reasons attributed to the ODP pursuant to its Track Access Agreement;</li> </ul> |
| <b>“Cancelled Stop”</b>         | means in relation to a Train scheduled in the Timetable to stop to set down passengers at a Station, the Train failing to stop at such Station, as recorded by Network Rail and/or the Infrastructure Manager;   |
| <b>“Cap Performance Level”</b>  | means in relation to the PTL Benchmark for any Reporting Period, the number set out in Column 6 ( <i>Cap Performance Level</i> ) of the PTL Benchmark Table.   |
| <b>“Critical Service Level”</b> | means, in relation to a Operational Performance Benchmark for any Reporting Period, the number set out in the relevant column of the Short Formation Benchmark Table and the PTL Benchmark Table (as the case may be) and in the row of the applicable table for that Reporting Period;  |

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**“CVL PTL Performance Payment”** means the payment determined pursuant to paragraph 7.2(b)(ii) of Schedule 7.1 (*Operational Performance*);

**“CVL Track Access Performance Schedule”** means a performance monitoring mechanism, whether incorporated in a track access agreement or not, which has been approved by the Authority and performs a function equivalent to Schedule 8 of the Track Access Agreement including, as a minimum:

- (a) monitoring and recording the arrival time of each train at each Monitoring Point;
- (b) comparing such data against the relevant Timetable; and
- (c) attributing a weighting to each Monitoring Point.

**“Deduction Rate”** means, for each ODP Year, the rate set out in the Passenger Time Lost Delay Performance Deduction Payment Table in Part 3 of Appendix 2 for:

- (a) Wales and Cross Border Lines in column 2; and
- (b) Core Valley Lines in column 3.

**“Escalation Service Level”** means, in relation to a Operational Performance Benchmark for any Reporting Period, the number set out in the relevant column of the Short Formation Benchmark Table and the PTL Benchmark Table (as the case may be) and in the row of the applicable table for that Reporting Period;

**“Extended Initial Reporting Stage”** means the Reporting Periods within the period from the first Reporting Period of the Rail Services Term to the twenty sixth (26<sup>th</sup>) Reporting Period of the Rail Services Term.

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|  |                    |  |
|--|--------------------|--|
| <b>“Initial Reporting Stage”</b>           |                    | means the Reporting Periods falling within the period from the first Reporting Period to the seventh Reporting Period of the first ODP Year;   |
| <b>“Minutes Delay”</b>                     |                    | means, in relation to a Train and a Recording Point, the delay at that Recording Point, calculated in accordance with paragraph 3 of Schedule 8 to the Track Access Agreement;   |
| <b>“Network Rail Partial Cancellation”</b> |                    | <p>means a Passenger Service which is included in the Enforcement Plan of the Day and which:</p> <ul style="list-style-type: none"> <li>(a) misses a stop; or</li> <li>(b) completes fifty percent (50%) or more, but less than one hundred percent (100%) of its scheduled mileage as prescribed in the Enforcement Plan of the Day,</li> </ul> <p>in circumstances where responsibility for the same is attributed to Network Rail pursuant to the Track Access Agreement;</p> |
| <b>“Operational Benchmark”</b>             | <b>Performance</b> | means any of the Short Formation Benchmark or the PTL Benchmark (as the context may require);  |
| <b>“Operational Service Level”</b>         |                    | means, in relation to an Operational Performance Benchmark for any Reporting Period, the number set out in the relevant column of the Short Formation Benchmark Table and the PTL Benchmark Table (as the case may be) and in the row of the applicable table for that Reporting Period;   |
| <b>“Partial Cancellation”</b>              |                    | <p>means a Passenger Service which is included in the Enforcement Plan of the Day and which:</p> <ul style="list-style-type: none"> <li>(a) misses a stop; or</li> <li>(b) completes fifty percent (50%) or more, but less than one hundred percent (100%) of its scheduled mileage as</li> </ul>  |



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prescribed in the Enforcement Plan of the Day,

in each case, for reasons which are attributed to the ODP pursuant to its Track Access Agreement;

**“Passenger Time Lost Delay Benchmark Table”** means the table set out in Part 1 (Passenger Time Lost Delay Benchmarks) of Appendix 2 to Schedule 7.1 (Performance Benchmarks);

**“Passenger Time Lost Delay Benchmark” or “PTL Benchmark”** means any of the performance levels in respect of Minutes Delay attributable to the ODP set out in the Passenger Time Lost Delay Benchmark Table;

**“Passenger Time Lost Delay Deduction Payment Table”** means the table set out in Part 3 (Passenger Time Lost Delay Deduction Payment Table) of Appendix 2 (Passenger Time Lost Delay Benchmarks) to Schedule 7.1 (Performance Benchmarks);

**“Passenger Time Lost Delay Performance Bonus Payment Table”** means the table set out in Part 2 (Passenger Time Lost Delay Performance Bonus Payment Table) of Appendix 2 (Passenger Time Lost Delay Benchmarks) to Schedule 7.1 (Performance Benchmarks);

**“Passenger Time Lost Delay” or “PTL”** means the time lost by passengers calculated in accordance with paragraph 3.2 of this Schedule 7.1;

**“Performance Deduction Payments Floor”** means, in relation to an Annual Short Formation Benchmark for any ODP Year the number set out in Column 4 (Performance Deduction Payments Floor) of the Annual Short Formation Benchmark Table for that ODP Year;

**“Performance Monitoring System”** means the recording system which Network Rail is required to operate under Part B of the Network Code;

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|   |  |
|---|--|
| <b>“Performance Plan Notice”</b>                      | means a notice served by the Authority on the ODP in accordance with paragraph 10 of this Schedule 7.1 requiring the ODP to produce a Performance Plan;  |
| <b>“Performance Plan”</b>                             | means the plan that the ODP is required to produce in accordance with paragraph 10 of this Schedule 7.1 and shall be deemed to be a Remedial Plan for the purpose of Schedule 10.1;  |
| <b>“Planned Station Stop”</b>                         | means in relation to a Train, a stop to set down passengers at a Station that is scheduled in the Timetable;   |
| <b>“Proportion of Station Stops Missed” or “PSSM”</b> | means, for each Reporting Period, the Total Station Stops Missed divided by the Planned Station Stops for each Station;  |
| <b>“PTL Performance Sum”</b>                          | means each of the WCB PTL Performance Payment and CVL PTL Performance Payment determined pursuant to paragraph 7 of Schedule 7.1 ( <i>Operational Performance</i> );   |
| <b>“Recording Point”</b>                              | means a point at which Network Rail records Trains using the Performance Monitoring System;  |
| <b>“Short Formation Benchmark Table”</b>              | means the table set out in Part 1 ( <i>Short Formation Benchmark Table</i> ) of Appendix 1 ( <i>Short Formation Benchmarks and Annual Short Formation Benchmarks</i> ) to Schedule 7.1 ( <i>Operational Performance</i> ); |
| <b>“Short Formation Benchmark”</b>                    | means any of the performance levels in respect of the Passenger Carrying Capacity operated in delivering the Passenger Services as set out in the Short Formation Benchmark Table;   |
| <b>“Short Formation Performance Sum”</b>              | means an amount determined in accordance with paragraph 7.3 of Schedule 7.1 ( <i>Operational Performance</i> ) which is payable by the ODP to the Authority;   |

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|   |   |
|---|---|
| <b>“Subsequent Reporting Stage”</b>           | means the Reporting Periods falling after the expiry of the Extended Initial Reporting Stage until the Expiry Date;   |
| <b>“Total Station Stops Missed” or “TSSM”</b> | means, the total Cancelled Stops for each Station in each Reporting Period;   |
| <b>“Train”</b>                                | means each train operating a service which is: <ul style="list-style-type: none"> <li>(a) operated by or on behalf of the ODP in accordance with the ODP Grant Agreement; and</li> <li>(b) used to provide services for the carriage of passengers by railway,</li> </ul> but excludes any and all trains making an Ancillary Movement; |
| <b>“WCB PTL Performance Payment”</b>          | means the payment determined pursuant to paragraph 7.2(b)(i) of Schedule 7.1 ( <i>Operational Performance</i> ).  |

- 1.2 The Short Formation Benchmarks are set out in the table in Part 1 of Appendix 1 (*Short Formation Benchmarks and Annual Short Formation Benchmarks*) to this Schedule.
- 1.3 The Annual Short Formation Benchmarks are set out in the table in Part 2 of Appendix 1 (*Short Formation Benchmarks and Annual Short Formation Benchmarks*) to this Schedule.
- 1.4 The Passenger Time Lost Delay Benchmarks are set out in the table in Part 1 of Appendix 2 (*PTL Benchmarks*) to this Schedule.
- 1.5 The Passenger Time Lost Delay Bonus Rates are set out in the table in Part 2 to Appendix 2 (Passenger Time Lost Delay Performance Bonus Payment Table).
- 1.6 The Passenger Time Lost Delay Deduction Rates are set out in the table in Part 3 to Appendix 2 (Passenger Time Lost Delay Performance Deduction Payment Table).
- 1.7 Charging Review

The Authority may at any time after a Charging Review vary, on giving not less than three (3) months' notice in writing, any of the Passenger Time Lost Delay Benchmarks to reflect the Authority's reasonable view of the performance trajectory set as part of such Charging Review. Where the Authority exercises its right pursuant to this paragraph 1.7,

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the relevant Passenger Time Lost Delay Benchmark Table shall be deemed to have been amended accordingly. The exercise by the Authority of its rights pursuant to this paragraph 1.7 shall be a Change as specified in paragraph (k) of the definition of Change.

#### **1.8 Track Access Agreement**

The ODP agrees with the Authority to comply with the requirements of the Track Access Agreement in respect of cancellations attribution (Cancellations, Partial Cancellations, Network Rail Cancellations and Network Rail Partial Cancellations) and Minutes Delay attribution.

#### **1.9 Changes to Benchmarks and Annual Short Formation Benchmarks on the occurrence of a Change**

Paragraph 4 of Schedule 9.1 (*Financial and Other Consequences of Change*) sets out the circumstances and the process by which any adjustments to Benchmarks and Annual Short Formation Benchmarks consequent upon the occurrence of a Change will be determined and effected.

#### **1.10 Notice of Performance Results**

As soon as reasonably practicable after the end of each Reporting Period and each ODP Year, the Authority shall notify the ODP of the results of the calculations performed pursuant to this Schedule 7.1.

### **2 REPORTING REQUIREMENTS**

The ODP shall at the end of each Reporting Period and in accordance with the relevant requirements of Appendix 2 (*Operational Information*) of Schedule 11.2 (*Management Information*) report to the Authority the operational information as specified in Appendix 2 (*Operational Performance Information*) of Schedule 11.2 (*Management Information*) and required for the purposes of the Authority undertaking any the calculations required to be performed by the Authority pursuant to this Schedule 7.1.

### **3 PASSENGER TIME LOST DELAY**

#### **3.1 Allocation of Responsibility**

- (a) The ODP shall be responsible for all Minutes Delay and Cancelled Stops:
- (i) allocated to the ODP in accordance with paragraph 5 to Schedule 8 of the Track Access Agreement in relation to the Wales and Cross Border Lines and Core Valley Lines (Pre-CVL Asset Transfer); and
  - (ii) in relation to the Core Valley Lines (Post-CVL Asset Transfer).

3.2 **Calculation of ODP Performance**

- (a) For all Wales and Cross Border Lines and Core Valley Lines, the Passenger Time Lost Delay weighted by a performance factor shall be calculated as follows:

$$PTL_{PFW} = PTL_{ODP} + (PF * PTL_{NR})$$

| (i) <b>Where:</b> |   |
|-------------------|---|
| $PTL_{PFW}$       | is the Passenger Time Lost Delay per Reporting Period weighted by the performance factor;   |
| $PTL_{ODP}$       | <p>shall be calculated as follows:</p> $PTL_{ODP} = \sum TWAML_{SG} * W_{SG}$ <p>Where:</p> <p><b>TWAML<sub>SG</sub></b> is the weighted average minutes late allocated to the ODP for a Service Group per Reporting Period, as set out in paragraph 10.1 to Schedule 8 of the Track Access Agreement or in respect of CVL (Post-CVL Asset Transfer) only, the CVL Track Access Performance Schedule.</p> <p><b>W<sub>SG</sub></b> is the Weight for each Service Group.</p> <p>For Wales and Cross Borders Lines the W<sub>SG</sub> for each Service Group is as follows:</p> <p>HL02 = 15%</p> <p>HL03 = 10%</p> <p>HL04 = 20%</p> <p>HL05 (WCB Services only) peak = 5%</p> <p>HL05 (WCB Services only) off-peak = 5%</p> <p>HL06 = 25%</p> <p>HL07 = 5%</p> <p>HL08 = 15%</p> |

|                   |  |
|-------------------|--|
|                   | <p>For Core Valley Lines (Pre-CVL asset transfer and Post-CVL Asset Transfer), the <math>W_{SG}</math> for each Service Group is as follows:</p> <p>HL05 (CVL Services only) peak = 50%</p> <p>HL05 (CVL Services only) off-peak = 50%</p>   |
| PF                | <p>is the performance factor, which is</p> <p>10% for Wales and Cross Border Lines; and</p> <p>10% for Core Valley Lines;</p>  |
| PTL <sub>NR</sub> | <p><math>PTL_{NR} = \sum NRWAML_{SG} * W_{SG}</math></p> <p>Where:</p> <p><b>NRWAML<sub>SG</sub></b> is the weighted average minutes late allocated to Network Rail for a Service Group per Reporting Period, as set out in paragraph 9.1 to Schedule 8 of the Track Access Agreement or in respect of the CVL (Post-CVL Asset Transfer) only, the CVL Track Access Performance Schedule.</p> <p><b>W<sub>SG</sub></b> is the Weight for each Service Group.</p> <p>For Wales and Cross Borders Lines the <math>W_{SG}</math> for each Service Group is as follows:</p> <p>HL02 = 15%</p> <p>HL03 = 10%</p> <p>HL04 = 20%</p> <p>HL05 (WCB Services only) peak = 5%</p> <p>HL05 (WCB Services only) off-peak = 5%</p> <p>HL06 = 25%</p> <p>HL07 = 5%</p> <p>HL08 = 15%</p> |

|  |  |
|--|--|
|  | <p>For Core Valley Lines (Pre-CVL Asset Transfer and Post-CVL Asset Transfer), the <math>W_{SG}</math> for each Service Group is as follows:</p> <p>HL05 peak = 50%</p> <p>HL05 off-peak = 50%</p> |
|--|--|

#### 4 SHORT FORMATIONS

##### 4.1 Short Formation Calculation: Value of ASF

| <b>Table A</b> |  |
|----------------|--|
| $A_{SF}$       | = $\frac{B_{SF}}{C_{SF}} \times 100$   |
| <b>where:</b>  |  |
| $B_{SF}$       | <p>is the total number of Passenger Services in that Reporting Period operated with less Passenger Carrying Capacity than that specified for each such Passenger Service in the Train Plan disregarding, if the ODP has complied with paragraph 9.1 (<i>Service Recovery Plans and Force Majeure</i>) of this Schedule 7.1, any such Passenger Services which were operated in that way as a result of:</p> <p>(a) the ODP's implementation of a Service Recovery Plan during that Reporting Period; or</p> <p>(b) the occurrence or continuing effect of a Force Majeure Event; and</p> |
| $C_{SF}$       | <p>is the total number of Passenger Services scheduled to be operated in that Reporting Period disregarding, if the ODP has complied with paragraph 9.1 (<i>Service Recovery Plans and Force Majeure</i>) of this Schedule 7.1, any such Passenger Service operated with less Passenger Carrying Capacity than that specified for each such Passenger Service in the Train Plan as a result of:</p> <p>(a) the ODP's implementation of a Service Recovery Plan during that Reporting Period; or</p> <p>(b) the occurrence or continuing effect of a Force Majeure Event.</p>             |

- (a) For the purposes of the calculation to be undertaken by the Authority pursuant to this paragraph 4.1, a Passenger Service that is specified in the Train Plan to operate on both a WCB Lines route and a CVL route will be assigned to the Rail Service on which the Passenger Service is specified to commence in the Train Plan.
- (b) For the purposes of the calculations to be undertaken by the Authority pursuant to paragraphs 4 and 5 of this Schedule 7.1, separate calculations will be undertaken in respect of the CVL and the WCB.

**4.2 Short Formation Calculations during the Extended Initial Reporting Stage**

For each Reporting Period during the Extended Initial Reporting Stage the Authority shall calculate the ODP's performance against the Short Formation Benchmark in accordance with the following formula:

| <b>Table B</b> |   |
|----------------|---|
| $A_{SF}$       | = $\frac{B_{SF}}{C_{SF}} \times 100$  |
| <b>where:</b>  |   |
| $B_{SF}$       | has the meaning given to it in paragraph 4.1 in respect of that Reporting Period; and |
| $C_{SF}$       | has the meaning given to it in paragraph 4.1 in respect of that Reporting Period.     |

**4.3 Not Used**

**4.4 Short Formation Calculations during the Subsequent Reporting Stage**

For each Reporting Period during the Subsequent Reporting Stage the Authority shall calculate a moving annual average of the ODP's performance against the Short Formation Benchmark in accordance with the following formula:

| <b>Table D</b>               |   |
|------------------------------|---|
| $\frac{A_{SF} + E_{SF}}{13}$ |   |
| <b>where:</b>                |   |
| $A_{SF}$                     | has the meaning given to it in paragraph 4.1 in respect of that Reporting Period; and |



|                       |   |
|-----------------------|---|
| <b>E<sub>SF</sub></b> | is the sum of the values of <b>A<sub>SF</sub></b> in each of the twelve (12) Reporting Periods immediately preceding that Reporting Period. |
|-----------------------|---|

**4.5 For the purposes of the calculations to be undertaken by the Authority pursuant to paragraphs 4.2 to 4.4:**

- (a) if and to the extent that any Passenger Service is operated with Passenger Carrying Capacity in excess of the Passenger Carrying Capacity specified for that Passenger Service in the Train Plan, the excess capacity shall be disregarded; and
- (b) any Passenger Service that is the subject of a Cancellation or a Partial Cancellation shall be disregarded.

**5 ANNUAL SHORT FORMATION CALCULATIONS**

5.1 At the end of each ODP Year the Authority shall calculate the ODP's performance against the Annual Short Formation Benchmark in accordance with the following formula:

|                                 |  |
|---------------------------------|--|
| <b>Table E</b>                  |  |
| <b>ACTUAL<sub>SF</sub></b>      | = $\frac{\sum A_{SF}}{X}$  |
| <b>where:</b>                   |  |
| <b><math>\sum A_{SF}</math></b> | is the sum of the values of <b>A<sub>SF</sub></b> ( <b>A<sub>SF</sub></b> being as defined in paragraph 4.1) for each of the Reporting Periods in that ODP Year; and   |
| <b>X</b>                        | (a) in respect of a ODP Year consisting of thirteen (13) Reporting Periods equals, 13; or<br><br>(b) in respect of a ODP Year consisting of less than thirteen (13) Reporting Periods, the number of Reporting Periods in such ODP Year. |

5.2 For the purposes of the calculations to be undertaken by the Authority pursuant to paragraph 5.1:

- (a) if and to the extent that any Passenger Service is operated with Passenger Carrying Capacity in excess of the Passenger Carrying Capacity specified for that Passenger Service in the Train Plan, the excess capacity shall be disregarded; and
- (b) any Passenger Service that is the subject of a Cancellation or a Partial Cancellation shall be disregarded.

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## 6 CANCELLATIONS AND MISSED STATION STOPS

6.1 For all Reporting Periods, subsequent to the Initial Reporting Stage, the ODP shall ensure that:

- (a) the PSSM shall be less than 5% for 90% of Stations in any Reporting Period;
- (b) the PSSM shall be less than 8% for 95% of Stations in any Reporting Period; and
- (c) the PSSM shall be less than 8% in any three (3) consecutive Reporting Periods for any Station.

6.2 The ODP shall ensure that PSSM in relation to all Stations are recorded by the ODP no later than the fourth Reporting Period after the Start Date.

6.3 The ODP shall comply with its Code of Practice for Cancellations and Missed Station Stops.

## 7 PERFORMANCE SUM PAYMENTS

7.1 Not used.

### 7.2 PTL Performance Sum

- (a) At the end of each Reporting Period the Authority shall, in accordance with this paragraph 7.2 and Schedule 8 (Rail Services Payments), calculate the PTL Performance Sum required to be paid by the Authority to the ODP or required to be incurred by the ODP (as the case may be).
- (b) For each Reporting Period in which the Passenger Time Lost Delay calculated in accordance with paragraph 3.2(a) is better than (i.e. less than) the PTL Operational Service Level, the Authority shall pay to the ODP an amount for such Reporting Period that will be calculated as follows:

(i) **Wales and Cross Border Lines**

$$\text{WCB PTL Performance Payment} = \text{Bonus Rate} * \{ \text{Operational Service Level} - \text{Max}(\text{PTL}_{\text{PFW}}, \text{Cap Performance Level}) \} \times \text{RPI}$$

|                    |   |
|--------------------|---|
| <b>Where:</b>      |   |
| PTL <sub>PFW</sub> | is as calculated in paragraph 3.2(a) for WCB.   |
| RPI                | has the meaning given to it in Appendix 1 (Annual Rail Services Payments) to Schedule 8.1 (Rail Services Payments). |

(ii) **Core Valley Lines**

CVL PTL Performance Payment = Bonus Rate \* {Operational Service Level – Max(PTL<sub>PFW</sub>, Cap Performance Level)} x RPI

| <b>Where:</b>      |   |
|--------------------|---|
| PTL <sub>PFW</sub> | is as calculated in paragraph 3.2(a) for CVL.   |
| RPI                | has the meaning given to it in Appendix 1 (Annual Rail Services Payments) to Schedule 8.1 (Rail Services Payments). |

(c) For each Reporting Period in which the Passenger Time Lost Delay calculated in accordance with paragraph 3.2(a) is equal to or worse than (i.e. more than) the PTL Operational Service Level, the ODP shall incur an amount for such Reporting Period that will be calculated as follows:

(i) **Wales and Cross Border Lines**

WCB Deduction Payment = Deduction Rate \* RFE \* {Operational Service Level – Min(PTL<sub>PFW</sub>, Escalation Service Level)} x RPI

| <b>Where:</b> |   |
|---------------|---|
| RFE           | <p>is the repeat failure escalator (RFE) which shall be calculated as follows:</p> <ul style="list-style-type: none"><li>(a) 1 for initial Reporting Period below Operational Service Level;</li><li>(b) 1.1 for second consecutive Reporting Period below Operational Service Level;</li><li>(c) 1.2 for third consecutive Reporting Period below Operational Service Level;</li><li>(d) 1.3 for the fourth consecutive Reporting Period below Operational Service Level;</li><li>(e) 1.4 for the fifth consecutive Reporting Period below Operational Service Level; and</li><li>(f) 1.5 for the sixth (and any subsequent) consecutive Reporting Period below Operational Service Level.</li></ul> |

|                    |   |
|--------------------|---|
| PTL <sub>PFW</sub> | is as calculated in paragraph 3.2(a) for WCB.   |
| RPI                | has the meaning given to it in Appendix 1 (Annual Rail Services Payments) to Schedule 8.1 (Rail Services Payments). |

(i) **Core Valley Lines**

CVL Deduction Payment = Deduction Rate \* RFE \* {Operational Service Level – Min(PTL<sub>PFW</sub>, Escalation Service Level)} x RPI

|                    |  |
|--------------------|--|
| <b>Where:</b>      |  |
| RFE                | is the repeat failure escalator (RFE) which shall be calculated as follows:<br><br>(a) 1x for initial Reporting Period below Operational Service Level;<br><br>(b) 1.1x for second consecutive Reporting Period below Operational Service Level;<br><br>(c) 1.2x for third consecutive Reporting Period below Operational Service Level;<br><br>(d) 1.3x for the fourth consecutive Reporting Period below Operational Service Level;<br><br>(e) 1.4x for the fifth consecutive Reporting Period below Operational Service Level; and<br><br>(f) 1.5x for the sixth (and any subsequent) consecutive Reporting Period below Operational Service Level. |
| PTL <sub>PFW</sub> | is as calculated in paragraph 3.2(a) for CVL.  |
| RPI                | has the meaning given to it in Appendix 1 (Annual Rail Services Payments) to Schedule 8.1 (Rail Services Payments).  |

**7.3 Short Formation Performance Sum**

- (a) At the end of each ODP Year the Authority shall, in accordance with this paragraph 7.3, calculate the Short Formation Performance Sum required to be incurred (or in respect of the Final ODP Year to be paid) by the ODP.

(b) For any ODP Year the Short Formation Performance Sum is calculated as follows:

| <b>Table F02</b> |  |
|------------------|--|
| <b>ACTUALSF</b>  | has the meaning given to it in paragraph 5 above in respect of that ODP Year;                                    |
| <b>TARGETSF</b>  | is the Annual Operational Service Level relating to the Annual Short Formation Benchmark for that ODP Year; and  |
| <b>FLOORSF</b>   | is the Performance Deduction Payments Floor relating to that Annual Short Formation Benchmark for that ODP Year. |

| <b>Table G02</b> |   |   |
|------------------|---|---|
|                  | Column 1                                | Column 2  |
|                  | Value of <b>ACTUALSF</b> is             | Short Formation Performance Sum to be incurred or to be paid by the ODP to the Authority shall be an amount calculated by the following Table H02 |
|                  | $\geq \text{TARGETSF} < \text{FLOORSF}$ | Table H02   |
|                  | $\geq \text{FLOORSF}$                   | Table I02   |

| <b>Table H02</b>                    |  |
|-------------------------------------|--|
| <b>(ACTUALSF – TARGETSF) x PDSF</b> |  |
| <b>where:</b>                       |  |
| <b>AACTUALSF</b>                    | has the meaning given to it in paragraph 5 above;  |
| <b>TARGETSF</b>                     | has the meaning given to it in paragraph 7.3 (Table F02); and  |
| <b>PDSF</b>                         | is in respect of such ODP Year, an amount calculated as follows:<br><br>$\text{PDPSF} \times \text{RPI}$ |

|  |               |  |
|--|---------------|--|
| <b>(Performance Deduction Payment)</b> |               |  |
|  | <b>where:</b> |  |
|  |               | is the amount specified in the table in Part 3 ( <i>Annual Short Formation Payment Table</i> ) of Appendix 1 ( <i>Short Formation Benchmarks and Annual Short Formation Benchmarks</i> ) to this Schedule 7.1; |
|  |               | has the meaning given to it in Appendix 1 ( <i>Annual Rail Services Payments</i> ) to Schedule 8.1 ( <i>Rail Services Payments</i> ).  |

|  |  |  |
|--|--|--|
| <b>Table I02</b>                       |  |  |
| <b>(FLOORSF – TARGETSF) x PDSF</b>     |  |  |
| <b>where:</b>                          |  |  |
| <b>FLOORSF</b>                         | has the meaning given to it in paragraph 7.3 (Table F02);        |  |
| <b>TARGETSF</b>                        | has the meaning given to it in paragraph 7.3 (Table F02); and    |  |
| <b>PDSF</b>                            | is in respect of such ODP Year, an amount calculated as follows: |  |
| <b>(Performance Deduction Payment)</b> | PDPSF x RPI  |  |
|  | <b>where:</b>  |  |
|  | PDPSF  | is the amount specified in the table in Part 3 ( <i>Annual Short Formation Payment Table</i> ) of Appendix 1 ( <i>Short Formation Benchmarks and Annual Short Formation Benchmarks</i> ) to this Schedule 7.1; |

|  |     |   |
|--|-----|---|
|  | RPI | has the meaning given to it in Appendix 1 ( <i>Annual Rail Services Payments</i> ) to Schedule 8.1 ( <i>Rail Services Payments</i> ). |
|--|-----|---|

7.4 For the purpose of the calculations referred to in this paragraph 7, each of the Performance Deduction Payments Floor and the Annual Operational Service Level will be specified as an absolute number not as a percentage (i.e. one point five percent (1.5%) equals 1.5).

**8 CALCULATIONS**

8.1 The Authority shall perform the calculations referred to in paragraphs 3, 4, 5, 6 and 7 rounded to three (3) decimal places with the midpoint (that is, 11.1115) rounded upwards (that is, 11.112).

**9 SERVICE RECOVERY PLANS AND FORCE MAJEURE**

9.1 The ODP shall, within eight (8) weeks of the end of each Reporting Period for which a Service Recovery Plan has been implemented (or such other period as may be agreed by the Authority), submit to the Authority all the comprehensive records (as more particularly described in the ATOC “Approved Code of Practice 2013” or any document of a similar equivalent nature) which relate to the implementation of such Service Recovery Plan during that Reporting Period.

9.2 In performing the calculations pursuant to paragraph 3 (Passenger Time Lost Delay) the Authority shall disregard any Minutes Delay and Cancelled Stops that are caused by the occurrence or continuing effect of a Force Majeure Event.

**10 CONSEQUENCES OF POOR PERFORMANCE**

**10.1 Short Formation Benchmarks**

(a) The ODP shall ensure that its performance in relation to the Short Formation Benchmark in each Reporting Period (other than any Reporting Period falling within the Extended Initial Reporting Stage), as calculated by the Authority in accordance with the requirements of this Schedule 7.1, is better than each Escalation Service Level for the Short Formation Benchmark in respect of each such Reporting Period.

(b) Without limiting the provisions of paragraph 7 (Performance Sum Payments) above, if in any Reporting Period (other than any Reporting Period falling within the Extended Initial Reporting Stage) the ODP's performance, as calculated by the Authority in accordance with the requirements of this Schedule 7.1, is equal to or worse than:

- 
- (i) any Escalation Service Level relating to a Short Formation Benchmark in respect of that Reporting Period, then the Authority may serve a Performance Plan Notice on the ODP requiring it to propose such steps as the ODP considers appropriate for the purpose of ensuring that performance in relation to the Short Formation Benchmark will, as soon as reasonably practicable, be equal to or below the Operational Service Level; or
  - (ii) any Critical Service Level relating to a Short Formation Benchmark in respect of that Reporting Period then the Authority may issue a Warning Notice to the ODP in respect of the ODP's performance.

#### 10.2 **PTL Benchmarks**

- (a) The ODP shall ensure that its performance in relation to the PTL Benchmark in each Reporting Period (other than any Reporting Period falling within the Initial Reporting Stage), as calculated by the Authority in accordance with the requirements of this Schedule 7.1, is better than each Operational Service Level, Escalation Service Level and Critical Service Level in respect of each such Reporting Period.
- (b) Without limiting the provisions of paragraph 7 (Performance Sum Payments) above, if (following the Initial Reporting Stage) the ODP's performance is equal to or worse than the:
  - (i) Operational Service Level for any five (5) Reporting Periods within any six (6) consecutive Reporting Periods;
  - (ii) Escalation Service Level for any three (3) Reporting Periods within any six (6) consecutive Reporting Periods; or
  - (iii) Critical Service Level for any Reporting Period,

then the Authority may serve a Performance Plan Notice on the ODP requiring it to propose such steps as the ODP considers appropriate for the purpose of ensuring that performance in relation to the PTL Benchmark will, as soon as reasonably practicable, be equal to or below the Operational Service Level.

#### 10.3 **Cancellation and Missed Station Stops**

- (a) The ODP shall ensure that its performance in each Reporting Period in relation to PSSM, as calculated by the Authority in accordance with the requirements of this Schedule 7.1, is better than the PSSM levels set out in paragraph 6.
- (b) If in any Reporting Period the ODP's performance is equal to or worse than the PSSM levels set out in paragraph 6, then the Authority may serve a Performance Plan Notice



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on the ODP requiring it to propose such steps as the ODP considers appropriate for the purpose of ensuring that performance in relation to the relevant PSSM level will, as soon as reasonably practicable, be equal to or less than the relevant PSSM levels set out in paragraph 6.

#### 10.4 **Performance Plans**

Each Performance Plan shall set out:

- (a) an explanation of the circumstances that has resulted in the level of performance;
- (b) the steps proposed for the purposes of ensuring that the level of performance will, as soon as reasonably practicable, be provided at a level that is required in accordance with this Schedule 7.1, including, without limitation, the issue of a draft Performance Plan within five (5) Weekdays;
- (c) the steps proposed for the purposes of ensuring that the level of performance will, as soon as reasonably practicable, be provided at a level that is required in accordance with this Schedule 7.1, including, without limitation, the issue of an updated Performance Plan within twenty (20) Weekdays;
- (d) the time period within which the ODP proposes to implement those steps; and
- (e) any other information requested by the Authority in the Performance Plan Notice.

#### 11 **PAYMENTS MADE BY AUTHORITY**

- 11.1 Each payment calculated pursuant to paragraph 7 in respect of any Reporting Period payable by the Authority to the ODP shall, subject to paragraph 12, be paid by way of adjustment to ODP Rail Service Payments in accordance with Schedule 8 (Rail Service Payments).

#### 12 **PAYMENTS IN RESPECT OF THE FINAL REPORTING PERIOD**

- 12.1 Any PTL Performance Sum or Short Formation Performance Sum to be made in respect of the final Reporting Period of the Final ODP Year shall be calculated in accordance with the provisions of this Schedule 7 and shall be paid by the Authority to the ODP or the ODP to the Authority (as the case may be) in accordance with Schedule 8.

#### 13 **NETWORK RAIL CLAIM**

- 13.1 For the purposes of this paragraph 13, “**PTL Loss**” means any loss suffered or costs incurred by the ODP as a result of the ODP:
- (a) being required to incur or pay any PTL Performance Sum; or
  - (b) not being entitled to receive from the Authority any PTL Performance Sum,

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in each case in accordance with paragraph 7 (*Performance Sum Payments*).

- 13.2 The ODP shall not include in any claim for compensation from Network Rail, whether under Schedule 8 of the Track Access Agreement or otherwise, any amounts to compensate the ODP for a PTL Loss.
- 13.3 Without prejudice to the Authority's rights under Schedule 10 (Remedies, Events of Default and Termination Events), if the ODP receives compensation from Network Rail in respect of a PTL Loss, the ODP shall pay such compensation received to the Authority within five (5) days of receipt.

**Appendix 1 to Schedule 7.1 - Short Formation Benchmarks and Annual Short Formation Benchmarks**

**Part 1 - Short Formation Benchmark Table**

**Table A: Wales and Cross-Border Lines Services**

| <b>Column 1</b> | <b>Column 2</b> | <b>Column 3</b>                  | <b>Column 4</b>                 | <b>Column 5</b>               |
|-----------------|-----------------|----------------------------------|---------------------------------|-------------------------------|
| <b>Year</b>     | <b>Period</b>   | <b>Operational Service Level</b> | <b>Escalation Service Level</b> | <b>Critical Service Level</b> |
| 2019            | Period 08       | 2.200                            |                                 |                               |
| 2019            | Period 09       | 2.200                            |                                 |                               |
| 2019            | Period 10       | 2.200                            |                                 |                               |
| 2019            | Period 11       | 2.200                            |                                 |                               |
| 2019            | Period 12       | 2.200                            |                                 |                               |
| 2019            | Period 13       | 2.200                            |                                 |                               |
| 2020            | Period 01       | 1.800                            |                                 |                               |
| 2020            | Period 02       | 1.800                            |                                 |                               |
| 2020            | Period 03       | 1.800                            |                                 |                               |
| 2020            | Period 04       | 1.800                            |                                 |                               |
| 2020            | Period 05       | 1.800                            |                                 |                               |
| 2020            | Period 06       | 1.800                            |                                 |                               |
| 2020            | Period 07       | 1.800                            |                                 |                               |
| 2020            | Period 08       | 1.800                            |                                 |                               |
| 2020            | Period 09       | 1.800                            |                                 |                               |
| 2020            | Period 10       | 1.800                            |                                 |                               |
| 2020            | Period 11       | 1.800                            |                                 |                               |
| 2020            | Period 12       | 1.800                            |                                 |                               |
| 2020            | Period 13       | 1.800                            |                                 |                               |
| 2021            | Period 01       | 1.500                            |                                 |                               |
| 2021            | Period 02       | 1.500                            |                                 |                               |
| 2021            | Period 03       | 1.500                            |                                 |                               |
| 2021            | Period 04       | 1.500                            |                                 |                               |
| 2021            | Period 05       | 1.500                            |                                 |                               |
| 2021            | Period 06       | 1.500                            |                                 |                               |
| 2021            | Period 07       | 1.500                            |                                 |                               |
| 2021            | Period 08       | 1.500                            | 5.500                           | 9.500                         |
| 2021            | Period 09       | 1.500                            | 5.500                           | 9.500                         |
| 2021            | Period 10       | 1.500                            | 5.500                           | 9.500                         |
| 2021            | Period 11       | 1.500                            | 5.500                           | 9.500                         |
| 2021            | Period 12       | 1.500                            | 5.500                           | 9.500                         |
| 2021            | Period 13       | 1.500                            | 5.500                           | 9.500                         |
| 2022            | Period 01       | 1.250                            | 4.250                           | 7.250                         |
| 2022            | Period 02       | 1.250                            | 4.250                           | 7.250                         |
| 2022            | Period 03       | 1.250                            | 4.250                           | 7.250                         |
| 2022            | Period 04       | 1.250                            | 4.250                           | 7.250                         |
| 2022            | Period 05       | 1.250                            | 4.250                           | 7.250                         |
| 2022            | Period 06       | 1.250                            | 4.250                           | 7.250                         |
| 2022            | Period 07       | 1.250                            | 4.250                           | 7.250                         |
| 2022            | Period 08       | 1.250                            | 4.250                           | 7.250                         |
| 2022            | Period 09       | 1.250                            | 4.250                           | 7.250                         |
| 2022            | Period 10       | 1.250                            | 4.250                           | 7.250                         |

| Column 1 | Column 2  | Column 3                  | Column 4                 | Column 5               |
|----------|-----------|---------------------------|--------------------------|------------------------|
| Year     | Period    | Operational Service Level | Escalation Service Level | Critical Service Level |
| 2022     | Period 11 | 1.250                     | 4.250                    | 7.250                  |
| 2022     | Period 12 | 1.250                     | 4.250                    | 7.250                  |
| 2022     | Period 13 | 1.250                     | 4.250                    | 7.250                  |
| 2023     | Period 01 | 1.100                     | 2.100                    | 3.100                  |
| 2023     | Period 02 | 1.100                     | 2.100                    | 3.100                  |
| 2023     | Period 03 | 1.100                     | 2.100                    | 3.100                  |
| 2023     | Period 04 | 1.100                     | 2.100                    | 3.100                  |
| 2023     | Period 05 | 1.100                     | 2.100                    | 3.100                  |
| 2023     | Period 06 | 1.100                     | 2.100                    | 3.100                  |
| 2023     | Period 07 | 1.100                     | 2.100                    | 3.100                  |
| 2023     | Period 08 | 1.100                     | 2.100                    | 3.100                  |
| 2023     | Period 09 | 1.100                     | 2.100                    | 3.100                  |
| 2023     | Period 10 | 1.100                     | 2.100                    | 3.100                  |
| 2023     | Period 11 | 1.100                     | 2.100                    | 3.100                  |
| 2023     | Period 12 | 1.100                     | 2.100                    | 3.100                  |
| 2023     | Period 13 | 1.100                     | 2.100                    | 3.100                  |
| 2024     | Period 01 | 0.950                     | 1.950                    | 2.950                  |
| 2024     | Period 02 | 0.950                     | 1.950                    | 2.950                  |
| 2024     | Period 03 | 0.950                     | 1.950                    | 2.950                  |
| 2024     | Period 04 | 0.950                     | 1.950                    | 2.950                  |
| 2024     | Period 05 | 0.950                     | 1.950                    | 2.950                  |
| 2024     | Period 06 | 0.950                     | 1.950                    | 2.950                  |
| 2024     | Period 07 | 0.950                     | 1.950                    | 2.950                  |
| 2024     | Period 08 | 0.950                     | 1.950                    | 2.950                  |
| 2024     | Period 09 | 0.950                     | 1.950                    | 2.950                  |
| 2024     | Period 10 | 0.950                     | 1.950                    | 2.950                  |
| 2024     | Period 11 | 0.950                     | 1.950                    | 2.950                  |
| 2024     | Period 12 | 0.950                     | 1.950                    | 2.950                  |
| 2024     | Period 13 | 0.950                     | 1.950                    | 2.950                  |
| 2025     | Period 01 | 0.800                     | 1.800                    | 2.800                  |
| 2025     | Period 02 | 0.800                     | 1.800                    | 2.800                  |
| 2025     | Period 03 | 0.800                     | 1.800                    | 2.800                  |
| 2025     | Period 04 | 0.800                     | 1.800                    | 2.800                  |
| 2025     | Period 05 | 0.800                     | 1.800                    | 2.800                  |
| 2025     | Period 06 | 0.800                     | 1.800                    | 2.800                  |
| 2025     | Period 07 | 0.800                     | 1.800                    | 2.800                  |
| 2025     | Period 08 | 0.800                     | 1.800                    | 2.800                  |
| 2025     | Period 09 | 0.800                     | 1.800                    | 2.800                  |
| 2025     | Period 10 | 0.800                     | 1.800                    | 2.800                  |
| 2025     | Period 11 | 0.800                     | 1.800                    | 2.800                  |
| 2025     | Period 12 | 0.800                     | 1.800                    | 2.800                  |
| 2025     | Period 13 | 0.800                     | 1.800                    | 2.800                  |
| 2026     | Period 01 | 0.750                     | 1.750                    | 2.750                  |
| 2026     | Period 02 | 0.750                     | 1.750                    | 2.750                  |
| 2026     | Period 03 | 0.750                     | 1.750                    | 2.750                  |
| 2026     | Period 04 | 0.750                     | 1.750                    | 2.750                  |
| 2026     | Period 05 | 0.750                     | 1.750                    | 2.750                  |
| 2026     | Period 06 | 0.750                     | 1.750                    | 2.750                  |
| 2026     | Period 07 | 0.750                     | 1.750                    | 2.750                  |

| Column 1 | Column 2  | Column 3                  | Column 4                 | Column 5               |
|----------|-----------|---------------------------|--------------------------|------------------------|
| Year     | Period    | Operational Service Level | Escalation Service Level | Critical Service Level |
| 2026     | Period 08 | 0.750                     | 1.750                    | 2.750                  |
| 2026     | Period 09 | 0.750                     | 1.750                    | 2.750                  |
| 2026     | Period 10 | 0.750                     | 1.750                    | 2.750                  |
| 2026     | Period 11 | 0.750                     | 1.750                    | 2.750                  |
| 2026     | Period 12 | 0.750                     | 1.750                    | 2.750                  |
| 2026     | Period 13 | 0.750                     | 1.750                    | 2.750                  |
| 2027     | Period 01 | 0.710                     | 1.710                    | 2.710                  |
| 2027     | Period 02 | 0.710                     | 1.710                    | 2.710                  |
| 2027     | Period 03 | 0.710                     | 1.710                    | 2.710                  |
| 2027     | Period 04 | 0.710                     | 1.710                    | 2.710                  |
| 2027     | Period 05 | 0.710                     | 1.710                    | 2.710                  |
| 2027     | Period 06 | 0.710                     | 1.710                    | 2.710                  |
| 2027     | Period 07 | 0.710                     | 1.710                    | 2.710                  |
| 2027     | Period 08 | 0.710                     | 1.710                    | 2.710                  |
| 2027     | Period 09 | 0.710                     | 1.710                    | 2.710                  |
| 2027     | Period 10 | 0.710                     | 1.710                    | 2.710                  |
| 2027     | Period 11 | 0.710                     | 1.710                    | 2.710                  |
| 2027     | Period 12 | 0.710                     | 1.710                    | 2.710                  |
| 2027     | Period 13 | 0.710                     | 1.710                    | 2.710                  |
| 2028     | Period 01 | 0.670                     | 1.670                    | 2.670                  |
| 2028     | Period 02 | 0.670                     | 1.670                    | 2.670                  |
| 2028     | Period 03 | 0.670                     | 1.670                    | 2.670                  |
| 2028     | Period 04 | 0.670                     | 1.670                    | 2.670                  |
| 2028     | Period 05 | 0.670                     | 1.670                    | 2.670                  |
| 2028     | Period 06 | 0.670                     | 1.670                    | 2.670                  |
| 2028     | Period 07 | 0.670                     | 1.670                    | 2.670                  |
| 2028     | Period 08 | 0.670                     | 1.670                    | 2.670                  |
| 2028     | Period 09 | 0.670                     | 1.670                    | 2.670                  |
| 2028     | Period 10 | 0.670                     | 1.670                    | 2.670                  |
| 2028     | Period 11 | 0.670                     | 1.670                    | 2.670                  |
| 2028     | Period 12 | 0.670                     | 1.670                    | 2.670                  |
| 2028     | Period 13 | 0.670                     | 1.670                    | 2.670                  |
| 2029     | Period 01 | 0.630                     | 1.630                    | 2.630                  |
| 2029     | Period 02 | 0.630                     | 1.630                    | 2.630                  |
| 2029     | Period 03 | 0.630                     | 1.630                    | 2.630                  |
| 2029     | Period 04 | 0.630                     | 1.630                    | 2.630                  |
| 2029     | Period 05 | 0.630                     | 1.630                    | 2.630                  |
| 2029     | Period 06 | 0.630                     | 1.630                    | 2.630                  |
| 2029     | Period 07 | 0.630                     | 1.630                    | 2.630                  |
| 2029     | Period 08 | 0.630                     | 1.630                    | 2.630                  |
| 2029     | Period 09 | 0.630                     | 1.630                    | 2.630                  |
| 2029     | Period 10 | 0.630                     | 1.630                    | 2.630                  |
| 2029     | Period 11 | 0.630                     | 1.630                    | 2.630                  |
| 2029     | Period 12 | 0.630                     | 1.630                    | 2.630                  |
| 2029     | Period 13 | 0.630                     | 1.630                    | 2.630                  |
| 2030     | Period 01 | 0.590                     | 1.590                    | 2.590                  |
| 2030     | Period 02 | 0.590                     | 1.590                    | 2.590                  |
| 2030     | Period 03 | 0.590                     | 1.590                    | 2.590                  |
| 2030     | Period 04 | 0.590                     | 1.590                    | 2.590                  |

| Column 1 | Column 2  | Column 3                  | Column 4                 | Column 5               |
|----------|-----------|---------------------------|--------------------------|------------------------|
| Year     | Period    | Operational Service Level | Escalation Service Level | Critical Service Level |
| 2030     | Period 05 | 0.590                     | 1.590                    | 2.590                  |
| 2030     | Period 06 | 0.590                     | 1.590                    | 2.590                  |
| 2030     | Period 07 | 0.590                     | 1.590                    | 2.590                  |
| 2030     | Period 08 | 0.590                     | 1.590                    | 2.590                  |
| 2030     | Period 09 | 0.590                     | 1.590                    | 2.590                  |
| 2030     | Period 10 | 0.590                     | 1.590                    | 2.590                  |
| 2030     | Period 11 | 0.590                     | 1.590                    | 2.590                  |
| 2030     | Period 12 | 0.590                     | 1.590                    | 2.590                  |
| 2030     | Period 13 | 0.590                     | 1.590                    | 2.590                  |
| 2031     | Period 01 | 0.560                     | 1.560                    | 2.560                  |
| 2031     | Period 02 | 0.560                     | 1.560                    | 2.560                  |
| 2031     | Period 03 | 0.560                     | 1.560                    | 2.560                  |
| 2031     | Period 04 | 0.560                     | 1.560                    | 2.560                  |
| 2031     | Period 05 | 0.560                     | 1.560                    | 2.560                  |
| 2031     | Period 06 | 0.560                     | 1.560                    | 2.560                  |
| 2031     | Period 07 | 0.560                     | 1.560                    | 2.560                  |
| 2031     | Period 08 | 0.560                     | 1.560                    | 2.560                  |
| 2031     | Period 09 | 0.560                     | 1.560                    | 2.560                  |
| 2031     | Period 10 | 0.560                     | 1.560                    | 2.560                  |
| 2031     | Period 11 | 0.560                     | 1.560                    | 2.560                  |
| 2031     | Period 12 | 0.560                     | 1.560                    | 2.560                  |
| 2031     | Period 13 | 0.560                     | 1.560                    | 2.560                  |
| 2032     | Period 01 | 0.530                     | 1.530                    | 2.530                  |
| 2032     | Period 02 | 0.530                     | 1.530                    | 2.530                  |
| 2032     | Period 03 | 0.530                     | 1.530                    | 2.530                  |
| 2032     | Period 04 | 0.530                     | 1.530                    | 2.530                  |
| 2032     | Period 05 | 0.530                     | 1.530                    | 2.530                  |
| 2032     | Period 06 | 0.530                     | 1.530                    | 2.530                  |
| 2032     | Period 07 | 0.530                     | 1.530                    | 2.530                  |
| 2032     | Period 08 | 0.530                     | 1.530                    | 2.530                  |
| 2032     | Period 09 | 0.530                     | 1.530                    | 2.530                  |
| 2032     | Period 10 | 0.530                     | 1.530                    | 2.530                  |
| 2032     | Period 11 | 0.530                     | 1.530                    | 2.530                  |
| 2032     | Period 12 | 0.530                     | 1.530                    | 2.530                  |
| 2032     | Period 13 | 0.530                     | 1.530                    | 2.530                  |
| 2033     | Period 01 | 0.500                     | 1.500                    | 2.500                  |
| 2033     | Period 02 | 0.500                     | 1.500                    | 2.500                  |
| 2033     | Period 03 | 0.500                     | 1.500                    | 2.500                  |
| 2033     | Period 04 | 0.500                     | 1.500                    | 2.500                  |
| 2033     | Period 05 | 0.500                     | 1.500                    | 2.500                  |
| 2033     | Period 06 | 0.500                     | 1.500                    | 2.500                  |
| 2033     | Period 07 | 0.500                     | 1.500                    | 2.500                  |
| 2033     | Period 08 | 0.500                     | 1.500                    | 2.500                  |
| 2033     | Period 09 | 0.500                     | 1.500                    | 2.500                  |
| 2033     | Period 10 | 0.500                     | 1.500                    | 2.500                  |
| 2033     | Period 11 | 0.500                     | 1.500                    | 2.500                  |
| 2033     | Period 12 | 0.500                     | 1.500                    | 2.500                  |
| 2033     | Period 13 | 0.500                     | 1.500                    | 2.500                  |
| 2034     | Period 01 | 0.500                     | 1.500                    | 2.500                  |

| Column 1 | Column 2  | Column 3                  | Column 4                 | Column 5               |
|----------|-----------|---------------------------|--------------------------|------------------------|
| Year     | Period    | Operational Service Level | Escalation Service Level | Critical Service Level |
| 2034     | Period 02 | 0.500                     | 1.500                    | 2.500                  |
| 2034     | Period 03 | 0.500                     | 1.500                    | 2.500                  |
| 2034     | Period 04 | 0.500                     | 1.500                    | 2.500                  |
| 2034     | Period 05 | 0.500                     | 1.500                    | 2.500                  |
| 2034     | Period 06 | 0.500                     | 1.500                    | 2.500                  |
| 2034     | Period 07 | 0.500                     | 1.500                    | 2.500                  |
| 2034     | Period 08 | 0.500                     | 1.500                    | 2.500                  |
| 2034     | Period 09 | 0.500                     | 1.500                    | 2.500                  |
| 2034     | Period 10 | 0.500                     | 1.500                    | 2.500                  |
| 2034     | Period 11 | 0.500                     | 1.500                    | 2.500                  |
| 2034     | Period 12 | 0.500                     | 1.500                    | 2.500                  |
| 2034     | Period 13 | 0.500                     | 1.500                    | 2.500                  |
| 2035     | Period 01 | 0.500                     | 1.500                    | 2.500                  |
| 2035     | Period 02 | 0.500                     | 1.500                    | 2.500                  |
| 2035     | Period 03 | 0.500                     | 1.500                    | 2.500                  |
| 2035     | Period 04 | 0.500                     | 1.500                    | 2.500                  |
| 2035     | Period 05 | 0.500                     | 1.500                    | 2.500                  |
| 2035     | Period 06 | 0.500                     | 1.500                    | 2.500                  |
| 2035     | Period 07 | 0.500                     | 1.500                    | 2.500                  |
| 2035     | Period 08 | 0.500                     | 1.500                    | 2.500                  |
| 2035     | Period 09 | 0.500                     | 1.500                    | 2.500                  |
| 2035     | Period 10 | 0.500                     | 1.500                    | 2.500                  |
| 2035     | Period 11 | 0.500                     | 1.500                    | 2.500                  |
| 2035     | Period 12 | 0.500                     | 1.500                    | 2.500                  |
| 2035     | Period 13 | 0.500                     | 1.500                    | 2.500                  |
| 2036     | Period 01 | 0.500                     | 1.500                    | 2.500                  |
| 2036     | Period 02 | 0.500                     | 1.500                    | 2.500                  |
| 2036     | Period 03 | 0.500                     | 1.500                    | 2.500                  |
| 2036     | Period 04 | 0.500                     | 1.500                    | 2.500                  |
| 2036     | Period 05 | 0.500                     | 1.500                    | 2.500                  |
| 2036     | Period 06 | 0.500                     | 1.500                    | 2.500                  |
| 2036     | Period 07 | 0.500                     | 1.500                    | 2.500                  |

**Table B: Core Valley Lines**

| Column 1 | Column 2  | Column 3                  | Column 4                 | Column 5               |
|----------|-----------|---------------------------|--------------------------|------------------------|
| Year     | Period    | Operational Service Level | Escalation Service Level | Critical Service Level |
| 2019     | Period 08 | 2.200                     |                          |                        |
| 2019     | Period 09 | 2.200                     |                          |                        |
| 2019     | Period 10 | 2.200                     |                          |                        |
| 2019     | Period 11 | 2.200                     |                          |                        |
| 2019     | Period 12 | 2.200                     |                          |                        |
| 2019     | Period 13 | 2.200                     |                          |                        |
| 2020     | Period 01 | 1.800                     |                          |                        |
| 2020     | Period 02 | 1.800                     |                          |                        |
| 2020     | Period 03 | 1.800                     |                          |                        |
| 2020     | Period 04 | 1.800                     |                          |                        |
| 2020     | Period 05 | 1.800                     |                          |                        |
| 2020     | Period 06 | 1.800                     |                          |                        |
| 2020     | Period 07 | 1.800                     |                          |                        |
| 2020     | Period 08 | 1.800                     |                          |                        |
| 2020     | Period 09 | 1.800                     |                          |                        |
| 2020     | Period 10 | 1.800                     |                          |                        |
| 2020     | Period 11 | 1.800                     |                          |                        |
| 2020     | Period 12 | 1.800                     |                          |                        |
| 2020     | Period 13 | 1.800                     |                          |                        |
| 2021     | Period 01 | 1.500                     |                          |                        |
| 2021     | Period 02 | 1.500                     |                          |                        |
| 2021     | Period 03 | 1.500                     |                          |                        |
| 2021     | Period 04 | 1.500                     |                          |                        |
| 2021     | Period 05 | 1.500                     |                          |                        |
| 2021     | Period 06 | 1.500                     |                          |                        |
| 2021     | Period 07 | 1.500                     |                          |                        |
| 2021     | Period 08 | 1.500                     | 5.500                    | 9.500                  |
| 2021     | Period 09 | 1.500                     | 5.500                    | 9.500                  |
| 2021     | Period 10 | 1.500                     | 5.500                    | 9.500                  |
| 2021     | Period 11 | 1.500                     | 5.500                    | 9.500                  |
| 2021     | Period 12 | 1.500                     | 5.500                    | 9.500                  |
| 2021     | Period 13 | 1.500                     | 5.500                    | 9.500                  |
| 2022     | Period 01 | 1.250                     | 4.250                    | 7.250                  |
| 2022     | Period 02 | 1.250                     | 4.250                    | 7.250                  |
| 2022     | Period 03 | 1.250                     | 4.250                    | 7.250                  |
| 2022     | Period 04 | 1.250                     | 4.250                    | 7.250                  |
| 2022     | Period 05 | 1.250                     | 4.250                    | 7.250                  |
| 2022     | Period 06 | 1.250                     | 4.250                    | 7.250                  |
| 2022     | Period 07 | 1.250                     | 4.250                    | 7.250                  |
| 2022     | Period 08 | 1.250                     | 4.250                    | 7.250                  |
| 2022     | Period 09 | 1.250                     | 4.250                    | 7.250                  |
| 2022     | Period 10 | 1.250                     | 4.250                    | 7.250                  |
| 2022     | Period 11 | 1.250                     | 4.250                    | 7.250                  |
| 2022     | Period 12 | 1.250                     | 4.250                    | 7.250                  |
| 2022     | Period 13 | 1.250                     | 4.250                    | 7.250                  |
| 2023     | Period 01 | 1.100                     | 2.100                    | 3.100                  |
| 2023     | Period 02 | 1.100                     | 2.100                    | 3.100                  |



| Column 1 | Column 2  | Column 3                  | Column 4                 | Column 5               |
|----------|-----------|---------------------------|--------------------------|------------------------|
| Year     | Period    | Operational Service Level | Escalation Service Level | Critical Service Level |
| 2023     | Period 03 | 1.100                     | 2.100                    | 3.100                  |
| 2023     | Period 04 | 1.100                     | 2.100                    | 3.100                  |
| 2023     | Period 05 | 1.100                     | 2.100                    | 3.100                  |
| 2023     | Period 06 | 1.100                     | 2.100                    | 3.100                  |
| 2023     | Period 07 | 1.100                     | 2.100                    | 3.100                  |
| 2023     | Period 08 | 1.100                     | 2.100                    | 3.100                  |
| 2023     | Period 09 | 1.100                     | 2.100                    | 3.100                  |
| 2023     | Period 10 | 1.100                     | 2.100                    | 3.100                  |
| 2023     | Period 11 | 1.100                     | 2.100                    | 3.100                  |
| 2023     | Period 12 | 1.100                     | 2.100                    | 3.100                  |
| 2023     | Period 13 | 1.100                     | 2.100                    | 3.100                  |
| 2024     | Period 01 | 0.950                     | 1.950                    | 2.950                  |
| 2024     | Period 02 | 0.950                     | 1.950                    | 2.950                  |
| 2024     | Period 03 | 0.950                     | 1.950                    | 2.950                  |
| 2024     | Period 04 | 0.950                     | 1.950                    | 2.950                  |
| 2024     | Period 05 | 0.950                     | 1.950                    | 2.950                  |
| 2024     | Period 06 | 0.950                     | 1.950                    | 2.950                  |
| 2024     | Period 07 | 0.950                     | 1.950                    | 2.950                  |
| 2024     | Period 08 | 0.950                     | 1.950                    | 2.950                  |
| 2024     | Period 09 | 0.950                     | 1.950                    | 2.950                  |
| 2024     | Period 10 | 0.950                     | 1.950                    | 2.950                  |
| 2024     | Period 11 | 0.950                     | 1.950                    | 2.950                  |
| 2024     | Period 12 | 0.950                     | 1.950                    | 2.950                  |
| 2024     | Period 13 | 0.950                     | 1.950                    | 2.950                  |
| 2025     | Period 01 | 0.800                     | 1.800                    | 2.800                  |
| 2025     | Period 02 | 0.800                     | 1.800                    | 2.800                  |
| 2025     | Period 03 | 0.800                     | 1.800                    | 2.800                  |
| 2025     | Period 04 | 0.800                     | 1.800                    | 2.800                  |
| 2025     | Period 05 | 0.800                     | 1.800                    | 2.800                  |
| 2025     | Period 06 | 0.800                     | 1.800                    | 2.800                  |
| 2025     | Period 07 | 0.800                     | 1.800                    | 2.800                  |
| 2025     | Period 08 | 0.800                     | 1.800                    | 2.800                  |
| 2025     | Period 09 | 0.800                     | 1.800                    | 2.800                  |
| 2025     | Period 10 | 0.800                     | 1.800                    | 2.800                  |
| 2025     | Period 11 | 0.800                     | 1.800                    | 2.800                  |
| 2025     | Period 12 | 0.800                     | 1.800                    | 2.800                  |
| 2025     | Period 13 | 0.800                     | 1.800                    | 2.800                  |
| 2026     | Period 01 | 0.750                     | 1.750                    | 2.750                  |
| 2026     | Period 02 | 0.750                     | 1.750                    | 2.750                  |
| 2026     | Period 03 | 0.750                     | 1.750                    | 2.750                  |
| 2026     | Period 04 | 0.750                     | 1.750                    | 2.750                  |
| 2026     | Period 05 | 0.750                     | 1.750                    | 2.750                  |
| 2026     | Period 06 | 0.750                     | 1.750                    | 2.750                  |
| 2026     | Period 07 | 0.750                     | 1.750                    | 2.750                  |
| 2026     | Period 08 | 0.750                     | 1.750                    | 2.750                  |
| 2026     | Period 09 | 0.750                     | 1.750                    | 2.750                  |
| 2026     | Period 10 | 0.750                     | 1.750                    | 2.750                  |
| 2026     | Period 11 | 0.750                     | 1.750                    | 2.750                  |
| 2026     | Period 12 | 0.750                     | 1.750                    | 2.750                  |

| Column 1 | Column 2  | Column 3                  | Column 4                 | Column 5               |
|----------|-----------|---------------------------|--------------------------|------------------------|
| Year     | Period    | Operational Service Level | Escalation Service Level | Critical Service Level |
| 2026     | Period 13 | 0.750                     | 1.750                    | 2.750                  |
| 2027     | Period 01 | 0.710                     | 1.710                    | 2.710                  |
| 2027     | Period 02 | 0.710                     | 1.710                    | 2.710                  |
| 2027     | Period 03 | 0.710                     | 1.710                    | 2.710                  |
| 2027     | Period 04 | 0.710                     | 1.710                    | 2.710                  |
| 2027     | Period 05 | 0.710                     | 1.710                    | 2.710                  |
| 2027     | Period 06 | 0.710                     | 1.710                    | 2.710                  |
| 2027     | Period 07 | 0.710                     | 1.710                    | 2.710                  |
| 2027     | Period 08 | 0.710                     | 1.710                    | 2.710                  |
| 2027     | Period 09 | 0.710                     | 1.710                    | 2.710                  |
| 2027     | Period 10 | 0.710                     | 1.710                    | 2.710                  |
| 2027     | Period 11 | 0.710                     | 1.710                    | 2.710                  |
| 2027     | Period 12 | 0.710                     | 1.710                    | 2.710                  |
| 2027     | Period 13 | 0.710                     | 1.710                    | 2.710                  |
| 2028     | Period 01 | 0.670                     | 1.670                    | 2.670                  |
| 2028     | Period 02 | 0.670                     | 1.670                    | 2.670                  |
| 2028     | Period 03 | 0.670                     | 1.670                    | 2.670                  |
| 2028     | Period 04 | 0.670                     | 1.670                    | 2.670                  |
| 2028     | Period 05 | 0.670                     | 1.670                    | 2.670                  |
| 2028     | Period 06 | 0.670                     | 1.670                    | 2.670                  |
| 2028     | Period 07 | 0.670                     | 1.670                    | 2.670                  |
| 2028     | Period 08 | 0.670                     | 1.670                    | 2.670                  |
| 2028     | Period 09 | 0.670                     | 1.670                    | 2.670                  |
| 2028     | Period 10 | 0.670                     | 1.670                    | 2.670                  |
| 2028     | Period 11 | 0.670                     | 1.670                    | 2.670                  |
| 2028     | Period 12 | 0.670                     | 1.670                    | 2.670                  |
| 2028     | Period 13 | 0.670                     | 1.670                    | 2.670                  |
| 2029     | Period 01 | 0.630                     | 1.630                    | 2.630                  |
| 2029     | Period 02 | 0.630                     | 1.630                    | 2.630                  |
| 2029     | Period 03 | 0.630                     | 1.630                    | 2.630                  |
| 2029     | Period 04 | 0.630                     | 1.630                    | 2.630                  |
| 2029     | Period 05 | 0.630                     | 1.630                    | 2.630                  |
| 2029     | Period 06 | 0.630                     | 1.630                    | 2.630                  |
| 2029     | Period 07 | 0.630                     | 1.630                    | 2.630                  |
| 2029     | Period 08 | 0.630                     | 1.630                    | 2.630                  |
| 2029     | Period 09 | 0.630                     | 1.630                    | 2.630                  |
| 2029     | Period 10 | 0.630                     | 1.630                    | 2.630                  |
| 2029     | Period 11 | 0.630                     | 1.630                    | 2.630                  |
| 2029     | Period 12 | 0.630                     | 1.630                    | 2.630                  |
| 2029     | Period 13 | 0.630                     | 1.630                    | 2.630                  |
| 2030     | Period 01 | 0.590                     | 1.590                    | 2.590                  |
| 2030     | Period 02 | 0.590                     | 1.590                    | 2.590                  |
| 2030     | Period 03 | 0.590                     | 1.590                    | 2.590                  |
| 2030     | Period 04 | 0.590                     | 1.590                    | 2.590                  |
| 2030     | Period 05 | 0.590                     | 1.590                    | 2.590                  |
| 2030     | Period 06 | 0.590                     | 1.590                    | 2.590                  |
| 2030     | Period 07 | 0.590                     | 1.590                    | 2.590                  |
| 2030     | Period 08 | 0.590                     | 1.590                    | 2.590                  |
| 2030     | Period 09 | 0.590                     | 1.590                    | 2.590                  |

| Column 1 | Column 2  | Column 3                  | Column 4                 | Column 5               |
|----------|-----------|---------------------------|--------------------------|------------------------|
| Year     | Period    | Operational Service Level | Escalation Service Level | Critical Service Level |
| 2030     | Period 10 | 0.590                     | 1.590                    | 2.590                  |
| 2030     | Period 11 | 0.590                     | 1.590                    | 2.590                  |
| 2030     | Period 12 | 0.590                     | 1.590                    | 2.590                  |
| 2030     | Period 13 | 0.590                     | 1.590                    | 2.590                  |
| 2031     | Period 01 | 0.560                     | 1.560                    | 2.560                  |
| 2031     | Period 02 | 0.560                     | 1.560                    | 2.560                  |
| 2031     | Period 03 | 0.560                     | 1.560                    | 2.560                  |
| 2031     | Period 04 | 0.560                     | 1.560                    | 2.560                  |
| 2031     | Period 05 | 0.560                     | 1.560                    | 2.560                  |
| 2031     | Period 06 | 0.560                     | 1.560                    | 2.560                  |
| 2031     | Period 07 | 0.560                     | 1.560                    | 2.560                  |
| 2031     | Period 08 | 0.560                     | 1.560                    | 2.560                  |
| 2031     | Period 09 | 0.560                     | 1.560                    | 2.560                  |
| 2031     | Period 10 | 0.560                     | 1.560                    | 2.560                  |
| 2031     | Period 11 | 0.560                     | 1.560                    | 2.560                  |
| 2031     | Period 12 | 0.560                     | 1.560                    | 2.560                  |
| 2031     | Period 13 | 0.560                     | 1.560                    | 2.560                  |
| 2032     | Period 01 | 0.530                     | 1.530                    | 2.530                  |
| 2032     | Period 02 | 0.530                     | 1.530                    | 2.530                  |
| 2032     | Period 03 | 0.530                     | 1.530                    | 2.530                  |
| 2032     | Period 04 | 0.530                     | 1.530                    | 2.530                  |
| 2032     | Period 05 | 0.530                     | 1.530                    | 2.530                  |
| 2032     | Period 06 | 0.530                     | 1.530                    | 2.530                  |
| 2032     | Period 07 | 0.530                     | 1.530                    | 2.530                  |
| 2032     | Period 08 | 0.530                     | 1.530                    | 2.530                  |
| 2032     | Period 09 | 0.530                     | 1.530                    | 2.530                  |
| 2032     | Period 10 | 0.530                     | 1.530                    | 2.530                  |
| 2032     | Period 11 | 0.530                     | 1.530                    | 2.530                  |
| 2032     | Period 12 | 0.530                     | 1.530                    | 2.530                  |
| 2032     | Period 13 | 0.530                     | 1.530                    | 2.530                  |
| 2033     | Period 01 | 0.500                     | 1.500                    | 2.500                  |
| 2033     | Period 02 | 0.500                     | 1.500                    | 2.500                  |
| 2033     | Period 03 | 0.500                     | 1.500                    | 2.500                  |
| 2033     | Period 04 | 0.500                     | 1.500                    | 2.500                  |
| 2033     | Period 05 | 0.500                     | 1.500                    | 2.500                  |
| 2033     | Period 06 | 0.500                     | 1.500                    | 2.500                  |
| 2033     | Period 07 | 0.500                     | 1.500                    | 2.500                  |
| 2033     | Period 08 | 0.500                     | 1.500                    | 2.500                  |
| 2033     | Period 09 | 0.500                     | 1.500                    | 2.500                  |
| 2033     | Period 10 | 0.500                     | 1.500                    | 2.500                  |
| 2033     | Period 11 | 0.500                     | 1.500                    | 2.500                  |
| 2033     | Period 12 | 0.500                     | 1.500                    | 2.500                  |
| 2033     | Period 13 | 0.500                     | 1.500                    | 2.500                  |
| 2034     | Period 01 | 0.500                     | 1.500                    | 2.500                  |
| 2034     | Period 02 | 0.500                     | 1.500                    | 2.500                  |
| 2034     | Period 03 | 0.500                     | 1.500                    | 2.500                  |
| 2034     | Period 04 | 0.500                     | 1.500                    | 2.500                  |
| 2034     | Period 05 | 0.500                     | 1.500                    | 2.500                  |
| 2034     | Period 06 | 0.500                     | 1.500                    | 2.500                  |

| Column 1 | Column 2  | Column 3                  | Column 4                 | Column 5               |
|----------|-----------|---------------------------|--------------------------|------------------------|
| Year     | Period    | Operational Service Level | Escalation Service Level | Critical Service Level |
| 2034     | Period 07 | 0.500                     | 1.500                    | 2.500                  |
| 2034     | Period 08 | 0.500                     | 1.500                    | 2.500                  |
| 2034     | Period 09 | 0.500                     | 1.500                    | 2.500                  |
| 2034     | Period 10 | 0.500                     | 1.500                    | 2.500                  |
| 2034     | Period 11 | 0.500                     | 1.500                    | 2.500                  |
| 2034     | Period 12 | 0.500                     | 1.500                    | 2.500                  |
| 2034     | Period 13 | 0.500                     | 1.500                    | 2.500                  |
| 2035     | Period 01 | 0.500                     | 1.500                    | 2.500                  |
| 2035     | Period 02 | 0.500                     | 1.500                    | 2.500                  |
| 2035     | Period 03 | 0.500                     | 1.500                    | 2.500                  |
| 2035     | Period 04 | 0.500                     | 1.500                    | 2.500                  |
| 2035     | Period 05 | 0.500                     | 1.500                    | 2.500                  |
| 2035     | Period 06 | 0.500                     | 1.500                    | 2.500                  |
| 2035     | Period 07 | 0.500                     | 1.500                    | 2.500                  |
| 2035     | Period 08 | 0.500                     | 1.500                    | 2.500                  |
| 2035     | Period 09 | 0.500                     | 1.500                    | 2.500                  |
| 2035     | Period 10 | 0.500                     | 1.500                    | 2.500                  |
| 2035     | Period 11 | 0.500                     | 1.500                    | 2.500                  |
| 2035     | Period 12 | 0.500                     | 1.500                    | 2.500                  |
| 2035     | Period 13 | 0.500                     | 1.500                    | 2.500                  |
| 2036     | Period 01 | 0.500                     | 1.500                    | 2.500                  |
| 2036     | Period 02 | 0.500                     | 1.500                    | 2.500                  |
| 2036     | Period 03 | 0.500                     | 1.500                    | 2.500                  |
| 2036     | Period 04 | 0.500                     | 1.500                    | 2.500                  |
| 2036     | Period 05 | 0.500                     | 1.500                    | 2.500                  |
| 2036     | Period 06 | 0.500                     | 1.500                    | 2.500                  |
| 2036     | Period 07 | 0.500                     | 1.500                    | 2.500                  |

**Part 2 - Annual Short Formation Benchmark Table**

**Table A: Wales and Cross-Border Lines Services**

| Year  |           | ODP Year            | Annual Operational Service Level | Performance Deduction Payments Floor |
|---|-----------|---------------------|----------------------------------|--------------------------------------|
| From  | To        |                     |                                  |                                      |
| 14-Oct-18                                   | 31-Mar-19 | Year 1              | 2.20                             | 7.20                                 |
| 01-Apr-19                                   | 31-Mar-20 | Year 2              | 1.80                             | 4.30                                 |
| 01-Apr-20                                   | 31-Mar-21 | Year 3              | 1.50                             | 3.17                                 |
| 01-Apr-21                                   | 31-Mar-22 | Year 4              | 1.25                             | 2.50                                 |
| 01-Apr-22                                   | 31-Mar-23 | Year 5              | 1.10                             | 2.10                                 |
| 01-Apr-23                                   | 31-Mar-24 | Year 6              | 0.95                             | 1.95                                 |
| 01-Apr-24                                   | 31-Mar-25 | Year 7              | 0.80                             | 1.80                                 |
| 01-Apr-25                                   | 31-Mar-26 | Year 8              | 0.75                             | 1.75                                 |
| 01-Apr-26                                   | 31-Mar-27 | Year 9              | 0.71                             | 1.71                                 |
| 01-Apr-27                                   | 31-Mar-28 | Year 10             | 0.67                             | 1.67                                 |
| 01-Apr-28                                   | 31-Mar-29 | Year 11             | 0.63                             | 1.63                                 |
| 01-Apr-29                                   | 31-Mar-30 | Year 12             | 0.59                             | 1.59                                 |
| 01-Apr-30                                   | 31-Mar-31 | Year 13             | 0.56                             | 1.56                                 |
| 01-Apr-31                                   | 31-Mar-32 | Year 14             | 0.53                             | 1.53                                 |
| 01-Apr-32                                   | 31-Mar-33 | Year 15             | 0.50                             | 1.50                                 |
| 01-Apr-33                                   | 15-Oct-33 | Year 16 (core)      | 0.40                             | 1.40                                 |
| <b>Up to 26 Reporting Periods Extension</b> |           |                     |                                  |                                      |
| 16-Oct-33                                   | 31-Mar-34 | Year 16 (extension) | 0.55                             | 1.55                                 |
| 01-Apr-34                                   | 31-Mar-35 | Year 17 (extension) | 0.50                             | 1.50                                 |
| 01-Apr-35                                   | 13-Oct-35 | Year 18 (extension) | 0.40                             | 1.40                                 |

**Table B: Core Valley Lines (Pre-Asset Transfer)**

| Year  |           | ODP Year            | Annual Operational Service Level | Performance Deduction Payments Floor |
|---|-----------|---------------------|----------------------------------|--------------------------------------|
| From  | To        |                     |                                  |                                      |
| 14-Oct-18                                   | 31-Mar-19 | Year 1              | 2.20                             | 7.20                                 |
| 01-Apr-19                                   | 31-Mar-20 | Year 2              | 1.80                             | 4.30                                 |
| 01-Apr-20                                   | 31-Mar-21 | Year 3              | 1.50                             | 3.17                                 |
| 01-Apr-21                                   | 31-Mar-22 | Year 4              | 1.25                             | 2.50                                 |
| 01-Apr-22                                   | 31-Mar-23 | Year 5              | 1.10                             | 2.10                                 |
| 01-Apr-23                                   | 31-Mar-24 | Year 6              | 0.95                             | 1.95                                 |
| 01-Apr-24                                   | 31-Mar-25 | Year 7              | 0.80                             | 1.80                                 |
| 01-Apr-25                                   | 31-Mar-26 | Year 8              | 0.75                             | 1.75                                 |
| 01-Apr-26                                   | 31-Mar-27 | Year 9              | 0.71                             | 1.71                                 |
| 01-Apr-27                                   | 31-Mar-28 | Year 10             | 0.67                             | 1.67                                 |
| 01-Apr-28                                   | 31-Mar-29 | Year 11             | 0.63                             | 1.63                                 |
| 01-Apr-29                                   | 31-Mar-30 | Year 12             | 0.59                             | 1.59                                 |
| 01-Apr-30                                   | 31-Mar-31 | Year 13             | 0.56                             | 1.56                                 |
| 01-Apr-31                                   | 31-Mar-32 | Year 14             | 0.53                             | 1.53                                 |
| 01-Apr-32                                   | 31-Mar-33 | Year 15             | 0.50                             | 1.50                                 |
| 01-Apr-33                                   | 15-Oct-33 | Year 16 (core)      | 0.40                             | 1.40                                 |
| <b>Up to 26 Reporting Periods Extension</b> |           |                     |                                  |                                      |
| 16-Oct-33                                   | 31-Mar-34 | Year 16 (extension) | 0.55                             | 1.55                                 |
| 01-Apr-34                                   | 31-Mar-35 | Year 17 (extension) | 0.50                             | 1.50                                 |
| 01-Apr-35                                   | 13-Oct-35 | Year 18 (extension) | 0.40                             | 1.40                                 |

**Part 3 - Annual Short Formation Payment Tables**

**Table A: Annual Short Formation Payment Tables**

| Year      |           | ODP Year | PDPSF (WCB) | PDPSF (CVL) |
|-----------|-----------|----------|-------------|-------------|
| From      | To        |          |             |             |
| 14-Oct-18 | 31-Mar-19 | Year 1   | [REDACTED]  | [REDACTED]  |
| 01-Apr-19 | 31-Mar-20 | Year 2   | [REDACTED]  | [REDACTED]  |
| 01-Apr-20 | 31-Mar-21 | Year 3   | [REDACTED]  | [REDACTED]  |
| 01-Apr-21 | 31-Mar-22 | Year 4   | [REDACTED]  | [REDACTED]  |
| 01-Apr-22 | 31-Mar-23 | Year 5   | [REDACTED]  | [REDACTED]  |
| 01-Apr-23 | 31-Mar-24 | Year 6   | [REDACTED]  | [REDACTED]  |
| 01-Apr-24 | 31-Mar-25 | Year 7   | [REDACTED]  | [REDACTED]  |
| 01-Apr-25 | 31-Mar-26 | Year 8   | [REDACTED]  | [REDACTED]  |
| 01-Apr-26 | 31-Mar-27 | Year 9   | [REDACTED]  | [REDACTED]  |
| 01-Apr-27 | 31-Mar-28 | Year 10  | [REDACTED]  | [REDACTED]  |
| 01-Apr-28 | 31-Mar-29 | Year 11  | [REDACTED]  | [REDACTED]  |
| 01-Apr-29 | 31-Mar-30 | Year 12  | [REDACTED]  | [REDACTED]  |
| 01-Apr-30 | 31-Mar-31 | Year 13  | [REDACTED]  | [REDACTED]  |

|   |           |                     |            |            |
|---|-----------|---------------------|------------|------------|
| 01-Apr-31                                   | 31-Mar-32 | Year 14             | [REDACTED] | [REDACTED] |
| 01-Apr-32                                   | 31-Mar-33 | Year 15             | [REDACTED] | [REDACTED] |
| 01-Apr-33                                   | 15-Oct-33 | Year 16 (core)      | [REDACTED] | [REDACTED] |
| <b>Up to 26 Reporting Periods Extension</b> |           |                     |            |            |
| 16-Oct-33                                   | 31-Mar-34 | Year 16 (extension) | [REDACTED] | [REDACTED] |
| 01-Apr-34                                   | 31-Mar-35 | Year 17 (extension) | [REDACTED] | [REDACTED] |
| 01-Apr-35                                   | 13-Oct-35 | Year 18 (extension) | [REDACTED] | [REDACTED] |

Provided that in respect of any ODP Year of less than thirteen (13) Reporting Periods, then **PDPSF** (as applicable) shall be multiplied by the number of whole Reporting Periods in the relevant ODP Year and then divided by thirteen (13).



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**Appendix 2 To Schedule 7.1**

**Part 1 - Passenger Time Lost Delay Benchmarks**

**Table A: Wales and Cross-Border Lines Services**

| Column 1 | Column 2  | Column 3                  | Column 4                 | Column 5               | Column 6              |
|----------|-----------|---------------------------|--------------------------|------------------------|-----------------------|
| Year     | Period    | Operational Service Level | Escalation Service Level | Critical Service Level | Cap Performance Level |
| 2019     | Period 08 | 1.456                     | 2.006                    | 3.256                  | 1.056                 |
| 2019     | Period 09 | 1.757                     | 2.307                    | 3.557                  | 1.357                 |
| 2019     | Period 10 | 1.634                     | 2.184                    | 3.434                  | 1.234                 |
| 2019     | Period 11 | 1.028                     | 1.578                    | 2.828                  | 0.628                 |
| 2019     | Period 12 | 1.026                     | 1.576                    | 2.826                  | 0.626                 |
| 2019     | Period 13 | 1.025                     | 1.575                    | 2.825                  | 0.625                 |
| 2020     | Period 01 | 1.029                     | 1.529                    | 2.829                  | 0.629                 |
| 2020     | Period 02 | 1.028                     | 1.528                    | 2.828                  | 0.628                 |
| 2020     | Period 03 | 1.027                     | 1.527                    | 2.827                  | 0.627                 |
| 2020     | Period 04 | 1.026                     | 1.526                    | 2.826                  | 0.626                 |
| 2020     | Period 05 | 1.491                     | 1.991                    | 3.291                  | 1.091                 |
| 2020     | Period 06 | 1.081                     | 1.581                    | 2.881                  | 0.681                 |
| 2020     | Period 07 | 1.080                     | 1.580                    | 2.880                  | 0.680                 |
| 2020     | Period 08 | 1.428                     | 1.928                    | 3.228                  | 1.028                 |
| 2020     | Period 09 | 1.717                     | 2.217                    | 3.517                  | 1.317                 |
| 2020     | Period 10 | 1.599                     | 2.099                    | 3.399                  | 1.199                 |
| 2020     | Period 11 | 1.017                     | 1.517                    | 2.817                  | 0.617                 |
| 2020     | Period 12 | 1.016                     | 1.516                    | 2.816                  | 0.616                 |
| 2020     | Period 13 | 1.015                     | 1.515                    | 2.815                  | 0.615                 |
| 2021     | Period 01 | 1.024                     | 1.474                    | 2.824                  | 0.624                 |
| 2021     | Period 02 | 1.021                     | 1.471                    | 2.821                  | 0.621                 |
| 2021     | Period 03 | 1.018                     | 1.468                    | 2.818                  | 0.618                 |
| 2021     | Period 04 | 1.016                     | 1.466                    | 2.816                  | 0.616                 |
| 2021     | Period 05 | 1.407                     | 1.857                    | 3.207                  | 1.007                 |
| 2021     | Period 06 | 1.063                     | 1.513                    | 2.863                  | 0.663                 |
| 2021     | Period 07 | 1.060                     | 1.510                    | 2.860                  | 0.660                 |
| 2021     | Period 08 | 1.381                     | 1.831                    | 3.181                  | 0.981                 |
| 2021     | Period 09 | 1.650                     | 2.100                    | 3.450                  | 1.250                 |
| 2021     | Period 10 | 1.537                     | 1.987                    | 3.337                  | 1.137                 |
| 2021     | Period 11 | 0.995                     | 1.445                    | 2.795                  | 0.595                 |
| 2021     | Period 12 | 0.993                     | 1.443                    | 2.793                  | 0.593                 |
| 2021     | Period 13 | 0.990                     | 1.440                    | 2.790                  | 0.590                 |
| 2022     | Period 01 | 1.001                     | 1.401                    | 2.801                  | 0.601                 |
| 2022     | Period 02 | 0.998                     | 1.398                    | 2.798                  | 0.598                 |
| 2022     | Period 03 | 0.995                     | 1.395                    | 2.795                  | 0.595                 |
| 2022     | Period 04 | 0.992                     | 1.392                    | 2.792                  | 0.592                 |
| 2022     | Period 05 | 1.285                     | 1.685                    | 3.085                  | 0.885                 |
| 2022     | Period 06 | 1.033                     | 1.433                    | 2.833                  | 0.633                 |
| 2022     | Period 07 | 1.030                     | 1.430                    | 2.830                  | 0.630                 |
| 2022     | Period 08 | 1.321                     | 1.721                    | 3.121                  | 0.921                 |
| 2022     | Period 09 | 1.568                     | 1.968                    | 3.368                  | 1.168                 |
| 2022     | Period 10 | 1.464                     | 1.864                    | 3.264                  | 1.064                 |
| 2022     | Period 11 | 0.971                     | 1.371                    | 2.771                  | 0.571                 |
| 2022     | Period 12 | 0.969                     | 1.369                    | 2.769                  | 0.569                 |
| 2022     | Period 13 | 0.966                     | 1.366                    | 2.766                  | 0.566                 |
| 2023     | Period 01 | 0.974                     | 1.374                    | 2.774                  | 0.574                 |
| 2023     | Period 02 | 0.971                     | 1.371                    | 2.771                  | 0.571                 |
| 2023     | Period 03 | 0.968                     | 1.368                    | 2.768                  | 0.568                 |
| 2023     | Period 04 | 0.965                     | 1.365                    | 2.765                  | 0.565                 |

|      |           |       |       |       |       |
|------|-----------|-------|-------|-------|-------|
| 2023 | Period 05 | 1.181 | 1.581 | 2.981 | 0.781 |
| 2023 | Period 06 | 1.001 | 1.401 | 2.801 | 0.601 |
| 2023 | Period 07 | 0.998 | 1.398 | 2.798 | 0.598 |
| 2023 | Period 08 | 1.261 | 1.661 | 3.061 | 0.861 |
| 2023 | Period 09 | 1.488 | 1.888 | 3.288 | 1.088 |
| 2023 | Period 10 | 1.392 | 1.792 | 3.192 | 0.992 |
| 2023 | Period 11 | 0.945 | 1.345 | 2.745 | 0.545 |
| 2023 | Period 12 | 0.942 | 1.342 | 2.742 | 0.542 |
| 2023 | Period 13 | 0.939 | 1.339 | 2.739 | 0.539 |
| 2024 | Period 01 | 0.945 | 1.345 | 2.745 | 0.545 |
| 2024 | Period 02 | 0.942 | 1.342 | 2.742 | 0.542 |
| 2024 | Period 03 | 0.940 | 1.340 | 2.740 | 0.540 |
| 2024 | Period 04 | 0.937 | 1.337 | 2.737 | 0.537 |
| 2024 | Period 05 | 1.095 | 1.495 | 2.895 | 0.695 |
| 2024 | Period 06 | 0.967 | 1.367 | 2.767 | 0.567 |
| 2024 | Period 07 | 0.964 | 1.364 | 2.764 | 0.564 |
| 2024 | Period 08 | 1.205 | 1.605 | 3.005 | 0.805 |
| 2024 | Period 09 | 1.414 | 1.814 | 3.214 | 1.014 |
| 2024 | Period 10 | 1.325 | 1.725 | 3.125 | 0.925 |
| 2024 | Period 11 | 0.916 | 1.316 | 2.716 | 0.516 |
| 2024 | Period 12 | 0.913 | 1.313 | 2.713 | 0.513 |
| 2024 | Period 13 | 0.910 | 1.310 | 2.710 | 0.510 |
| 2025 | Period 01 | 0.913 | 1.313 | 2.713 | 0.513 |
| 2025 | Period 02 | 0.910 | 1.310 | 2.710 | 0.510 |
| 2025 | Period 03 | 0.907 | 1.307 | 2.707 | 0.507 |
| 2025 | Period 04 | 0.904 | 1.304 | 2.704 | 0.504 |
| 2025 | Period 05 | 1.025 | 1.425 | 2.825 | 0.625 |
| 2025 | Period 06 | 0.931 | 1.331 | 2.731 | 0.531 |
| 2025 | Period 07 | 0.928 | 1.328 | 2.728 | 0.528 |
| 2025 | Period 08 | 1.148 | 1.548 | 2.948 | 0.748 |
| 2025 | Period 09 | 1.342 | 1.742 | 3.142 | 0.942 |
| 2025 | Period 10 | 1.259 | 1.659 | 3.059 | 0.859 |
| 2025 | Period 11 | 0.883 | 1.283 | 2.683 | 0.483 |
| 2025 | Period 12 | 0.880 | 1.280 | 2.680 | 0.480 |
| 2025 | Period 13 | 0.877 | 1.277 | 2.677 | 0.477 |
| 2026 | Period 01 | 0.878 | 1.278 | 2.678 | 0.478 |
| 2026 | Period 02 | 0.875 | 1.275 | 2.675 | 0.475 |
| 2026 | Period 03 | 0.872 | 1.272 | 2.672 | 0.472 |
| 2026 | Period 04 | 0.869 | 1.269 | 2.669 | 0.469 |
| 2026 | Period 05 | 0.969 | 1.369 | 2.769 | 0.569 |
| 2026 | Period 06 | 0.893 | 1.293 | 2.693 | 0.493 |
| 2026 | Period 07 | 0.890 | 1.290 | 2.690 | 0.490 |
| 2026 | Period 08 | 1.093 | 1.493 | 2.893 | 0.693 |
| 2026 | Period 09 | 1.272 | 1.672 | 3.072 | 0.872 |
| 2026 | Period 10 | 1.195 | 1.595 | 2.995 | 0.795 |
| 2026 | Period 11 | 0.848 | 1.248 | 2.648 | 0.448 |
| 2026 | Period 12 | 0.845 | 1.245 | 2.645 | 0.445 |
| 2026 | Period 13 | 0.842 | 1.242 | 2.642 | 0.442 |
| 2027 | Period 01 | 0.843 | 1.243 | 2.643 | 0.443 |
| 2027 | Period 02 | 0.840 | 1.240 | 2.640 | 0.440 |
| 2027 | Period 03 | 0.837 | 1.237 | 2.637 | 0.437 |
| 2027 | Period 04 | 0.834 | 1.234 | 2.634 | 0.434 |

|      |           |       |       |       |       |
|------|-----------|-------|-------|-------|-------|
| 2027 | Period 05 | 0.913 | 1.313 | 2.713 | 0.513 |
| 2027 | Period 06 | 0.855 | 1.255 | 2.655 | 0.455 |
| 2027 | Period 07 | 0.852 | 1.252 | 2.652 | 0.452 |
| 2027 | Period 08 | 1.039 | 1.439 | 2.839 | 0.639 |
| 2027 | Period 09 | 1.204 | 1.604 | 3.004 | 0.804 |
| 2027 | Period 10 | 1.132 | 1.532 | 2.932 | 0.732 |
| 2027 | Period 11 | 0.813 | 1.213 | 2.613 | 0.413 |
| 2027 | Period 12 | 0.810 | 1.210 | 2.610 | 0.410 |
| 2027 | Period 13 | 0.807 | 1.207 | 2.607 | 0.407 |
| 2028 | Period 01 | 0.807 | 1.207 | 2.607 | 0.407 |
| 2028 | Period 02 | 0.805 | 1.205 | 2.605 | 0.405 |
| 2028 | Period 03 | 0.803 | 1.203 | 2.603 | 0.403 |
| 2028 | Period 04 | 0.801 | 1.201 | 2.601 | 0.401 |
| 2028 | Period 05 | 0.870 | 1.270 | 2.670 | 0.470 |
| 2028 | Period 06 | 0.823 | 1.223 | 2.623 | 0.423 |
| 2028 | Period 07 | 0.821 | 1.221 | 2.621 | 0.421 |
| 2028 | Period 08 | 0.996 | 1.396 | 2.796 | 0.596 |
| 2028 | Period 09 | 1.151 | 1.551 | 2.951 | 0.751 |
| 2028 | Period 10 | 1.086 | 1.486 | 2.886 | 0.686 |
| 2028 | Period 11 | 0.789 | 1.189 | 2.589 | 0.389 |
| 2028 | Period 12 | 0.787 | 1.187 | 2.587 | 0.387 |
| 2028 | Period 13 | 0.786 | 1.186 | 2.586 | 0.386 |
| 2029 | Period 01 | 0.788 | 1.188 | 2.588 | 0.388 |
| 2029 | Period 02 | 0.787 | 1.187 | 2.587 | 0.387 |
| 2029 | Period 03 | 0.786 | 1.186 | 2.586 | 0.386 |
| 2029 | Period 04 | 0.785 | 1.185 | 2.585 | 0.385 |
| 2029 | Period 05 | 0.844 | 1.244 | 2.644 | 0.444 |
| 2029 | Period 06 | 0.807 | 1.207 | 2.607 | 0.407 |
| 2029 | Period 07 | 0.806 | 1.206 | 2.606 | 0.406 |
| 2029 | Period 08 | 0.971 | 1.371 | 2.771 | 0.571 |
| 2029 | Period 09 | 1.119 | 1.519 | 2.919 | 0.719 |
| 2029 | Period 10 | 1.058 | 1.458 | 2.858 | 0.658 |
| 2029 | Period 11 | 0.779 | 1.179 | 2.579 | 0.379 |
| 2029 | Period 12 | 0.778 | 1.178 | 2.578 | 0.378 |
| 2029 | Period 13 | 0.777 | 1.177 | 2.577 | 0.377 |
| 2030 | Period 01 | 0.779 | 1.179 | 2.579 | 0.379 |
| 2030 | Period 02 | 0.778 | 1.178 | 2.578 | 0.378 |
| 2030 | Period 03 | 0.777 | 1.177 | 2.577 | 0.377 |
| 2030 | Period 04 | 0.776 | 1.176 | 2.576 | 0.376 |
| 2030 | Period 05 | 0.827 | 1.227 | 2.627 | 0.427 |
| 2030 | Period 06 | 0.797 | 1.197 | 2.597 | 0.397 |
| 2030 | Period 07 | 0.796 | 1.196 | 2.596 | 0.396 |
| 2030 | Period 08 | 0.954 | 1.354 | 2.754 | 0.554 |
| 2030 | Period 09 | 1.095 | 1.495 | 2.895 | 0.695 |
| 2030 | Period 10 | 1.037 | 1.437 | 2.837 | 0.637 |
| 2030 | Period 11 | 0.770 | 1.170 | 2.570 | 0.370 |
| 2030 | Period 12 | 0.769 | 1.169 | 2.569 | 0.369 |
| 2030 | Period 13 | 0.769 | 1.169 | 2.569 | 0.369 |
| 2031 | Period 01 | 0.770 | 1.170 | 2.570 | 0.370 |
| 2031 | Period 02 | 0.770 | 1.170 | 2.570 | 0.370 |
| 2031 | Period 03 | 0.769 | 1.169 | 2.569 | 0.369 |
| 2031 | Period 04 | 0.769 | 1.169 | 2.569 | 0.369 |

|      |           |       |       |       |       |
|------|-----------|-------|-------|-------|-------|
| 2031 | Period 05 | 0.816 | 1.216 | 2.616 | 0.416 |
| 2031 | Period 06 | 0.789 | 1.189 | 2.589 | 0.389 |
| 2031 | Period 07 | 0.789 | 1.189 | 2.589 | 0.389 |
| 2031 | Period 08 | 0.940 | 1.340 | 2.740 | 0.540 |
| 2031 | Period 09 | 1.077 | 1.477 | 2.877 | 0.677 |
| 2031 | Period 10 | 1.021 | 1.421 | 2.821 | 0.621 |
| 2031 | Period 11 | 0.766 | 1.166 | 2.566 | 0.366 |
| 2031 | Period 12 | 0.765 | 1.165 | 2.565 | 0.365 |
| 2031 | Period 13 | 0.765 | 1.165 | 2.565 | 0.365 |
| 2032 | Period 01 | 0.766 | 1.166 | 2.566 | 0.366 |
| 2032 | Period 02 | 0.765 | 1.165 | 2.565 | 0.365 |
| 2032 | Period 03 | 0.765 | 1.165 | 2.565 | 0.365 |
| 2032 | Period 04 | 0.764 | 1.164 | 2.564 | 0.364 |
| 2032 | Period 05 | 0.810 | 1.210 | 2.610 | 0.410 |
| 2032 | Period 06 | 0.784 | 1.184 | 2.584 | 0.384 |
| 2032 | Period 07 | 0.784 | 1.184 | 2.584 | 0.384 |
| 2032 | Period 08 | 0.930 | 1.330 | 2.730 | 0.530 |
| 2032 | Period 09 | 1.061 | 1.461 | 2.861 | 0.661 |
| 2032 | Period 10 | 1.008 | 1.408 | 2.808 | 0.608 |
| 2032 | Period 11 | 0.761 | 1.161 | 2.561 | 0.361 |
| 2032 | Period 12 | 0.761 | 1.161 | 2.561 | 0.361 |
| 2032 | Period 13 | 0.760 | 1.160 | 2.560 | 0.360 |
| 2033 | Period 01 | 0.761 | 1.161 | 2.561 | 0.361 |
| 2033 | Period 02 | 0.761 | 1.161 | 2.561 | 0.361 |
| 2033 | Period 03 | 0.760 | 1.160 | 2.560 | 0.360 |
| 2033 | Period 04 | 0.760 | 1.160 | 2.560 | 0.360 |
| 2033 | Period 05 | 0.804 | 1.204 | 2.604 | 0.404 |
| 2033 | Period 06 | 0.779 | 1.179 | 2.579 | 0.379 |
| 2033 | Period 07 | 0.779 | 1.179 | 2.579 | 0.379 |
| 2033 | Period 08 | 0.921 | 1.321 | 2.721 | 0.521 |
| 2033 | Period 09 | 1.050 | 1.450 | 2.850 | 0.650 |
| 2033 | Period 10 | 0.998 | 1.398 | 2.798 | 0.598 |
| 2033 | Period 11 | 0.757 | 1.157 | 2.557 | 0.357 |
| 2033 | Period 12 | 0.756 | 1.156 | 2.556 | 0.356 |
| 2033 | Period 13 | 0.756 | 1.156 | 2.556 | 0.356 |
| 2034 | Period 01 | 0.757 | 1.157 | 2.557 | 0.357 |
| 2034 | Period 02 | 0.756 | 1.156 | 2.556 | 0.356 |
| 2034 | Period 03 | 0.756 | 1.156 | 2.556 | 0.356 |
| 2034 | Period 04 | 0.755 | 1.155 | 2.555 | 0.355 |
| 2034 | Period 05 | 0.798 | 1.198 | 2.598 | 0.398 |
| 2034 | Period 06 | 0.774 | 1.174 | 2.574 | 0.374 |
| 2034 | Period 07 | 0.774 | 1.174 | 2.574 | 0.374 |
| 2034 | Period 08 | 0.913 | 1.313 | 2.713 | 0.513 |
| 2034 | Period 09 | 1.038 | 1.438 | 2.838 | 0.638 |
| 2034 | Period 10 | 0.987 | 1.387 | 2.787 | 0.587 |
| 2034 | Period 11 | 0.752 | 1.152 | 2.552 | 0.352 |
| 2034 | Period 12 | 0.752 | 1.152 | 2.552 | 0.352 |
| 2034 | Period 13 | 0.751 | 1.151 | 2.551 | 0.351 |
| 2035 | Period 01 | 0.752 | 1.152 | 2.552 | 0.352 |
| 2035 | Period 02 | 0.752 | 1.152 | 2.552 | 0.352 |
| 2035 | Period 03 | 0.751 | 1.151 | 2.551 | 0.351 |
| 2035 | Period 04 | 0.751 | 1.151 | 2.551 | 0.351 |

|      |           |       |       |       |       |
|------|-----------|-------|-------|-------|-------|
| 2035 | Period 05 | 0.792 | 1.192 | 2.592 | 0.392 |
| 2035 | Period 06 | 0.769 | 1.169 | 2.569 | 0.369 |
| 2035 | Period 07 | 0.769 | 1.169 | 2.569 | 0.369 |
| 2035 | Period 08 | 0.904 | 1.304 | 2.704 | 0.504 |
| 2035 | Period 09 | 1.027 | 1.427 | 2.827 | 0.627 |
| 2035 | Period 10 | 0.977 | 1.377 | 2.777 | 0.577 |
| 2035 | Period 11 | 0.748 | 1.148 | 2.548 | 0.348 |
| 2035 | Period 12 | 0.747 | 1.147 | 2.547 | 0.347 |
| 2035 | Period 13 | 0.747 | 1.147 | 2.547 | 0.347 |
| 2036 | Period 01 | 0.748 | 1.148 | 2.548 | 0.348 |
| 2036 | Period 02 | 0.748 | 1.148 | 2.548 | 0.348 |
| 2036 | Period 03 | 0.748 | 1.148 | 2.548 | 0.348 |
| 2036 | Period 04 | 0.748 | 1.148 | 2.548 | 0.348 |
| 2036 | Period 05 | 0.788 | 1.188 | 2.588 | 0.388 |
| 2036 | Period 06 | 0.766 | 1.166 | 2.566 | 0.366 |
| 2036 | Period 07 | 0.766 | 1.166 | 2.566 | 0.366 |

**Table B: Core Valley Lines (Pre-Asset Transfer)**

| Column 1 | Column 2  | Column 3                  | Column 4                 | Column 5               | Column 6              |
|----------|-----------|---------------------------|--------------------------|------------------------|-----------------------|
| Year     | Period    | Operational Service Level | Escalation Service Level | Critical Service Level | Cap Performance Level |
| 2019     | Period 08 | 1.205                     | 1.805                    | 3.205                  | 0.755                 |
| 2019     | Period 09 | 1.355                     | 1.955                    | 3.355                  | 0.905                 |
| 2019     | Period 10 | 1.454                     | 2.054                    | 3.454                  | 1.004                 |
| 2019     | Period 11 | 0.902                     | 1.502                    | 2.902                  | 0.452                 |
| 2019     | Period 12 | 0.901                     | 1.501                    | 2.901                  | 0.451                 |
| 2019     | Period 13 | 0.900                     | 1.500                    | 2.900                  | 0.450                 |
| 2020     | Period 01 | 0.903                     | 1.503                    | 2.903                  | 0.453                 |
| 2020     | Period 02 | 0.902                     | 1.502                    | 2.902                  | 0.452                 |
| 2020     | Period 03 | 0.901                     | 1.501                    | 2.901                  | 0.451                 |
| 2020     | Period 04 | 0.901                     | 1.501                    | 2.901                  | 0.451                 |
| 2020     | Period 05 | 0.900                     | 1.500                    | 2.900                  | 0.450                 |
| 2020     | Period 06 | 0.899                     | 1.499                    | 2.899                  | 0.449                 |
| 2020     | Period 07 | 0.898                     | 1.498                    | 2.898                  | 0.448                 |
| 2020     | Period 08 | 1.188                     | 1.788                    | 3.188                  | 0.738                 |
| 2020     | Period 09 | 1.332                     | 1.932                    | 3.332                  | 0.882                 |
| 2020     | Period 10 | 1.428                     | 2.028                    | 3.428                  | 0.978                 |
| 2020     | Period 11 | 0.896                     | 1.496                    | 2.896                  | 0.446                 |
| 2020     | Period 12 | 0.895                     | 1.495                    | 2.895                  | 0.445                 |
| 2020     | Period 13 | 0.894                     | 1.494                    | 2.894                  | 0.444                 |
| 2021     | Period 01 | 0.896                     | 1.496                    | 2.896                  | 0.446                 |
| 2021     | Period 02 | 0.895                     | 1.495                    | 2.895                  | 0.445                 |
| 2021     | Period 03 | 0.893                     | 1.493                    | 2.893                  | 0.443                 |
| 2021     | Period 04 | 0.891                     | 1.491                    | 2.891                  | 0.441                 |
| 2021     | Period 05 | 0.889                     | 1.489                    | 2.889                  | 0.439                 |
| 2021     | Period 06 | 0.888                     | 1.488                    | 2.888                  | 0.438                 |
| 2021     | Period 07 | 0.886                     | 1.486                    | 2.886                  | 0.436                 |
| 2021     | Period 08 | 1.159                     | 1.759                    | 3.159                  | 0.709                 |
| 2021     | Period 09 | 1.294                     | 1.894                    | 3.294                  | 0.844                 |
| 2021     | Period 10 | 1.383                     | 1.983                    | 3.383                  | 0.933                 |
| 2021     | Period 11 | 0.879                     | 1.479                    | 2.879                  | 0.429                 |
| 2021     | Period 12 | 0.877                     | 1.477                    | 2.877                  | 0.427                 |
| 2021     | Period 13 | 0.875                     | 1.496                    | 2.875                  | 0.425                 |
| 2022     | Period 01 | 0.877                     | 1.477                    | 2.877                  | 0.427                 |
| 2022     | Period 02 | 0.875                     | 1.475                    | 2.875                  | 0.425                 |
| 2022     | Period 03 | 0.873                     | 1.473                    | 2.873                  | 0.423                 |
| 2022     | Period 04 | 0.871                     | 1.471                    | 2.871                  | 0.421                 |
| 2022     | Period 05 | 0.869                     | 1.469                    | 2.869                  | 0.419                 |
| 2022     | Period 06 | 0.867                     | 1.467                    | 2.867                  | 0.417                 |
| 2022     | Period 07 | 0.864                     | 1.464                    | 2.864                  | 0.414                 |
| 2022     | Period 08 | 1.118                     | 1.718                    | 3.118                  | 0.668                 |

|      |           |       |       |        |       |
|------|-----------|-------|-------|--------|-------|
| 2022 | Period 09 | 1.243 | 1.843 | 3.243  | 0.793 |
| 2022 | Period 10 | 1.325 | 1.925 | 3.325  | 0.875 |
| 2022 | Period 11 | 0.856 | 1.456 | 2.856  | 0.406 |
| 2022 | Period 12 | 0.854 | 1.454 | 2.854  | 0.404 |
| 2022 | Period 13 | 0.852 | 1.452 | 2.852  | 0.402 |
| 2023 | Period 01 | 0.853 | 1.453 | 2.853  | 0.403 |
| 2023 | Period 02 | 0.851 | 1.451 | 2.851  | 0.401 |
| 2023 | Period 03 | 0.849 | 1.449 | 2.849  | 0.399 |
| 2023 | Period 04 | 0.847 | 1.447 | 2.847  | 0.397 |
| 2023 | Period 05 | 0.844 | 1.444 | 2.844  | 0.394 |
| 2023 | Period 06 | 0.842 | 1.442 | 2.842  | 0.392 |
| 2023 | Period 07 | 0.840 | 1.440 | 2.840  | 0.390 |
| 2023 | Period 08 | 1.075 | 1.675 | *3.075 | 0.625 |
| 2023 | Period 09 | 1.190 | 1.790 | 3.190  | 0.740 |
| 2023 | Period 10 | 1.265 | 1.865 | 3.265  | 0.815 |
| 2023 | Period 11 | 0.832 | 1.432 | 2.832  | 0.382 |
| 2023 | Period 12 | 0.829 | 1.429 | 2.829  | 0.379 |
| 2023 | Period 13 | 0.827 | 1.427 | 2.827  | 0.377 |
| 2024 | Period 01 | 0.828 | 1.428 | 2.828  | 0.378 |
| 2024 | Period 02 | 0.825 | 1.425 | 2.825  | 0.375 |
| 2024 | Period 03 | 0.823 | 1.423 | 2.823  | 0.373 |
| 2024 | Period 04 | 0.820 | 1.420 | 2.820  | 0.370 |
| 2024 | Period 05 | 0.818 | 1.418 | 2.818  | 0.368 |
| 2024 | Period 06 | 0.815 | 1.415 | 2.815  | 0.365 |
| 2024 | Period 07 | 0.813 | 1.413 | 2.813  | 0.363 |
| 2024 | Period 08 | 1.030 | 1.630 | 3.030  | 0.580 |
| 2024 | Period 09 | 1.137 | 1.737 | 3.137  | 0.687 |
| 2024 | Period 10 | 1.206 | 1.806 | 3.206  | 0.756 |
| 2024 | Period 11 | 0.803 | 1.403 | 2.803  | 0.353 |
| 2024 | Period 12 | 0.800 | 1.400 | 2.800  | 0.350 |
| 2024 | Period 13 | 0.798 | 1.398 | 2.798  | 0.348 |
| 2025 | Period 01 | 0.798 | 1.398 | 2.798  | 0.348 |
| 2025 | Period 02 | 0.792 | 1.392 | 2.792  | 0.342 |
| 2025 | Period 03 | 0.786 | 1.386 | 2.786  | 0.336 |
| 2025 | Period 04 | 0.780 | 1.380 | 2.780  | 0.330 |
| 2025 | Period 05 | 0.775 | 1.375 | 2.775  | 0.325 |
| 2025 | Period 06 | 0.769 | 1.369 | 2.769  | 0.319 |
| 2025 | Period 07 | 0.763 | 1.363 | 2.763  | 0.313 |
| 2025 | Period 08 | 0.955 | 1.555 | 2.955  | 0.505 |
| 2025 | Period 09 | 1.046 | 1.646 | 3.046  | 0.596 |
| 2025 | Period 10 | 1.102 | 1.702 | 3.102  | 0.652 |
| 2025 | Period 11 | 0.740 | 1.340 | 2.740  | 0.290 |
| 2025 | Period 12 | 0.734 | 1.334 | 2.734  | 0.284 |
| 2025 | Period 13 | 0.728 | 1.328 | 2.728  | 0.278 |
| 2026 | Period 01 | 0.724 | 1.324 | 2.724  | 0.274 |
| 2026 | Period 02 | 0.721 | 1.321 | 2.721  | 0.271 |
| 2026 | Period 03 | 0.717 | 1.317 | 2.717  | 0.267 |
| 2026 | Period 04 | 0.713 | 1.313 | 2.713  | 0.263 |
| 2026 | Period 05 | 0.710 | 1.310 | 2.710  | 0.260 |
| 2026 | Period 06 | 0.706 | 1.306 | 2.706  | 0.256 |
| 2026 | Period 07 | 0.702 | 1.302 | 2.702  | 0.252 |
| 2026 | Period 08 | 0.875 | 1.475 | 2.875  | 0.425 |
| 2026 | Period 09 | 0.959 | 1.559 | 2.959  | 0.509 |
| 2026 | Period 10 | 1.012 | 1.612 | 3.012  | 0.562 |
| 2026 | Period 11 | 0.688 | 1.288 | 2.688  | 0.238 |
| 2026 | Period 12 | 0.684 | 1.284 | 2.684  | 0.234 |
| 2026 | Period 13 | 0.681 | 1.281 | 2.681  | 0.231 |
| 2027 | Period 01 | 0.679 | 1.279 | 2.679  | 0.229 |
| 2027 | Period 02 | 0.676 | 1.276 | 2.676  | 0.226 |
| 2027 | Period 03 | 0.674 | 1.274 | 2.674  | 0.224 |
| 2027 | Period 04 | 0.671 | 1.271 | 2.671  | 0.221 |
| 2027 | Period 05 | 0.668 | 1.268 | 2.668  | 0.218 |
| 2027 | Period 06 | 0.665 | 1.265 | 2.665  | 0.215 |
| 2027 | Period 07 | 0.662 | 1.262 | 2.662  | 0.212 |
| 2027 | Period 08 | 0.819 | 1.419 | 2.819  | 0.369 |
| 2027 | Period 09 | 0.896 | 1.496 | 2.896  | 0.446 |
| 2027 | Period 10 | 0.945 | 1.545 | 2.945  | 0.495 |
| 2027 | Period 11 | 0.650 | 1.250 | 2.650  | 0.200 |
| 2027 | Period 12 | 0.647 | 1.247 | 2.647  | 0.197 |
| 2027 | Period 13 | 0.645 | 1.245 | 2.645  | 0.195 |
| 2028 | Period 01 | 0.643 | 1.243 | 2.643  | 0.193 |

|      |           |       |        |       |       |
|------|-----------|-------|--------|-------|-------|
| 2028 | Period 02 | 0.641 | 1.241  | 2.641 | 0.191 |
| 2028 | Period 03 | 0.639 | 1.239  | 2.639 | 0.189 |
| 2028 | Period 04 | 0.636 | 1.236  | 2.636 | 0.186 |
| 2028 | Period 05 | 0.634 | 1.234  | 2.634 | 0.184 |
| 2028 | Period 06 | 0.632 | 1.232  | 2.632 | 0.182 |
| 2028 | Period 07 | 0.630 | 1.230  | 2.630 | 0.180 |
| 2028 | Period 08 | 0.775 | 1.375  | 2.775 | 0.325 |
| 2028 | Period 09 | 0.846 | 1.446  | 2.846 | 0.396 |
| 2028 | Period 10 | 0.892 | 1.492  | 2.892 | 0.442 |
| 2028 | Period 11 | 0.621 | 1.221  | 2.621 | 0.171 |
| 2028 | Period 12 | 0.619 | 1.219  | 2.619 | 0.169 |
| 2028 | Period 13 | 0.617 | 1.217  | 2.617 | 0.167 |
| 2029 | Period 01 | 0.617 | 1.217  | 2.610 | 0.167 |
| 2029 | Period 02 | 0.616 | 1.216  | 2.746 | 0.166 |
| 2029 | Period 03 | 0.614 | 1.214  | 2.814 | 0.164 |
| 2029 | Period 04 | 0.613 | +1.213 | 2.858 | 0.163 |
| 2029 | Period 05 | 0.612 | 1.212  | 2.606 | 0.162 |
| 2029 | Period 06 | 0.611 | 1.211  | 2.605 | 0.161 |
| 2029 | Period 07 | 0.610 | 1.210  | 2.604 | 0.160 |
| 2029 | Period 08 | 0.746 | 1.346  | 2.610 | 0.296 |
| 2029 | Period 09 | 0.814 | 1.414  | 2.746 | 0.364 |
| 2029 | Period 10 | 0.858 | 1.458  | 2.814 | 0.408 |
| 2029 | Period 11 | 0.606 | 1.206  | 2.858 | 0.156 |
| 2029 | Period 12 | 0.605 | 1.205  | 2.606 | 0.155 |
| 2029 | Period 13 | 0.604 | 1.204  | 2.605 | 0.154 |
| 2030 | Period 01 | 0.604 | 1.204  | 2.604 | 0.154 |
| 2030 | Period 02 | 0.603 | 1.203  | 2.603 | 0.153 |
| 2030 | Period 03 | 0.602 | 1.202  | 2.602 | 0.152 |
| 2030 | Period 04 | 0.602 | 1.202  | 2.602 | 0.152 |
| 2030 | Period 05 | 0.601 | 1.201  | 2.601 | 0.151 |
| 2030 | Period 06 | 0.600 | 1.200  | 2.600 | 0.150 |
| 2030 | Period 07 | 0.599 | 1.199  | 2.599 | 0.149 |
| 2030 | Period 08 | 0.730 | 1.330  | 2.730 | 0.280 |
| 2030 | Period 09 | 0.794 | 1.394  | 2.794 | 0.344 |
| 2030 | Period 10 | 0.837 | 1.437  | 2.837 | 0.387 |
| 2030 | Period 11 | 0.596 | 1.196  | 2.596 | 0.146 |
| 2030 | Period 12 | 0.596 | 1.196  | 2.596 | 0.146 |
| 2030 | Period 13 | 0.595 | 1.195  | 2.595 | 0.145 |
| 2031 | Period 01 | 0.595 | 1.195  | 2.595 | 0.145 |
| 2031 | Period 02 | 0.595 | 1.195  | 2.595 | 0.145 |
| 2031 | Period 03 | 0.595 | 1.195  | 2.595 | 0.145 |
| 2031 | Period 04 | 0.594 | 1.194  | 2.594 | 0.144 |
| 2031 | Period 05 | 0.594 | 1.194  | 2.594 | 0.144 |
| 2031 | Period 06 | 0.594 | 1.194  | 2.594 | 0.144 |
| 2031 | Period 07 | 0.593 | 1.193  | 2.593 | 0.143 |
| 2031 | Period 08 | 0.719 | 1.319  | 2.719 | 0.269 |
| 2031 | Period 09 | 0.781 | 1.381  | 2.781 | 0.331 |
| 2031 | Period 10 | 0.822 | 1.422  | 2.822 | 0.372 |
| 2031 | Period 11 | 0.592 | 1.192  | 2.592 | 0.142 |
| 2031 | Period 12 | 0.591 | 1.191  | 2.591 | 0.141 |
| 2031 | Period 13 | 0.591 | 1.191  | 2.591 | 0.141 |
| 2032 | Period 01 | 0.592 | 1.192  | 2.592 | 0.142 |
| 2032 | Period 02 | 0.592 | 1.192  | 2.592 | 0.142 |
| 2032 | Period 03 | 0.591 | 1.191  | 2.591 | 0.141 |
| 2032 | Period 04 | 0.591 | 1.191  | 2.591 | 0.141 |
| 2032 | Period 05 | 0.591 | 1.191  | 2.591 | 0.141 |
| 2032 | Period 06 | 0.590 | 1.190  | 2.590 | 0.140 |
| 2032 | Period 07 | 0.590 | 1.190  | 2.590 | 0.140 |
| 2032 | Period 08 | 0.710 | 1.310  | 2.710 | 0.260 |
| 2032 | Period 09 | 0.770 | 1.370  | 2.770 | 0.320 |
| 2032 | Period 10 | 0.810 | 1.410  | 2.810 | 0.360 |
| 2032 | Period 11 | 0.588 | 1.188  | 2.588 | 0.138 |
| 2032 | Period 12 | 0.588 | 1.188  | 2.588 | 0.138 |
| 2032 | Period 13 | 0.588 | 1.188  | 2.588 | 0.138 |
| 2033 | Period 01 | 0.588 | 1.188  | 2.588 | 0.138 |
| 2033 | Period 02 | 0.587 | 1.187  | 2.587 | 0.137 |
| 2033 | Period 03 | 0.587 | 1.187  | 2.587 | 0.137 |
| 2033 | Period 04 | 0.587 | 1.187  | 2.587 | 0.137 |
| 2033 | Period 05 | 0.586 | 1.186  | 2.586 | 0.136 |
| 2033 | Period 06 | 0.586 | 1.186  | 2.586 | 0.136 |
| 2033 | Period 07 | 0.586 | 1.186  | 2.586 | 0.136 |



|      |           |       |       |       |       |
|------|-----------|-------|-------|-------|-------|
| 2033 | Period 08 | 0.703 | 1.303 | 2.703 | 0.253 |
| 2033 | Period 09 | 0.762 | 1.362 | 2.762 | 0.312 |
| 2033 | Period 10 | 0.801 | 1.401 | 2.801 | 0.351 |
| 2033 | Period 11 | 0.584 | 1.184 | 2.584 | 0.134 |
| 2033 | Period 12 | 0.584 | 1.184 | 2.584 | 0.134 |
| 2033 | Period 13 | 0.583 | 1.183 | 2.583 | 0.133 |
| 2034 | Period 01 | 0.584 | 1.184 | 2.584 | 0.134 |
| 2034 | Period 02 | 0.583 | 1.183 | 2.583 | 0.133 |
| 2034 | Period 03 | 0.583 | 1.183 | 2.583 | 0.133 |
| 2034 | Period 04 | 0.583 | 1.183 | 2.583 | 0.133 |
| 2034 | Period 05 | 0.582 | 1.182 | 2.582 | 0.132 |
| 2034 | Period 06 | 0.582 | 1.182 | 2.582 | 0.132 |
| 2034 | Period 07 | 0.581 | 1.181 | 2.581 | 0.131 |
| 2034 | Period 08 | 0.696 | 1.296 | 2.696 | 0.246 |
| 2034 | Period 09 | 0.753 | 1.353 | 2.753 | 0.303 |
| 2034 | Period 10 | 0.791 | 1.391 | 2.791 | 0.341 |
| 2034 | Period 11 | 0.580 | 1.180 | 2.580 | 0.130 |
| 2034 | Period 12 | 0.580 | 1.180 | 2.580 | 0.130 |
| 2034 | Period 13 | 0.579 | 1.179 | 2.579 | 0.129 |
| 2035 | Period 01 | 0.580 | 1.180 | 2.580 | 0.130 |
| 2035 | Period 02 | 0.579 | 1.179 | 2.579 | 0.129 |
| 2035 | Period 03 | 0.579 | 1.179 | 2.579 | 0.129 |
| 2035 | Period 04 | 0.578 | 1.178 | 2.578 | 0.128 |
| 2035 | Period 05 | 0.578 | 1.178 | 2.578 | 0.128 |
| 2035 | Period 06 | 0.578 | 1.178 | 2.578 | 0.128 |
| 2035 | Period 07 | 0.577 | 1.177 | 2.577 | 0.127 |
| 2035 | Period 08 | 0.689 | 1.289 | 2.689 | 0.239 |
| 2035 | Period 09 | 0.745 | 1.345 | 2.745 | 0.295 |
| 2035 | Period 10 | 0.782 | 1.382 | 2.782 | 0.332 |
| 2035 | Period 11 | 0.576 | 1.176 | 2.576 | 0.126 |
| 2035 | Period 12 | 0.575 | 1.175 | 2.575 | 0.125 |
| 2035 | Period 13 | 0.575 | 1.175 | 2.575 | 0.125 |
| 2036 | Period 01 | 0.575 | 1.175 | 2.575 | 0.125 |
| 2036 | Period 02 | 0.575 | 1.175 | 2.575 | 0.125 |
| 2036 | Period 03 | 0.575 | 1.175 | 2.575 | 0.125 |
| 2036 | Period 04 | 0.575 | 1.175 | 2.575 | 0.125 |
| 2036 | Period 05 | 0.575 | 1.175 | 2.575 | 0.125 |
| 2036 | Period 06 | 0.575 | 1.175 | 2.575 | 0.125 |
| 2036 | Period 07 | 0.575 | 1.175 | 2.575 | 0.125 |

**Table C: Core Valley Lines (Post-Asset Transfer)**

| Column 1 | Column 2  | Column 3                  | Column 4                 | Column 5               | Column 6              |
|----------|-----------|---------------------------|--------------------------|------------------------|-----------------------|
| Year     | Period    | Operational Service Level | Escalation Service Level | Critical Service Level | Cap Performance Level |
| 2019     | Period 08 | 1.750                     | 3.000                    | 4.750                  | 1.250                 |
| 2019     | Period 09 | 1.967                     | 3.217                    | 4.967                  | 1.467                 |
| 2019     | Period 10 | 2.111                     | 3.361                    | 5.111                  | 1.611                 |
| 2019     | Period 11 | 1.309                     | 2.559                    | 4.309                  | 0.809                 |
| 2019     | Period 12 | 1.308                     | 2.558                    | 4.308                  | 0.808                 |
| 2019     | Period 13 | 1.307                     | 2.557                    | 4.307                  | 0.807                 |
| 2020     | Period 01 | 1.311                     | 2.461                    | 4.311                  | 0.811                 |
| 2020     | Period 02 | 1.310                     | 2.460                    | 4.310                  | 0.810                 |
| 2020     | Period 03 | 1.309                     | 2.459                    | 4.309                  | 0.809                 |
| 2020     | Period 04 | 1.308                     | 2.458                    | 4.308                  | 0.808                 |
| 2020     | Period 05 | 1.307                     | 2.457                    | 4.307                  | 0.807                 |
| 2020     | Period 06 | 1.306                     | 2.456                    | 4.306                  | 0.806                 |
| 2020     | Period 07 | 1.305                     | 2.455                    | 4.305                  | 0.805                 |
| 2020     | Period 08 | 1.725                     | 2.875                    | 4.725                  | 1.225                 |
| 2020     | Period 09 | 1.935                     | 3.085                    | 4.935                  | 1.435                 |
| 2020     | Period 10 | 2.074                     | 3.224                    | 5.074                  | 1.574                 |
| 2020     | Period 11 | 1.300                     | 2.450                    | 4.300                  | 0.800                 |
| 2020     | Period 12 | 1.299                     | 2.449                    | 4.299                  | 0.799                 |
| 2020     | Period 13 | 1.298                     | 2.448                    | 4.298                  | 0.798                 |
| 2021     | Period 01 | 1.302                     | 2.402                    | 4.302                  | 0.802                 |
| 2021     | Period 02 | 1.299                     | 2.399                    | 4.299                  | 0.799                 |
| 2021     | Period 03 | 1.296                     | 2.396                    | 4.296                  | 0.796                 |
| 2021     | Period 04 | 1.294                     | 2.394                    | 4.294                  | 0.794                 |

|      |           |       |       |       |       |
|------|-----------|-------|-------|-------|-------|
| 2021 | Period 05 | 1.291 | 2.391 | 4.291 | 0.791 |
| 2021 | Period 06 | 1.289 | 2.389 | 4.289 | 0.789 |
| 2021 | Period 07 | 1.286 | 2.386 | 4.286 | 0.786 |
| 2021 | Period 08 | 1.683 | 2.783 | 4.683 | 1.183 |
| 2021 | Period 09 | 1.879 | 2.979 | 4.879 | 1.379 |
| 2021 | Period 10 | 2.008 | 3.108 | 5.008 | 1.508 |
| 2021 | Period 11 | 1.276 | 2.376 | 4.276 | 0.776 |
| 2021 | Period 12 | 1.273 | 2.373 | 4.273 | 0.773 |
| 2021 | Period 13 | 1.271 | 2.371 | 4.271 | 0.771 |
| 2022 | Period 01 | 1.274 | 2.374 | 4.274 | 0.774 |
| 2022 | Period 02 | 1.271 | 2.371 | 4.271 | 0.771 |
| 2022 | Period 03 | 1.267 | 2.367 | 4.267 | 0.767 |
| 2022 | Period 04 | 1.264 | 2.364 | 4.264 | 0.764 |
| 2022 | Period 05 | 1.261 | 2.361 | 4.261 | 0.761 |
| 2022 | Period 06 | 1.258 | 2.358 | 4.258 | 0.758 |
| 2022 | Period 07 | 1.255 | 2.355 | 4.255 | 0.755 |
| 2022 | Period 08 | 1.623 | 2.723 | 4.623 | 1.123 |
| 2022 | Period 09 | 1.805 | 2.905 | 4.805 | 1.305 |
| 2022 | Period 10 | 1.923 | 3.023 | 4.923 | 1.423 |
| 2022 | Period 11 | 1.243 | 2.343 | 4.243 | 0.743 |
| 2022 | Period 12 | 1.239 | 2.339 | 4.239 | 0.739 |
| 2022 | Period 13 | 1.236 | 2.336 | 4.236 | 0.736 |
| 2023 | Period 01 | 1.239 | 2.339 | 4.239 | 0.739 |
| 2023 | Period 02 | 1.236 | 2.336 | 4.236 | 0.736 |
| 2023 | Period 03 | 1.232 | 2.332 | 4.232 | 0.732 |
| 2023 | Period 04 | 1.229 | 2.329 | 4.229 | 0.729 |
| 2023 | Period 05 | 1.226 | 2.326 | 4.226 | 0.726 |
| 2023 | Period 06 | 1.223 | 2.323 | 4.223 | 0.723 |
| 2023 | Period 07 | 1.220 | 2.320 | 4.220 | 0.720 |
| 2023 | Period 08 | 1.560 | 2.660 | 4.560 | 1.060 |
| 2023 | Period 09 | 1.728 | 2.828 | 4.728 | 1.228 |
| 2023 | Period 10 | 1.837 | 2.937 | 4.837 | 1.337 |
| 2023 | Period 11 | 1.207 | 2.307 | 4.207 | 0.707 |
| 2023 | Period 12 | 1.204 | 2.304 | 4.204 | 0.704 |
| 2023 | Period 13 | 1.201 | 2.301 | 4.201 | 0.701 |
| 2024 | Period 01 | 1.202 | 2.302 | 4.202 | 0.702 |
| 2024 | Period 02 | 1.198 | 2.298 | 4.198 | 0.698 |
| 2024 | Period 03 | 1.195 | 2.295 | 4.195 | 0.695 |
| 2024 | Period 04 | 1.191 | 2.291 | 4.191 | 0.691 |
| 2024 | Period 05 | 1.187 | 2.287 | 4.187 | 0.687 |
| 2024 | Period 06 | 1.184 | 2.284 | 4.184 | 0.684 |
| 2024 | Period 07 | 1.180 | 2.280 | 4.180 | 0.680 |
| 2024 | Period 08 | 1.496 | 2.596 | 4.496 | 0.996 |
| 2024 | Period 09 | 1.650 | 2.750 | 4.650 | 1.150 |
| 2024 | Period 10 | 1.751 | 2.851 | 4.751 | 1.251 |
| 2024 | Period 11 | 1.165 | 2.265 | 4.165 | 0.665 |
| 2024 | Period 12 | 1.162 | 2.262 | 4.162 | 0.662 |
| 2024 | Period 13 | 1.158 | 2.258 | 4.158 | 0.658 |
| 2025 | Period 01 | 1.158 | 1.958 | 3.158 | 0.658 |
| 2025 | Period 02 | 1.150 | 1.950 | 3.150 | 0.650 |
| 2025 | Period 03 | 1.141 | 1.941 | 3.141 | 0.641 |
| 2025 | Period 04 | 1.133 | 1.933 | 3.133 | 0.633 |
| 2025 | Period 05 | 1.125 | 1.925 | 3.125 | 0.625 |
| 2025 | Period 06 | 1.116 | 1.916 | 3.116 | 0.616 |
| 2025 | Period 07 | 1.108 | 1.908 | 3.108 | 0.608 |
| 2025 | Period 08 | 1.386 | 2.186 | 3.386 | 0.886 |
| 2025 | Period 09 | 1.518 | 2.318 | 3.518 | 1.018 |
| 2025 | Period 10 | 1.601 | 2.401 | 3.601 | 1.101 |
| 2025 | Period 11 | 1.074 | 1.874 | 3.074 | 0.574 |
| 2025 | Period 12 | 1.066 | 1.866 | 3.066 | 0.566 |
| 2025 | Period 13 | 1.058 | 1.858 | 3.058 | 0.558 |
| 2026 | Period 01 | 1.052 | 1.752 | 3.052 | 0.552 |
| 2026 | Period 02 | 1.046 | 1.746 | 3.046 | 0.546 |
| 2026 | Period 03 | 1.041 | 1.741 | 3.041 | 0.541 |
| 2026 | Period 04 | 1.036 | 1.736 | 3.036 | 0.536 |
| 2026 | Period 05 | 1.031 | 1.731 | 3.031 | 0.531 |
| 2026 | Period 06 | 1.025 | 1.725 | 3.025 | 0.525 |
| 2026 | Period 07 | 1.020 | 1.720 | 3.020 | 0.520 |
| 2026 | Period 08 | 1.271 | 1.971 | 3.271 | 0.771 |
| 2026 | Period 09 | 1.392 | 2.092 | 3.392 | 0.892 |
| 2026 | Period 10 | 1.469 | 2.169 | 3.469 | 0.969 |

|      |           |       |       |       |       |
|------|-----------|-------|-------|-------|-------|
| 2026 | Period 11 | 0.999 | 1.699 | 2.999 | 0.499 |
| 2026 | Period 12 | 0.994 | 1.694 | 2.994 | 0.494 |
| 2026 | Period 13 | 0.988 | 1.688 | 2.988 | 0.488 |
| 2027 | Period 01 | 0.986 | 1.586 | 2.986 | 0.486 |
| 2027 | Period 02 | 0.982 | 1.582 | 2.982 | 0.482 |
| 2027 | Period 03 | 0.978 | 1.578 | 2.978 | 0.478 |
| 2027 | Period 04 | 0.974 | 1.574 | 2.974 | 0.474 |
| 2027 | Period 05 | 0.970 | 1.570 | 2.970 | 0.470 |
| 2027 | Period 06 | 0.965 | 1.565 | 2.965 | 0.465 |
| 2027 | Period 07 | 0.961 | 1.561 | 2.961 | 0.461 |
| 2027 | Period 08 | 1.190 | 1.790 | 3.190 | 0.690 |
| 2027 | Period 09 | 1.300 | 1.900 | 3.300 | 0.800 |
| 2027 | Period 10 | 1.371 | 1.971 | 3.371 | 0.871 |
| 2027 | Period 11 | 0.944 | 1.544 | 2.944 | 0.444 |
| 2027 | Period 12 | 0.940 | 1.540 | 2.940 | 0.440 |
| 2027 | Period 13 | 0.936 | 1.536 | 2.936 | 0.436 |
| 2028 | Period 01 | 0.934 | 1.434 | 2.934 | 0.434 |
| 2028 | Period 02 | 0.930 | 1.430 | 2.930 | 0.430 |
| 2028 | Period 03 | 0.927 | 1.427 | 2.927 | 0.427 |
| 2028 | Period 04 | 0.924 | 1.424 | 2.924 | 0.424 |
| 2028 | Period 05 | 0.921 | 1.421 | 2.921 | 0.421 |
| 2028 | Period 06 | 0.918 | 1.418 | 2.918 | 0.418 |
| 2028 | Period 07 | 0.915 | 1.415 | 2.915 | 0.415 |
| 2028 | Period 08 | 1.126 | 1.626 | 3.126 | 0.626 |
| 2028 | Period 09 | 1.228 | 1.728 | 3.228 | 0.728 |
| 2028 | Period 10 | 1.295 | 1.795 | 3.295 | 0.795 |
| 2028 | Period 11 | 0.902 | 1.402 | 2.902 | 0.402 |
| 2028 | Period 12 | 0.899 | 1.399 | 2.899 | 0.399 |
| 2028 | Period 13 | 0.896 | 1.396 | 2.896 | 0.396 |
| 2029 | Period 01 | 0.895 | 1.395 | 2.895 | 0.395 |
| 2029 | Period 02 | 0.894 | 1.394 | 2.894 | 0.394 |
| 2029 | Period 03 | 0.892 | 1.392 | 2.892 | 0.392 |
| 2029 | Period 04 | 0.891 | 1.391 | 2.891 | 0.391 |
| 2029 | Period 05 | 0.889 | 1.389 | 2.889 | 0.389 |
| 2029 | Period 06 | 0.887 | 1.387 | 2.887 | 0.387 |
| 2029 | Period 07 | 0.886 | 1.386 | 2.886 | 0.386 |
| 2029 | Period 08 | 1.084 | 1.584 | 3.084 | 0.584 |
| 2029 | Period 09 | 1.182 | 1.682 | 3.182 | 0.682 |
| 2029 | Period 10 | 1.246 | 1.746 | 3.246 | 0.746 |
| 2029 | Period 11 | 0.879 | 1.379 | 2.879 | 0.379 |
| 2029 | Period 12 | 0.878 | 1.378 | 2.878 | 0.378 |
| 2029 | Period 13 | 0.876 | 1.376 | 2.876 | 0.376 |
| 2030 | Period 01 | 0.877 | 1.377 | 2.877 | 0.377 |
| 2030 | Period 02 | 0.876 | 1.376 | 2.876 | 0.376 |
| 2030 | Period 03 | 0.874 | 1.374 | 2.874 | 0.374 |
| 2030 | Period 04 | 0.873 | 1.373 | 2.873 | 0.373 |
| 2030 | Period 05 | 0.872 | 1.372 | 2.872 | 0.372 |
| 2030 | Period 06 | 0.871 | 1.371 | 2.871 | 0.371 |
| 2030 | Period 07 | 0.870 | 1.370 | 2.870 | 0.370 |
| 2030 | Period 08 | 1.059 | 1.559 | 3.059 | 0.559 |
| 2030 | Period 09 | 1.153 | 1.653 | 3.153 | 0.653 |
| 2030 | Period 10 | 1.215 | 1.715 | 3.215 | 0.715 |
| 2030 | Period 11 | 0.866 | 1.366 | 2.866 | 0.366 |
| 2030 | Period 12 | 0.865 | 1.365 | 2.865 | 0.365 |
| 2030 | Period 13 | 0.864 | 1.364 | 2.864 | 0.364 |
| 2031 | Period 01 | 0.865 | 1.365 | 2.865 | 0.365 |
| 2031 | Period 02 | 0.864 | 1.364 | 2.864 | 0.364 |
| 2031 | Period 03 | 0.864 | 1.364 | 2.864 | 0.364 |
| 2031 | Period 04 | 0.863 | 1.363 | 2.863 | 0.363 |
| 2031 | Period 05 | 0.862 | 1.362 | 2.862 | 0.362 |
| 2031 | Period 06 | 0.862 | 1.362 | 2.862 | 0.362 |
| 2031 | Period 07 | 0.861 | 1.361 | 2.861 | 0.361 |
| 2031 | Period 08 | 1.043 | 1.543 | 3.043 | 0.543 |
| 2031 | Period 09 | 1.134 | 1.634 | 3.134 | 0.634 |
| 2031 | Period 10 | 1.194 | 1.694 | 3.194 | 0.694 |
| 2031 | Period 11 | 0.859 | 1.359 | 2.859 | 0.359 |
| 2031 | Period 12 | 0.859 | 1.359 | 2.859 | 0.359 |
| 2031 | Period 13 | 0.858 | 1.358 | 2.858 | 0.358 |
| 2032 | Period 01 | 0.860 | 1.360 | 2.860 | 0.360 |
| 2032 | Period 02 | 0.859 | 1.359 | 2.859 | 0.359 |
| 2032 | Period 03 | 0.858 | 1.358 | 2.858 | 0.358 |

|      |           |       |       |       |       |
|------|-----------|-------|-------|-------|-------|
| 2032 | Period 04 | 0.858 | 1.358 | 2.858 | 0.358 |
| 2032 | Period 05 | 0.857 | 1.357 | 2.857 | 0.357 |
| 2032 | Period 06 | 0.857 | 1.357 | 2.857 | 0.357 |
| 2032 | Period 07 | 0.856 | 1.356 | 2.856 | 0.356 |
| 2032 | Period 08 | 1.031 | 1.531 | 3.031 | 0.531 |
| 2032 | Period 09 | 1.118 | 1.618 | 3.118 | 0.618 |
| 2032 | Period 10 | 1.176 | 1.676 | 3.176 | 0.676 |
| 2032 | Period 11 | 0.854 | 1.354 | 2.854 | 0.354 |
| 2032 | Period 12 | 0.854 | 1.354 | 2.854 | 0.354 |
| 2032 | Period 13 | 0.853 | 1.353 | 2.853 | 0.353 |
| 2033 | Period 01 | 0.854 | 1.354 | 2.854 | 0.354 |
| 2033 | Period 02 | 0.853 | 1.353 | 2.853 | 0.353 |
| 2033 | Period 03 | 0.852 | 1.352 | 2.852 | 0.352 |
| 2033 | Period 04 | 0.852 | 1.352 | 2.852 | 0.352 |
| 2033 | Period 05 | 0.851 | 1.351 | 2.851 | 0.351 |
| 2033 | Period 06 | 0.851 | 1.351 | 2.851 | 0.351 |
| 2033 | Period 07 | 0.850 | 1.350 | 2.850 | 0.350 |
| 2033 | Period 08 | 1.021 | 1.521 | 3.021 | 0.521 |
| 2033 | Period 09 | 1.106 | 1.606 | 3.106 | 0.606 |
| 2033 | Period 10 | 1.163 | 1.663 | 3.163 | 0.663 |
| 2033 | Period 11 | 0.848 | 1.348 | 2.848 | 0.348 |
| 2033 | Period 12 | 0.848 | 1.348 | 2.848 | 0.348 |
| 2033 | Period 13 | 0.847 | 1.347 | 2.847 | 0.347 |
| 2034 | Period 01 | 0.847 | 1.347 | 2.847 | 0.347 |
| 2034 | Period 02 | 0.847 | 1.347 | 2.847 | 0.347 |
| 2034 | Period 03 | 0.846 | 1.346 | 2.846 | 0.346 |
| 2034 | Period 04 | 0.846 | 1.346 | 2.846 | 0.346 |
| 2034 | Period 05 | 0.845 | 1.345 | 2.845 | 0.345 |
| 2034 | Period 06 | 0.845 | 1.345 | 2.845 | 0.345 |
| 2034 | Period 07 | 0.844 | 1.344 | 2.844 | 0.344 |
| 2034 | Period 08 | 1.011 | 1.511 | 3.011 | 0.511 |
| 2034 | Period 09 | 1.094 | 1.594 | 3.094 | 0.594 |
| 2034 | Period 10 | 1.149 | 1.649 | 3.149 | 0.649 |
| 2034 | Period 11 | 0.842 | 1.342 | 2.842 | 0.342 |
| 2034 | Period 12 | 0.842 | 1.342 | 2.842 | 0.342 |
| 2034 | Period 13 | 0.841 | 1.341 | 2.841 | 0.341 |
| 2035 | Period 01 | 0.841 | 1.341 | 2.841 | 0.341 |
| 2035 | Period 02 | 0.841 | 1.341 | 2.841 | 0.341 |
| 2035 | Period 03 | 0.840 | 1.340 | 2.840 | 0.340 |
| 2035 | Period 04 | 0.840 | 1.340 | 2.840 | 0.340 |
| 2035 | Period 05 | 0.839 | 1.339 | 2.839 | 0.339 |
| 2035 | Period 06 | 0.839 | 1.339 | 2.839 | 0.339 |
| 2035 | Period 07 | 0.838 | 1.338 | 2.838 | 0.338 |
| 2035 | Period 08 | 1.001 | 1.501 | 3.001 | 0.501 |
| 2035 | Period 09 | 1.082 | 1.582 | 3.082 | 0.582 |
| 2035 | Period 10 | 1.136 | 1.636 | 3.136 | 0.636 |
| 2035 | Period 11 | 0.836 | 1.336 | 2.836 | 0.336 |
| 2035 | Period 12 | 0.836 | 1.336 | 2.836 | 0.336 |
| 2035 | Period 13 | 0.835 | 1.335 | 2.835 | 0.335 |
| 2036 | Period 01 | 0.835 | 1.335 | 2.835 | 0.335 |
| 2036 | Period 02 | 0.835 | 1.335 | 2.835 | 0.335 |
| 2036 | Period 03 | 0.835 | 1.335 | 2.835 | 0.335 |
| 2036 | Period 04 | 0.835 | 1.335 | 2.835 | 0.335 |
| 2036 | Period 05 | 0.835 | 1.335 | 2.835 | 0.335 |
| 2036 | Period 06 | 0.835 | 1.335 | 2.835 | 0.335 |
| 2036 | Period 07 | 0.835 | 1.335 | 2.835 | 0.335 |

**Part 2 To Appendix 2**

**Passenger Time Lost Delay Performance Bonus Payment Table**

| Year  |           | ODP Year               | WCB        | CVL        |
|---|-----------|------------------------|------------|------------|
| From  | To        |                        |            |            |
| 14-Oct-18                                   | 31-Mar-19 | Year 1                 | [REDACTED] | [REDACTED] |
| 01-Apr-19                                   | 31-Mar-20 | Year 2                 | [REDACTED] | [REDACTED] |
| 01-Apr-20                                   | 31-Mar-21 | Year 3                 | [REDACTED] | [REDACTED] |
| 01-Apr-21                                   | 31-Mar-22 | Year 4                 | [REDACTED] | [REDACTED] |
| 01-Apr-22                                   | 31-Mar-23 | Year 5                 | [REDACTED] | [REDACTED] |
| 01-Apr-23                                   | 31-Mar-24 | Year 6                 | [REDACTED] | [REDACTED] |
| 01-Apr-24                                   | 31-Mar-25 | Year 7                 | [REDACTED] | [REDACTED] |
| 01-Apr-25                                   | 31-Mar-26 | Year 8                 | [REDACTED] | [REDACTED] |
| 01-Apr-26                                   | 31-Mar-27 | Year 9                 | [REDACTED] | [REDACTED] |
| 01-Apr-27                                   | 31-Mar-28 | Year 10                | [REDACTED] | [REDACTED] |
| 01-Apr-28                                   | 31-Mar-29 | Year 11                | [REDACTED] | [REDACTED] |
| 01-Apr-29                                   | 31-Mar-30 | Year 12                | [REDACTED] | [REDACTED] |
| 01-Apr-30                                   | 31-Mar-31 | Year 13                | [REDACTED] | [REDACTED] |
| 01-Apr-31                                   | 31-Mar-32 | Year 14                | [REDACTED] | [REDACTED] |
| 01-Apr-32                                   | 31-Mar-33 | Year 15                | [REDACTED] | [REDACTED] |
| 01-Apr-33                                   | 15-Oct-33 | Year 16<br>(core)      | [REDACTED] | [REDACTED] |
| <b>Up to 26 Reporting Periods Extension</b> |           |                        |            |            |
| 16-Oct-33                                   | 31-Mar-34 | Year 16<br>(extension) | [REDACTED] | [REDACTED] |
| 01-Apr-34                                   | 31-Mar-35 | Year 17<br>(extension) | [REDACTED] | [REDACTED] |
| 01-Apr-35                                   | 13-Oct-35 | Year 18<br>(extension) | [REDACTED] | [REDACTED] |

**Part 3 To Appendix 2**

**Passenger Time Lost Delay Performance Deduction Payment Table**

| Year  |           | ODP Year               | WCB        | CVL        |
|---|-----------|------------------------|------------|------------|
| From  | To        |                        |            |            |
| 14-Oct-18                                   | 31-Mar-19 | Year 1                 | [REDACTED] | [REDACTED] |
| 01-Apr-19                                   | 31-Mar-20 | Year 2                 | [REDACTED] | [REDACTED] |
| 01-Apr-20                                   | 31-Mar-21 | Year 3                 | [REDACTED] | [REDACTED] |
| 01-Apr-21                                   | 31-Mar-22 | Year 4                 | [REDACTED] | [REDACTED] |
| 01-Apr-22                                   | 31-Mar-23 | Year 5                 | [REDACTED] | [REDACTED] |
| 01-Apr-23                                   | 31-Mar-24 | Year 6                 | [REDACTED] | [REDACTED] |
| 01-Apr-24                                   | 31-Mar-25 | Year 7                 | [REDACTED] | [REDACTED] |
| 01-Apr-25                                   | 31-Mar-26 | Year 8                 | [REDACTED] | [REDACTED] |
| 01-Apr-26                                   | 31-Mar-27 | Year 9                 | [REDACTED] | [REDACTED] |
| 01-Apr-27                                   | 31-Mar-28 | Year 10                | [REDACTED] | [REDACTED] |
| 01-Apr-28                                   | 31-Mar-29 | Year 11                | [REDACTED] | [REDACTED] |
| 01-Apr-29                                   | 31-Mar-30 | Year 12                | [REDACTED] | [REDACTED] |
| 01-Apr-30                                   | 31-Mar-31 | Year 13                | [REDACTED] | [REDACTED] |
| 01-Apr-31                                   | 31-Mar-32 | Year 14                | [REDACTED] | [REDACTED] |
| 01-Apr-32                                   | 31-Mar-33 | Year 15                | [REDACTED] | [REDACTED] |
| 01-Apr-33                                   | 15-Oct-33 | Year 16<br>(core)      | [REDACTED] | [REDACTED] |
| <b>Up to 26 Reporting Periods Extension</b> |           |                        |            |            |
| 16-Oct-33                                   | 31-Mar-34 | Year 16<br>(extension) | [REDACTED] | [REDACTED] |
| 01-Apr-34                                   | 31-Mar-35 | Year 17<br>(extension) | [REDACTED] | [REDACTED] |
| 01-Apr-35                                   | 13-Oct-35 | Year 18<br>(extension) | [REDACTED] | [REDACTED] |

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**Appendix 3 to Schedule 7.1**

Code of Practice for Cancellations and Missed Station Stops

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**Schedule 7.2 – National Rail Passenger Surveys, Customer Report and CCI Scheme**

|              |   |
|--------------|---|
| Paragraph 2  | National Rail Passenger Surveys                     |
| Paragraph 5  | Customer Satisfaction Surveys                       |
| Paragraph 8  | Mystery Shopper Surveys                             |
| Paragraph 15 | Consultations                                       |
| Paragraph 16 | Customer, Staff and Stakeholder Engagement Strategy |
| Paragraph 17 | Customer Report                                     |
| Paragraph 18 | Customer and Communities Investment (CCI) Scheme    |



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## 1 DEFINITIONS

1.1 For the purposes of this Schedule 7.2 only, the following words and expressions shall have the following meanings:

|                              |   |
|------------------------------|---|
| <b>“Alternative NRPS”</b>    | has the meaning given to it in paragraph 2.6 of this Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCI Scheme);                                    |
| <b>“Benchmark”</b>           | means any of the NRPS Benchmark, CSS Benchmark or MSS Benchmark (as the context may require);   |
| <b>“CSS Benchmark Table”</b> | means each of tables in the form set out Appendix 2 to this Schedule 7.2 to be populated by the ODP in accordance with paragraph 6.1 of this Schedule 7.2;              |
| <b>“CSS Benchmark”</b>       | means, in respect of a relevant ODP Year, the benchmark for each CSS Measure and for each CSS Service Group as set out in the CSS Benchmark Table;                      |
| <b>“CSS Measure”</b>         | means each of the factors to be developed by the ODP and approved by the Authority as part of the Authority’s approval of the Customer Satisfaction Survey Methodology; |
| <b>“CSS Service Group”</b>   | means each of the service groups set out in the Customer Satisfaction Survey Methodology;   |
| <b>“MSS Benchmark Table”</b> | means each of tables in the form set out in Appendix 3 to this Schedule 7.2 to be populated by the ODP in accordance with paragraph 9.1 of this Schedule 7.2;           |
| <b>“MSS Benchmark”</b>       | means, in respect of a relevant ODP Year, the benchmark for each MSS Measure and for each MSS Service Group as set out in the MSS Benchmark Table;                      |
| <b>“MSS Measure”</b>         | means each of the factors to be developed by the ODP and approved by the Authority as part of the   |

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|                               |   |
|-------------------------------|---|
|                               | Authority's approval of the Mystery Shopper Survey Methodology;   |
| <b>"MSS Service Group"</b>    | means each of the service groups set out in the Mystery Shopper Survey Methodology;   |
| <b>"NRPS Benchmark Table"</b> | means each of tables 1, 2, 3, 4, 5 and 6 in Appendix 1 to this Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCI Scheme);  |
| <b>"NRPS Benchmark"</b>       | means, in respect of a relevant ODP Year, the benchmark for each NRPS Measure and for each NRPS Service Group as set out in the NRPS Benchmark Table;   |
| <b>"NRPS Measure"</b>         | means each of the factors more particularly described in the Passenger Survey Methodology and grouped as "Stations (S)", "Trains (T)", "Customer Service (C)" and "Dealing With Delays (D)" as categorised in Appendix 4 to this Schedule 7.2;  |
| <b>"NRPS Service Group"</b>   | means each of the service groups set out in the Passenger Survey Methodology and more particularly described as: <ul style="list-style-type: none"> <li>(a) "CVL" including the Cardiff and Valleys' NRPS service group; and</li> <li>(b) "WCB" including the 'South Wales and Borders/West Wales', 'North Wales and Borders', 'Mid Wales and Borders' and 'Interurban' NRPS service groups.</li> </ul> |
| <b>"Required Improvement"</b> | means an improvement in the level of customer satisfaction for the relevant NRPS Measure, CSS Measure or MSS Measure as measured by a National Rail Passenger Survey, Customer Satisfaction Survey or Mystery Shopper Survey (as the case may be) so that such level is equal to or higher than the related NRPS Benchmark,   |

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CSS Benchmark or MSS Benchmark (as the case may be); and

**“Survey Performance Plan”** has the meaning given to it in paragraph 11 of this Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCI Scheme) and shall be deemed to be a Remedial Plan for the purpose of Schedule 10.1.

## **2 CONDUCT OF NATIONAL RAIL PASSENGER SURVEYS**

2.1 The ODP agrees with the Authority that:

- (a) the Passengers' Council may measure the level of passenger satisfaction with the ODP Services through National Rail Passenger Surveys;
- (b) the Passengers' Council shall determine how, when (normally twice per annum) and where National Rail Passenger Surveys are to be carried out;
- (c) the ODP shall grant access on trains or at stations to the Passengers' Council (or its representatives and agents) to carry out National Rail Passenger Surveys;
- (d) the ODP shall co-operate with the Passengers' Council (in such manner as the Passengers' Council may reasonably request or as the Authority may reasonably direct) in order to enable the Passengers' Council to carry out National Rail Passenger Surveys; and
- (e) the Passengers' Council and/or the Authority may, from time to time, publish the results of each National Rail Passenger Survey.

2.2 The Authority shall use reasonable endeavours to procure that:

- (a) the findings of any National Rail Passenger Survey are made available by the Passengers' Council to the ODP within a reasonable period of time after the completion of each such survey and shall use all reasonable endeavours to procure that those findings are made available in a timely manner to enable the ODP to comply with its obligations under paragraph 2.3; and
- (b) if any such survey includes a comparison between its findings and the findings of any equivalent earlier survey, such comparison forms a reasonable basis for monitoring the trends of passenger satisfaction over time.

2.3 The ODP shall, as soon as reasonably practicable after such information is made available to the ODP in accordance with paragraph 2.2, publicise its performance against

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the NRPS Benchmarks by including such information in its Customer Report and displaying such information at all of the Stations and on its website.

2.4 It is agreed by the ODP that, subject to paragraph 2.5, the methodology adopted by the Passengers' Council in conducting any such National Rail Passenger Survey shall be as described in the latest Passenger Survey Methodology as at the date of this Agreement (the "**Passenger Survey Methodology**");

2.5 If:

- (a) at any time during the Rail Services Term the methodology adopted in conducting any National Rail Passenger Survey is, in the reasonable opinion of the Authority, materially inconsistent with the Passenger Survey Methodology; and
- (b) the Authority reasonably determines that in consequence a revision to the NRPS Benchmark is required in order to hold constant the risk of the ODP failing to satisfy the NRPS Benchmark,

then the Authority shall make such revisions to such NRPS Benchmarks as it reasonably considers appropriate to hold constant such risk.

2.6 If the Passengers' Council ceases to undertake National Rail Passenger Surveys then the relevant National Rail Passenger Survey for the purposes of this Schedule 7.2 shall be such other passenger survey as the Authority may, after consultation with the ODP, reasonably determine to be appropriate in the circumstances (the "**Alternative NRPS**"). The provisions of this Schedule 7.2 shall apply in respect of any Alternative NRPS and for these purposes Passengers' Council shall be replaced with such other entity that is responsible for conducting such Alternative NRPS.

### **3 NRPS BENCHMARKS**

3.1 It is agreed by the Authority and the ODP that, subject to paragraph 2.6, the results of the National Rail Passenger Survey(s) published by the Passengers' Council in any ODP Year should be used to determine the ODP's performance against the NRPS Benchmarks for that ODP Year.

### **4 PERFORMANCE REVIEW OF NRPS**

4.1 For each ODP Year the Authority shall determine the ODP's performance against each NRPS Benchmark by comparing:

- (a) if only one (1) National Rail Passenger Survey has been published by Passengers' Council in that ODP Year, the results of such National Rail Passenger Survey against the NRPS Benchmarks applicable in respect of that ODP Year; or

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(b) if more than one (1) National Rail Passenger Survey has been published by Passengers' Council in that ODP Year, the average of the results of all of the National Rail Passenger Surveys published by the Passengers' Council in that ODP Year against the NRPS Benchmarks applicable in respect of that ODP Year.

4.2 For the purposes of undertaking the comparison pursuant to paragraph 4.1, the results referred to in paragraph 4.1(a) or paragraph 4.1(b) (as the case may be) shall be rounded up to one (1) decimal place with the midpoint (that is, 4.45) rounded upwards (that is, 4.5).

4.3 If, following the Authority's determination pursuant to any of paragraphs 4.1(a) or 4.1(b) (as the case may be), the results show that the level of customer satisfaction in respect of any NRPS Measure is below the NRPS Benchmark for such measure then the ODP shall produce a Survey Performance Plan to secure the Required Improvement.

## **5 CONDUCT OF CUSTOMER SATISFACTION SURVEYS**

5.1 The ODP agrees with the Authority that:

(a) the ODP will measure the level of customer satisfaction with the ODP Services through Customer Satisfaction Surveys;

(b) it shall provide the Authority with the methodology to be adopted by the ODP in conducting any such Customer Satisfaction Survey within three (3) months of the date of this Agreement (the "**Customer Satisfaction Survey Methodology**") to be agreed with the Authority following the Process for Acceptance of Document Deliverables. Such methodology shall be based upon the principles as described in the document marked **CSSMP** (the "**Customer Satisfaction Survey Methodology Principles**");

(c) the ODP will publicise its performance against the CSS Benchmarks by including such information in its Customer Report and displaying such information at all of the Stations and on its website; and

(d) the Authority may, from time to time, publish the results of each Customer Satisfaction Survey.

## **6 CUSTOMER SATISFACTION SURVEY BENCHMARKS**

6.1 The ODP shall, within three (3) months of the date of this Agreement, provide to the Authority a populated CSS Benchmark Table, based upon its Customer Satisfaction Survey Methodology Principles.

6.2 It is agreed by the Authority and the ODP that, the results of the Customer Satisfaction Survey(s) shall be used to determine the ODP's performance against the CSS Benchmarks for that ODP Year.

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## **7 PERFORMANCE REVIEW OF CUSTOMER SATISFACTION SURVEYS**

- 7.1 The performance of the ODP against the CSS Benchmarks shall be measured against the average of the results of all of the Customer Satisfaction Surveys published by the ODP in that ODP Year.
- 7.2 The results referred to in paragraph 7.1 shall be rounded up to one (1) decimal place with the midpoint (that is, 4.45) rounded upwards (that is, 4.5).
- 7.3 If the results calculated pursuant to paragraph 7.1 show that the level of customer satisfaction in respect of any CSS Measure is below the CSS Benchmark for such measure then the ODP shall produce a Survey Performance Plan to secure the Required Improvement.

## **8 CONDUCT OF MYSTERY SHOPPER SURVEYS**

- 8.1 The ODP agrees with the Authority that:
- (a) the ODP will measure the level of customer satisfaction with the ODP Services through Mystery Shopper Surveys;
  - (b) it shall provide the Authority with the methodology to be adopted by the ODP in conducting any such Mystery Shopper Survey within three (3) months of the date of this Agreement (the “**Mystery Shopper Survey Methodology**”) to be agreed with the Authority following the Process for Acceptance of Document Deliverables. Such methodology shall be based upon the principles as described in the document marked **MSSMP** (the “**Mystery Shopper Survey Methodology Principles**”);
  - (c) the ODP will publicise its performance against the MSS Benchmarks by including such information in its Customer Report and displaying such information at all of the Stations and on its website; and
  - (d) the Authority may, from time to time, publish the results of each Mystery Shopper Survey.

## **9 MYSTERY SHOPPER SURVEY BENCHMARKS**

- 9.1 The ODP shall, within three (3) months of the date of this Agreement, provide to the Authority a populated MSS Benchmarks Table, based upon its Mystery Shopper Survey Methodology Principles.
- 9.2 It is agreed by the Authority and the ODP that, the results of the Mystery Shopper Survey(s) shall be used to determine the ODP's performance against the MSS Benchmarks for that ODP Year.

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## 10 PERFORMANCE REVIEW OF MYSTERY SHOPPER SURVEYS

- 10.1 The performance of the ODP against the MSS Benchmarks shall be measured against the average of the results of all of the Mystery Shopper Surveys published by the ODP in that ODP Year.
- 10.2 The results referred to in paragraph 10.1 shall be rounded up to one (1) decimal place with the midpoint (that is, 4.45) rounded upwards (that is, 4.5).
- 10.3 If the results calculated pursuant to paragraph 10.1 show that the level of customer satisfaction in respect of any MSS Measure is below the MSS Benchmark for such measure then the ODP shall produce a Survey Performance Plan to secure the Required Improvement.

## 11 REQUIRED IMPROVEMENT AND SURVEY PERFORMANCE PLANS

- 11.1 On each occasion that the ODP becomes obliged to secure a Required Improvement, the ODP shall produce a plan (a “**Survey Performance Plan**”) which is consistent with its obligations under paragraphs 4.3, 7.3 or 10.3 (as the case may be) and in compliance with the following provisions:
- (a) the ODP shall (i) produce; (ii) obtain the Authority's approval of; and (iii) commence the implementation of the Survey Performance Plan within three (3) months after the date on which the results of such National Rail Passenger Survey, Customer Satisfaction Survey or Mystery Shopper Survey (as the case may be) which triggered the requirement for the Required Improvement were published or otherwise made available to the ODP; and
- (b) the Survey Performance Plan will contain specific tangible action points and indicate in the case of each action point:
- (i) how that action will contribute to meeting the relevant Required Improvement;
  - (ii) where the action is to be implemented;
  - (iii) when the action is to be commenced and by when it is to be implemented provided always that where any action is expressed to be ongoing the plan shall include specific review dates; and
  - (iv) how performance of the action is to be measured.
- 11.2 The ODP shall, except to the extent otherwise agreed by the Authority in advance, implement each Survey Performance Plan referred to in paragraph 11.1 in accordance with its terms.

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11.3 It is acknowledged by the ODP that the approval or lack of approval by the Authority of each Survey Performance Plan as contemplated in paragraph 11.1 shall not relieve the ODP of its obligations under this Schedule 7.2 or any other provisions of the ODP Grant Agreement.

## **12 CONTINUOUS IMPROVEMENT OF BENCHMARKS**

Without prejudice to its other obligations under this Agreement, the ODP shall use all reasonable endeavours to improve the ODP's performance against each Benchmark on a continuous basis over the duration of the Rail Services Term.

## **13 REVISING BENCHMARKS**

13.1 If at any time the Authority reasonably considers that the Benchmarks are no longer appropriate or robust for the purposes of this Schedule 7.2 as a result of any changes in circumstances (which may include but shall not be limited to any change in the nature of the ODP Services or any change in the way that National Rail Passenger Survey, Customer Satisfaction Survey or Mystery Shopper Survey is to be carried out, or the need to correct estimates or assumptions made by the Authority in setting the initial Benchmarks which prove to be inaccurate) then the Authority may re-set the levels of the Benchmarks to such level as it reasonably considers appropriate in order to:-

- (a) give effect to this Schedule 7.2; and,
- (b) so far as it is possible to do so, replicate (in terms of the level of customer satisfaction required) the effect of any Benchmark as previously set for the purposes of this Schedule 7.2.

13.2 The exercise by the Authority of its powers under this paragraph 13 to re-set the levels of the Benchmarks shall be dealt with as a Change in accordance with Schedule 9 (Changes and Variations).

**14** Not used.

## **15 CONSULTATIONS**

The ODP shall undertake consultations from time to time as required with:

15.1 passengers, potential passengers, Stakeholders and other users of the rail network; and

15.2 persons who are protected by a Disabled People's Protection Policy; and

15.3 persons with other protected characteristics within the meaning of the EA,

for the purposes of the Customer, Staff and Stakeholder Engagement Strategy, the Customer Report and the CCI Scheme.



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## **16 CUSTOMER, STAFF AND STAKEHOLDER ENGAGEMENT STRATEGY**

- 16.1 The ODP shall provide its Customer, Staff and Stakeholder Engagement Strategy to the Authority for approval by no later than one (1) month prior to the Start Date. The ODP shall comply with such Customer, Staff and Stakeholder Engagement Strategy from the Start Date.
- 16.2 The ODP shall:
- (a) undertake and complete a review of the Customer, Staff and Stakeholder Engagement Strategy during each of the fourth (4<sup>th</sup>), seventh (7<sup>th</sup>) and twelfth (12<sup>th</sup>) ODP Years; and
  - (b) provide the Authority with any proposed revisions to the Customer, Staff and Stakeholder Engagement Strategy arising out of such review by no later than the end of each such ODP Year.
- 16.3 The aim of such review shall be to update the Customer, Staff and Stakeholder Engagement Strategy to reflect lessons learned in the period since the Start Date or the previous review of the Customer, Staff and Stakeholder Engagement Strategy (as applicable) and to ensure that the Customer, Staff and Stakeholder Engagement Strategy achieves effective passenger and staff engagement. Any revisions to the Customer, Staff and Stakeholder Engagement Strategy shall require the consent of the Authority (such consent not to be unreasonably withheld or delayed).

## **17 CUSTOMER REPORT**

- 17.1 The ODP shall, in accordance with the requirements of paragraph 17.2 and paragraph 17.3 below, publish a Customer Report in such readily accessible formats as the Authority may reasonably require (including in booklet or other similar hard copy formats, in electronic formats (such as on the ODP's website, through social media channels and by email)), in each case in accordance with the Customer, Staff and Stakeholder Engagement Strategy and the provisions of paragraph 8 (Publication of Performance Data) and paragraph 9 (Publication of Complaints and Faults Handling Data) of Schedule 1.4 (Passenger Facing Obligations).
- 17.2 The ODP shall publish a Customer Report as follows:
- (a) in respect of the first (1<sup>st</sup>) ODP Year:
    - (i) where such ODP Year is less than seven (7) Reporting Periods, the ODP shall only be required to publish a Customer Report for that ODP Year by no later than the Start Date; or
    - (ii) where such ODP Year is less than thirteen (13) Reporting Periods but equal to or more than seven (7) Reporting Periods, the ODP shall be

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required to publish two (2) Customer Reports in that ODP Year, the first Customer Report to be published by no later than the Start Date and the second Customer Report to be published before the end of that first ODP Year; and

- (b) in respect of each subsequent ODP Year, the ODP shall be required to publish a Customer Report at least twice in that ODP Year provided that where any such subsequent ODP Year is less than thirteen (13) Reporting Periods the ODP shall be required to publish a Customer Report only once in respect of that ODP Year.

17.3 Without prejudice to the obligations of the ODP as specified in each of paragraphs 19.1 and 19.3 of this Schedule 7.2, paragraphs 8.3 and 9 of Schedule 1.4 (Passenger Facing Obligations) and paragraph 16 of Schedule 11.2 (Management Information), the Authority and the ODP acknowledge and agree that in respect of each ODP Year to which the provisions of paragraph 17.2(b) apply, the first Customer Report to be published for that ODP Year shall be prepared in respect of the first six (6) Reporting Periods of that ODP Year and the second Customer Report to be published for that ODP Year shall be prepared in respect of the last seven (7) Reporting Periods of that ODP Year.

## **18 CUSTOMER AND COMMUNITIES INVESTMENT (CCI) SCHEME**

18.1 No later than three (3) months prior to the start of each CCI Period the ODP shall provide to the Authority details of those initiatives, works or proposals (each a “**CCI Scheme**”) which the ODP proposes to undertake in that CCI Period in order to resolve or mitigate issues raised with the ODP through the NRPS, CSS, MSS and consultations carried out pursuant to paragraph 15. The ODP shall use all reasonable endeavours to propose, in respect of each CCI Period, CCI Schemes with an aggregate projected CCI Scheme Shortfall of not less than the aggregate of the CCI Amount for each ODP Year in the relevant CCI Period.

18.2 In relation to each CCI Scheme proposed by the ODP pursuant to paragraph 18.1 the ODP shall provide:

- (a) details of the specific issues which that CCI Scheme is intended to resolve or mitigate (including how those issues have been identified) and how that CCI Scheme will resolve or mitigate those issues; and
- (b) fully worked up details of the CCI Scheme sufficient to enable the Authority to evaluate the same, including:
- (i) a timetable for the implementation of that CCI Scheme, setting out the proposed commencement and completion date of such CCI Scheme and any other key dates and milestones;

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- (ii) details of the projected CCI Scheme Cost; and
  - (iii) details of the projected CCI Scheme Revenue.
- 18.3 The ODP shall provide the Authority with such further information in relation to any CCI Scheme proposed by the ODP pursuant to paragraph 18.1 as the Authority may reasonably require.
- 18.4 A CCI Scheme proposed by the ODP pursuant to paragraph 18.1 shall not be an Approved CCI Scheme unless and until approved by the Authority pursuant to this paragraph 18.4. Without limitation, the Authority may withhold its approval to any proposed CCI Scheme which:
- (a) has not been identified and/or developed in accordance with the Customer, Staff and Stakeholder Engagement Strategy;
  - (b) is not designed to resolve or mitigate issues raised with the ODP through the consultations referred to in paragraph 15;
  - (c) has a completion date falling later than the end of the relevant CCI Period;
  - (d) is projected to generate a Commercial Return or in relation to which the Authority considers the CCI Scheme Costs (or any part of them) to be too high or disproportionate to the benefits accruing from the CCI Scheme;
  - (e) the ODP is otherwise funded to undertake; or
  - (f) in the opinion of the Authority, amounts to actions or steps which the ODP is otherwise obliged to take or which any competent train operator should be taking in relation to the operation of the ODP Services.
- 18.5 Approved CCI Schemes shall be deemed to be, and treated for the purposes of this Agreement as, Committed Obligations and the provisions of Part 2 of Schedule 6.2 (Committed Obligations) shall apply.
- 18.6 Paragraph 18.8 will apply if:
- (a) the aggregate projected CCI Scheme Shortfall in respect of all Approved CCI Schemes for any CCI Period is less than the aggregate of the CCI Amount for each ODP Year in that CCI Period; or
  - (b) subject to paragraph 18.7 in any CCI Period, in the Authority's reasonable opinion, the aggregate of the actual CCI Scheme Shortfall incurred by the ODP during that CCI Period upon Approved CCI Schemes is less than the aggregate of the CCI Amount for each ODP Year in that CCI Period,

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in each case the underspend against the aggregate CCI Amount being the “**CCI Scheme Underspend**”.

18.7 If:

- (a) the amount of the CCI Scheme Costs actually incurred by the ODP in relation to any Approved CCI Scheme exceeds the projected CCI Scheme Costs notified to the Authority pursuant to paragraph 18.2 for such Approved CCI Scheme, then the amount of the excess shall not amount to CCI Scheme Cost; or
- (b) in the Authority's reasonable opinion, the amount of the CCI Scheme Revenue actually earned by the ODP in relation to any Approved CCI Scheme is less than the projected CCI Scheme Revenue notified to the Secretary of State pursuant to paragraph 18.2 for such Approved CCI Scheme then, for the purposes of paragraph 18.6(b) the actual CCI Scheme Revenue shall be deemed to be the projected CCI Scheme Revenue.

18.8 Where this paragraph 18.8 applies the Authority may require:

- (a) all or part of the CCI Scheme Underspend to be added to the CCI Amount for the first ODP Year in the subsequent CCI Period;
- (b) the ODP to propose further CCI Schemes using all or part of the CCI Scheme Underspend by such new deadline as the Authority may specify;
- (c) the ODP to spend all or part of the CCI Scheme Underspend in such manner as the Authority may direct; and/or
- (d) the ODP to pay all or part of the CCI Scheme Underspend to the Authority,

provided that paragraph 18.8(d) shall automatically apply in respect of the last CCI Period unless the Authority specifies otherwise.

18.9 Any Rail Services Asset arising as a result of an Approved CCI Scheme shall be designated as a Primary Rail Services Asset and shall not be de-designated as such. Any such Primary Rail Services Asset which falls to be valued in accordance with the Supplemental Agreement shall be valued at nil.

## **19 CUSTOMER SERVICE AND SATISFACTION DATA**

19.1 As part of each Customer Report to be provided by the ODP pursuant to paragraph 17.1 of this Schedule 7.2, the ODP shall publish (in such format as the Authority may reasonably require) details of the ODP's:

- 
- (a) level of adherence to scheduled ticket office opening hours at Stations (so that the Customer Report shows, as a percentage, the proportion of scheduled ticket office opening hours not delivered aggregated across all ticket offices at all Stations); and
  - (b) performance by reference to such benchmarks as may be agreed between the ODP and the ORR as part of the ODP's Disabled People's Protection Policy in respect of the Passenger Assistance service operated by the ODP,

in each case in relation to the Reporting Periods that have elapsed since the last Reporting Period reported on in the previous Customer Report or, in the case of the first Customer Report, since the Start Date, along with (from the third (3<sup>rd</sup>) Customer Report onwards) a comparison with the relevant statistics or results (as applicable) provided for the same Reporting Periods in the previous ODP Year.

19.2 The ODP shall publish on its website (in such format as the Authority may reasonably require):

- (a) within twenty (20) Weekdays of the publication of each National Rail Passenger Survey carried out by the Passengers' Council during the Rail Services Term, details of the scores achieved by the ODP in such National Rail Passenger Survey, including the scores achieved in respect of passengers' 'overall satisfaction';
- (b) within twenty (20) Weekdays of the publication of the last National Rail Passenger Survey to be carried out by the Passengers' Council during any ODP Year, details of the scores achieved by the ODP in respect of each NRPS Benchmark, as calculated in accordance with paragraph 4 of this Schedule 7.2;
- (c) within twenty (20) Weekdays of the publication of the last Customer Satisfaction Survey to be carried out during any ODP Year, details of the scores achieved by the ODP in respect of each CSS Benchmark, as calculated in accordance with paragraph 7 of this Schedule 7.2; and
- (d) within twenty (20) Weekdays of the publication of the last Mystery Shopper Survey to be carried out during any ODP Year, details of the scores achieved by the ODP in respect of each MSS Benchmark, as calculated in accordance with paragraph 10 of this Schedule 7.2.

19.3 The ODP shall ensure that the scores achieved in relation to the Benchmarks published by it pursuant to paragraph 19.2, are also recorded in the subsequent Customer Report which relates to the Reporting Periods during which the applicable Benchmarks were achieved, along with:

- (a) from the third (3<sup>rd</sup>) Customer Report onwards, a comparison with the scores that were achieved against the Benchmarks for the same Reporting Periods in the previous ODP

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Year, accompanied by a supporting narrative describing the outcomes and implications of the results of such comparison exercise;

- (b) details of any remedial work either:
    - (i) planned by the ODP to occur in the period in relation to which the next Customer Report will report to improve the ODP's performance in relation to achieving and exceeding the Benchmarks; or
    - (ii) undertaken by the ODP during the Reporting Periods that have elapsed since the last Reporting Period reported on in the previous Customer Report or, in the case of the first (1<sup>st</sup>) Customer Report, since the Start Date, for the purposes of improving the ODP's performance in relation to achieving and exceeding the Benchmarks; and
  - (c) details of any other initiatives planned to be implemented by the ODP to improve passenger experience, including information relating to the review and revision of the Customer, Staff and Stakeholder Engagement Strategy in accordance with paragraph 16.
- 19.4 The ODP shall ensure that a summary of the then current Customer Report is made available at all staffed Stations (in such format as the Authority may reasonably require) and that such summary includes instructions to enable passengers to locate and obtain a full copy of the applicable Customer Report.

**Appendix 1 to Schedule 7.2 - NRPS Benchmark Tables**

| <b>Table 1 NRPS SERVICE GROUP – CVL</b>     |           |                     |                        |                       |                                  |
|---|-----------|---------------------|------------------------|-----------------------|----------------------------------|
| <b>Year</b>                                 |           | <b>ODP Year</b>     | <b>NRPS BENCHMARKS</b> |                       |                                  |
| <b>From</b>                                 | <b>To</b> |                     | <b>NRPS MEASURE</b>    | <b>NRPS MEASURE</b>   | <b>NRPS MEASURE</b>              |
|   |           |                     | <b>STATION (S) (%)</b> | <b>TRAINS (T) (%)</b> | <b>CUSTOMER SERVICES (C) (%)</b> |
|   |           | Year 1              | 51%                    | 53%                   | 64%                              |
|   |           | Year 2              | 51%                    | 53%                   | 64%                              |
|   |           | Year 3              | 51%                    | 53%                   | 64%                              |
|   |           | Year 4              | 51%                    | 53%                   | 64%                              |
|   |           | Year 5              | 51%                    | 53%                   | 64%                              |
|   |           | Year 6              | 53%                    | 55%                   | 66%                              |
|   |           | Year 7              | 56%                    | 57%                   | 68%                              |
|   |           | Year 8              | 58%                    | 59%                   | 70%                              |
|   |           | Year 9              | 61%                    | 61%                   | 72%                              |
|   |           | Year 10             | 64%                    | 63%                   | 74%                              |
|   |           | Year 11             | 66%                    | 65%                   | 75%                              |
|   |           | Year 12             | 68%                    | 67%                   | 76%                              |
|   |           | Year 13             | 70%                    | 69%                   | 77%                              |
|   |           | Year 14             | 72%                    | 70%                   | 78%                              |
|   |           | Year 15             | 72%                    | 70%                   | 79%                              |
|   |           | Year 16             | 72%                    | 70%                   | 80%                              |
| <b>Up to 26 Reporting Periods Extension</b> |           |                     |                        |                       |                                  |
|   |           | Year 16 (extension) | 72%                    | 70%                   | 80%                              |
|   |           | Year 17 (extension) | 72%                    | 70%                   | 80%                              |
|   |           | Year 18 (extension) | 72%                    | 70%                   | 80%                              |

| Table 2 NRPS SERVICE GROUP - WCB            |    |                     |                 |                |                           |
|---|----|---------------------|-----------------|----------------|---------------------------|
| Year  |    | ODP Year            | NRPS BENCHMARKS |                |                           |
| From  | To |                     | NRPS MEASURE    | NRPS MEASURE   | NRPS MEASURE              |
|   |    |                     | STATION (S) (%) | TRAINS (T) (%) | CUSTOMER SERVICES (C) (%) |
|   |    | Year 1              | 67%             | 68%            | 78%                       |
|   |    | Year 2              | 68%             | 69%            | 79%                       |
|   |    | Year 3              | 70%             | 71%            | 79%                       |
|   |    | Year 4              | 73%             | 73%            | 79%                       |
|   |    | Year 5              | 76%             | 74%            | 79%                       |
|   |    | Year 6              | 76%             | 76%            | 80%                       |
|   |    | Year 7              | 77%             | 77%            | 80%                       |
|   |    | Year 8              | 77%             | 79%            | 80%                       |
|   |    | Year 9              | 78%             | 81%            | 80%                       |
|   |    | Year 10             | 78%             | 81%            | 80%                       |
|   |    | Year 11             | 78%             | 81%            | 80%                       |
|   |    | Year 12             | 78%             | 81%            | 80%                       |
|   |    | Year 13             | 78%             | 81%            | 80%                       |
|   |    | Year 14             | 78%             | 81%            | 80%                       |
|   |    | Year 15             | 78%             | 81%            | 80%                       |
|   |    | Year 16 (core)      | 78%             | 81%            | 80%                       |
| <b>Up to 26 Reporting Periods Extension</b> |    |                     |                 |                |                           |
|   |    | Year 16 (extension) | 78%             | 81%            | 80%                       |
|   |    | Year 17 (extension) | 78%             | 81%            | 80%                       |
|   |    | Year 18 (extension) | 78%             | 81%            | 80%                       |



**Appendix 2 to Schedule 7.2**

**Form of CSS Benchmark Tables**

| CSS Benchmark Tables: Table 1 CCS SERVICE GROUP - CVL |    |                     |                |             |             |             |
|---|----|---------------------|----------------|-------------|-------------|-------------|
| Year  |    | ODP Year            | CSS BENCHMARKS |             |             |             |
| From  | To |                     | CSS MEASURE    | CSS MEASURE | CSS MEASURE | CSS MEASURE |
|   |    |                     | [TBC] (%)      | [TBC] (%)   | [ TBC ] (%) | [ TBC ] (%) |
|   |    | Year 1              |                |             |             |             |
|   |    | Year 2              |                |             |             |             |
|   |    | Year 3              |                |             |             |             |
|   |    | Year 4              |                |             |             |             |
|   |    | Year 5              |                |             |             |             |
|   |    | Year 6              |                |             |             |             |
|   |    | Year 7              |                |             |             |             |
|   |    | Year 8              |                |             |             |             |
|   |    | Year 9              |                |             |             |             |
|   |    | Year 10             |                |             |             |             |
|   |    | Year 11             |                |             |             |             |
|   |    | Year 12             |                |             |             |             |
|   |    | Year 13             |                |             |             |             |
|   |    | Year 14             |                |             |             |             |
|   |    | Year 15             |                |             |             |             |
|   |    | Year 16             |                |             |             |             |
| <b>Up to 26 Reporting Periods Extension</b>           |    |                     |                |             |             |             |
|   |    | Year 16 (extension) |                |             |             |             |
|   |    | Year 17 (extension) |                |             |             |             |
|   |    | Year 18 (extension) |                |             |             |             |

| CSS Benchmark Tables: Table 2 CSS SERVICE GROUP – WCB |    |                     |                |             |             |             |
|---|----|---------------------|----------------|-------------|-------------|-------------|
| Year  |    | ODP Year            | CSS BENCHMARKS |             |             | CSS MEASURE |
| From  | To |                     | CSS MEASURE    | CSS MEASURE | CSS MEASURE |             |
|   |    |                     | [TBC] (%)      | [TBC] (%)   | [TBC] (%)   | [TBC] (%)   |
|   |    | Year 1              |                |             |             |             |
|   |    | Year 2              |                |             |             |             |
|   |    | Year 3              |                |             |             |             |
|   |    | Year 4              |                |             |             |             |
|   |    | Year 5              |                |             |             |             |
|   |    | Year 6              |                |             |             |             |
|   |    | Year 7              |                |             |             |             |
|   |    | Year 8              |                |             |             |             |
|   |    | Year 9              |                |             |             |             |
|   |    | Year 10             |                |             |             |             |
|   |    | Year 11             |                |             |             |             |
|   |    | Year 12             |                |             |             |             |
|   |    | Year 13             |                |             |             |             |
|   |    | Year 14             |                |             |             |             |
|   |    | Year 15             |                |             |             |             |
|   |    | Year 16             |                |             |             |             |
| <b>Up to 26 Reporting Periods Extension</b>           |    |                     |                |             |             |             |
|   |    | Year 16 (extension) |                |             |             |             |
|   |    | Year 17 (extension) |                |             |             |             |
|   |    | Year 18 (extension) |                |             |             |             |

Appendix 3 to Schedule 7.2

Form of MSS Benchmark Tables

| MSS Benchmark Tables: Table 1 MSS SERVICE GROUP - CVL |    |                     |                |             |             |             |
|---|----|---------------------|----------------|-------------|-------------|-------------|
| Year  |    | ODP Year            | MSS BENCHMARKS |             |             |             |
| From  | To |                     | MSS MEASURE    | MSS MEASURE | MSS MEASURE | MSS MEASURE |
|   |    |                     | [TBC] (%)      | [TBC] (%)   | [TBC] (%)   | [TBC] (%)   |
|   |    | Year 1              |                |             |             |             |
|   |    | Year 2              |                |             |             |             |
|   |    | Year 3              |                |             |             |             |
|   |    | Year 4              |                |             |             |             |
|   |    | Year 5              |                |             |             |             |
|   |    | Year 6              |                |             |             |             |
|   |    | Year 7              |                |             |             |             |
|   |    | Year 8              |                |             |             |             |
|   |    | Year 9              |                |             |             |             |
|   |    | Year 10             |                |             |             |             |
|   |    | Year 11             |                |             |             |             |
|   |    | Year 12             |                |             |             |             |
|   |    | Year 13             |                |             |             |             |
|   |    | Year 14             |                |             |             |             |
|   |    | Year 15             |                |             |             |             |
|   |    | Year 16             |                |             |             |             |
| <b>Up to 26 Reporting Periods Extension</b>           |    |                     |                |             |             |             |
|   |    | Year 16 (extension) |                |             |             |             |
|   |    | Year 17 (extension) |                |             |             |             |
|   |    | Year 18 (extension) |                |             |             |             |

| MSS Benchmark Tables: Table 2 MSS SERVICE GROUP - WCB |    |                     |                          |                          |                          |                          |
|---|----|---------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| Year  |    | ODP Year            | MSS BENCHMARKS           |                          |                          | MSS MEASURE<br>[TBC] (%) |
| From  | To |                     | MSS MEASURE<br>[TBC] (%) | MSS MEASURE<br>[TBC] (%) | MSS MEASURE<br>[TBC] (%) |                          |
|   |    | Year 1              |                          |                          |                          |                          |
|   |    | Year 2              |                          |                          |                          |                          |
|   |    | Year 3              |                          |                          |                          |                          |
|   |    | Year 4              |                          |                          |                          |                          |
|   |    | Year 5              |                          |                          |                          |                          |
|   |    | Year 6              |                          |                          |                          |                          |
|   |    | Year 7              |                          |                          |                          |                          |
|   |    | Year 8              |                          |                          |                          |                          |
|   |    | Year 9              |                          |                          |                          |                          |
|   |    | Year 10             |                          |                          |                          |                          |
|   |    | Year 11             |                          |                          |                          |                          |
|   |    | Year 12             |                          |                          |                          |                          |
|   |    | Year 13             |                          |                          |                          |                          |
|   |    | Year 14             |                          |                          |                          |                          |
|   |    | Year 15             |                          |                          |                          |                          |
|   |    | Year 16             |                          |                          |                          |                          |
| <b>Up to 26 Reporting Periods Extension</b>           |    |                     |                          |                          |                          |                          |
|   |    | Year 16 (extension) |                          |                          |                          |                          |
|   |    | Year 17 (extension) |                          |                          |                          |                          |
|   |    | Year 18 (extension) |                          |                          |                          |                          |

**Appendix 4 to Schedule 7.2 - NRPS Measures**

For the purposes of the NRPS Measures relating WCB Services and CVL Rail Services, the NRPS questions shall be categorized as set out in the relevant tables below. Should additional questions be asked as part of NRPS or should existing questions be changed or removed, the Authority shall reasonably determine the NRPS measure that such new or amended questions should be allocated to. Each question shall have an equal weighting with other questions within the NRPS Measure that it is categorised in.

**1 WCB**

| NRPS Measure - Station |   |                     |
|------------------------|---|---------------------|
| NRPS Measure ID        | NRPS Measure  | Unit of measurement |
| <b>S1</b>              | <b>Station – Overall satisfaction with the station</b>                | %                   |
| <b>S2</b>              | <b>Station – Ticket buying facilities</b>                             | %                   |
| <b>S3</b>              | <b>Station – The upkeep/repair of the station buildings/platforms</b> | %                   |
| <b>S4</b>              | <b>Station – Cleanliness of the station</b>                           | %                   |
| <b>S5</b>              | <b>Station – Availability of W—Fi</b>                                 | %                   |
| <b>S6</b>              | <b>Station – Toilet facilities at the station</b>                     | %                   |
| <b>S7</b>              | <b>Station – Connections with other forms of public transport</b>     | %                   |
| <b>S8</b>              | <b>Station – Facilities for car parking</b>                           | %                   |
| <b>S9</b>              | <b>Station – Overall environment</b>                                  | %                   |

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|            |   |  |
|------------|---|--|
| <b>S10</b> | <b>Station – Your personal security whilst using</b>                  | <b>%</b>   |
| <b>S11</b> | <b>Station – Shelter facilities</b>                                   | <b>%</b>   |
| <b>S12</b> | <b>Station – Availability of seating</b>                              | <b>%</b>   |
| <b>S13</b> | <b>Station – Choice of shops/eating/drinking facilities available</b> | <b>%</b>   |
|            | <b>Station NRPS Measure</b>   | <b>= NRPS Measures SUM(S1... S13) / 13<br/>expressed as a percentage</b> |

| NRPS Measure - Train |   |                     |
|----------------------|---|---------------------|
| NRPS Measure ID      | NRPS Measure  | Unit of measurement |
| T1                   | Train – Overall satisfaction with the train                                 | %                   |
| T2                   | Train – Frequency of trains on that route                                   | %                   |
| T3                   | Train - Punctuality/reliability (i.e. the train arriving/departing on time) | %                   |
| T4                   | Train - Length of time the journey was scheduled to take (speed)            | %                   |
| T5                   | Train – Connections with other train services                               | %                   |
| T6                   | Train - Value for money of the price of your ticket                         | %                   |
| T7                   | Train – Upkeep and repair of the train                                      | %                   |
| T8                   | Train – The space for luggage   | %                   |
| T9                   | Train – The toilet facilities   | %                   |
| T10                  | Train – The comfort of the seats  | %                   |
| T11                  | Train - Step or gap between the train and the platform                      | %                   |
| T12                  | Train – Your personal security on board                                     | %                   |
| T13                  | Train - The cleanliness of the inside of the train                          | %                   |
| T14                  | Train – The cleanliness of the outside of the train                         | %                   |
| T15                  | Train - Level of crowding   | %                   |
| T16                  | Train - Availability of Wi-Fi   | %                   |
| T17                  | Train - Availability of power sockets                                       | %                   |

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|  |                           |  |
|--|---------------------------|--|
|  | <b>Train NRPS Measure</b> | <b>= NRPS Measures SUM(T1... T17) / 17 expressed as a percentage</b> |
|--|---------------------------|--|



| NRPS Measure – Customer Service |  |   |
|---------------------------------|--|---|
| NRPS Measure ID                 | NRPS Measure   | Unit of measurement   |
| CS1                             | Station – Provision of information about train times/platforms               | %   |
| CS2                             | Station – The attitudes and helpfulness of the station staff                 | %   |
| CS3                             | Station – The availability of staff at stations                              | %   |
| CS4                             | Station – Overall satisfaction with how request to station staff was handled | %   |
| CS5                             | Train – The provision of information during the journey                      | %   |
| CS6                             | Train – The helpfulness and attitude of the staff on the train               | %   |
| CS7                             | Train – The availability of staff on the train                               | %   |
| CS8                             | Train – How well train company dealt with delays                             | %   |
|                                 | Customer Service NRPS Measure  | = NRPS Measures SUM(CS1... CS8) / 8 expressed as a percentage |

2 CVL

| NRPS Measure - Station |   |                     |
|------------------------|---|---------------------|
| NRPS Measure ID        |   | Unit of measurement |
| <b>S1</b>              | <b>Station – Overall satisfaction with the station</b>                | %                   |
| <b>S2</b>              | <b>Station – Ticket buying facilities</b>                             | %                   |
| <b>S3</b>              | <b>Station – The upkeep/repair of the station buildings/platforms</b> | %                   |
| <b>S4</b>              | <b>Station – Cleanliness of the station</b>                           | %                   |
| <b>S5</b>              | <b>Station – Availability of W—Fi</b>                                 | %                   |
| <b>S6</b>              | <b>Station – Toilet facilities at the station</b>                     | %                   |
| <b>S7</b>              | <b>Station – Connections with other forms of public transport</b>     | %                   |
| <b>S8</b>              | <b>Station – Facilities for car parking</b>                           | %                   |
| <b>S9</b>              | <b>Station – Overall environment</b>                                  | %                   |
| <b>S10</b>             | <b>Station – Your personal security whilst using</b>                  | %                   |
| <b>S11</b>             | <b>Station – Shelter facilities</b>                                   | %                   |
| <b>S12</b>             | <b>Station – Availability of seating</b>                              | %                   |
| <b>S13</b>             | <b>Station – Choice of shops/eating/drinking facilities available</b> | %                   |

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|  |                             |  |
|--|-----------------------------|--|
|  | <b>Station NRPS Measure</b> | <b>= NRPS Measures SUM(S1... S13) / 13<br/>expressed as a percentage</b> |
|--|-----------------------------|--|

| NRPS Measure - Train |   |  |
|----------------------|---|--|
| NRPS Measure ID      |   | Unit of measurement  |
| T1                   | Train – Overall satisfaction with the train                                 | %  |
| T2                   | Train – Frequency of trains on that route                                   | %  |
| T3                   | Train - Punctuality/reliability (i.e. the train arriving/departing on time) | %  |
| T4                   | Train - Length of time the journey was scheduled to take (speed)            | %  |
| T5                   | Train – Connections with other train services                               | %  |
| T6                   | Train - Value for money of the price of your ticket                         | %  |
| T7                   | Train – Upkeep and repair of the train                                      | %  |
| T8                   | Train – The space for luggage   | %  |
| T9                   | Train – The toilet facilities   | %  |
| T10                  | Train – The comfort of the seats  | %  |
| T11                  | Train - Step or gap between the train and the platform                      | %  |
| T12                  | Train – Your personal security on board                                     | %  |
| T13                  | Train - The cleanliness of the inside of the train                          | %  |
| T14                  | Train – The cleanliness of the outside of the train                         | %  |
| T15                  | Train - Level of crowding   | %  |
| T16                  | Train - Availability of Wi-Fi   | %  |
| T17                  | Train - Availability of power sockets                                       | %  |
|                      | <b>Train NRPS Measure</b>   | <b>= NRPS Measures SUM(T1... T17) / 17 expressed as a percentage</b> |

| NRPS Measure – Customer Service |  |  |
|---------------------------------|--|--|
| NRPS Measure ID                 |  | Unit of measurement  |
| CS1                             | Station – Provision of information about train times/platforms               | %  |
| CS2                             | Station – The attitudes and helpfulness of the station staff                 | %  |
| CS3                             | Station – The availability of staff at stations                              | %  |
| CS4                             | Station – Overall satisfaction with how request to station staff was handled | %  |
| CS5                             | Train – The provision of information during the journey                      | %  |
| CS6                             | Train – The helpfulness and attitude of the staff on the train               | %  |
| CS7                             | Train – The availability of staff on the train                               | %  |
| CS8                             | Train – How well train company dealt with delays                             | %  |
|                                 | <b>Customer Service NRPS Measure</b>   | <b>= NRPS Measures SUM(CS1... CS8) / 8 expressed as a percentage</b> |

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## Schedule 7.3 – Service Quality Regime

### 1 DEFINITIONS

For the purposes of this Schedule 7.3 only, the following words and expressions shall have the following meanings:

|  |  |
|--|--|
| <b>“Additional Services”</b>                         | means Station Services or Passenger Services operated by the ODP during the Rail Services Term which are not comprised in the Wales and Cross-Border Lines Services or the CVL Services as set out in paragraph 2.5;                                 |
| <b>“Authority Audit”</b>                             | means an audit conducted by the Authority (or its employees, representatives, agents or advisers on its behalf) to verify, as a minimum, the matters referred to in paragraph 3.10;  |
| <b>“Authority Service Quality Inspection”</b>        | means Service Quality Inspections conducted by the Authority (or by a nominee on its behalf) as set out at paragraph 3.21(b)(iii);   |
| <b>“Authority Service Quality Inspection Period”</b> | means the duration that the Authority (or a nominee on its behalf) will conduct Service Quality Inspections;   |
| <b>“Critical SQ Level”</b>                           | means collectively each SQ Level set out in Column 3 of tables 1 and 2 in Appendix 3 and 4 to this Schedule 7.3. A reference to a “Critical SQ Level” shall include, as the context requires, a reference to any or all such Critical SQ Levels;     |
| <b>“Escalation SQ Level”</b>                         | means collectively each SQ Level set out in Column 2 of tables 1 and 2 in Appendix 3 and 4 to this Schedule 7.3. A reference to a “Escalation SQ Level” shall include, as the context requires, a reference to any or all such Escalation SQ Levels; |
| <b>“Independent Service Quality Audit”</b>           | means the audit to be undertaken by the ODP in accordance with paragraph 3.10;   |

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|   |  |
|---|--|
| <b>“Initial SQ Reporting Period”</b>                      | means the seventh (7 <sup>th</sup> ) Reporting Period following the Start Date;  |
| <b>“Operational SQ Level”</b>                             | means collectively each SQ Level set out in Column 1 tables 1 and 2 in Appendix 3 and 4 to this Schedule 7.3. A reference to a “Operational SQ Level” shall include, as the context requires, a reference to any or all such Operational SQ Levels;  |
| <b>“Performance Plan”</b>                                 | means the plan that the ODP is required to produce in accordance with paragraph 7 of this Schedule 7.3 for the purpose of ensuring that the SQ Level will, as soon as reasonably practicable, be provided at a SQ Level that is equal to or above the Operational SQ Level and such plan shall be deemed to be a Remedial Plan for the purpose of Schedule 10.1; |
| <b>“Performance Plan Notice”</b>                          | means a notice served by the Authority on the ODP in accordance with paragraphs 3.23 and 7 of this Schedule 7.3 requiring the ODP to produce a Performance Plan;   |
| <b>“Performance Plan Period”</b>                          | means the time period set out in each Performance Plan Notice within which the ODP will provide to the Authority an appropriate Performance Plan;  |
| <b>“Service Quality Defect”</b>                           | means the failure of the ODP to achieve a Service Quality Standard;  |
| <b>“Service Quality Failure”</b>                          | means a failure by the ODP to remedy a Service Quality Defect in the time period set out in the applicable Time To Fix Service Level;  |
| <b>“Service Quality Inspection Methodology” or “SQIM”</b> | means the methodology to be adopted by the ODP in conducting any such Service Quality Inspection shall be as described in the document in the agreed terms marked <b>SQIM</b> (the “ <b>Service Quality</b>  |

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**Inspection Methodology**”) and as set out in Appendix 1 to this Schedule 7.3;

**“Service Quality Inspections”** means the inspections to be carried out by the ODP in accordance with paragraphs 3.7 and 3.8;

**“Service Quality Management System”** means the ODP’s system for measuring and reporting the ODP’s performance against each Service Quality Standard as described in paragraph 3 of this Schedule 7.3;

**“Service Quality Register”** means the register prepared by the ODP to undertake each Service Quality Inspection as described in paragraph 3.6;

**“Service Quality Standard”** means each Service Quality Standard set out in Column 2 of the table in Appendix 2 to this Schedule 7.3, together known as the “Service Quality Standards”;

**“SQ Level Rate”** means the performance rate for each:

- (a) Service Quality Standard as calculated in accordance with paragraph 4; and
- (b) Time To Fix Service Level as calculated in accordance with paragraph 5.

**“SQ Levels”** means together the Operational SQ Levels, Escalation SQ Levels and Critical SQ Levels set out in tables (1) and (2) of Appendix 3 and 4 to this Schedule 7.3. A reference to a “SQ Level” shall include, as the context requires, a reference to any or all such SQ Levels;

**“Time to Fix Service Levels”** means collectively the service levels set out in Column 3 of the table in Appendix 2 to this Schedule 7.3. A reference to a “Time to Fix Service Level” shall include, as the context requires, a reference to any or all such Time to Fix Service Levels;



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## 2 INTRODUCTION

This Schedule 7.3 sets out:

- 2.1 the Service Quality Standards and Time to Fix Service Levels with which the ODP must comply for the Rail Services Term;
- 2.2 the Service Quality Management System to be put in place by the ODP for the management and delivery of Service Quality Standards and Time to Fix Service Levels for the Rail Services Term;
- 2.3 the responsibilities including the inspection, auditing and reporting requirements of the ODP;
- 2.4 the rights of the Authority to witness audits carried out by the ODP;
- 2.5 the means of the measurement and reporting of the SQ Levels required to be carried out by the ODP;
- 2.6 the remedies available to the Authority in the event that the ODP does not achieve the required SQ Levels;
- 2.7 the SQ Level performance information the ODP will be required to publish; and
- 2.8 in Appendix 1 to this Schedule 7.3 the basis for undertaking Service Quality Inspections.

### Service Quality Regime

## 3 OBLIGATIONS OF THE ODP

- 3.1 The ODP shall be responsible for ensuring that all Station Services and Passenger Services comply with the Service Quality Standards and Time to Fix Service Levels.
- 3.2 **Not used.**
- 3.3 The ODP shall put in place management arrangements and processes (including the collection of relevant data) which shall (as a minimum):
  - (a) be capable of measuring and reporting the ODP's performance against each Service Quality Standard and Time to Fix Service Level; and
  - (b) set out procedures for:
    - (i) ensuring compliance with the requirements of this Schedule 7.3 including the obligation to conduct Service Quality Inspections as required pursuant to paragraph 3.7; and

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- (ii) identifying and rectifying failures identified during each Service Quality Inspection (including processes which ensure that corrective actions identified during any Service Quality Inspection are undertaken in a diligent and prompt manner),

(the “**Service Quality Management System**”).

3.4 The Service Quality Management System shall, in respect of the Rail Services, be implemented and fully operational no later than the first day of the Initial SQ Reporting Period.

3.5 If at any time during the Rail Services Term the ODP operates or provides Station Services or Passenger Services which are not comprised in the Wales and Cross-Border Lines Services or the CVL Services (the “**Additional Services**”) the ODP shall, subject to paragraph 3.4 above, update its Service Quality Management System to include such Station Services and/or Passenger Services by the first day of the Reporting Period after the date upon which the ODP begins to operate or provide such Station Services or Passenger Services.

3.6 **Service Quality Register**

(a) The ODP shall prepare and complete the Service Quality Register by no later than the first day of the Initial SQ Reporting Period. The form and content of the Service Quality Register shall include as a minimum:

- (i) Stations with station assets relevant to the Service Quality Areas for each Station (an inspection list for each station);
- (ii) rolling stock vehicles;
- (iii) inspections undertaken and inspection results;
- (iv) planned inspections for the next three (3) months (updated quarterly to demonstrate compliance with the Service Quality Inspection Methodology); and
- (v) reports on time to fix responses for all service quality failures.

(b) The ODP shall:

- (i) maintain the Service Quality Register; and
- (ii) update such Service Quality Register:
  - (A) no later than the first day of the Initial SQ Reporting Period, to include the Station Services and Passenger Services;

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- (B) to include the Additional Services at the same time as the ODP is required pursuant to paragraph 3.5 to update the Service Quality Management System in respect of Additional Services; and
  - (C) in any case, at such regular intervals as is reasonably necessary; and
- (iii) immediately at the request of the Authority, provide an up to date copy of the Service Quality Register to the Authority or to any person carrying out an Authority Audit or Authority Service Quality Inspection on behalf of the Authority.

### 3.7 **Service Quality Inspections**

In each Reporting Period from the Initial SQ Reporting Period, the ODP shall, in accordance with the requirements of paragraph 3.8, undertake or procure the undertaking of Service Quality Inspections in respect of the Rail Services.

3.8 The ODP shall (as a minimum) ensure that:

- (a) each Service Quality Inspection is carried out accurately and impartially by independent persons (who for these purposes can be ODP Services Employees). The ODP shall ensure that any ODP Services Employees required to undertake a Service Quality Inspection will have been adequately trained to undertake such Service Quality Inspection.
- (b) the methodology to be adopted by the ODP in conducting any such Service Quality Inspection shall be as described in the document in the agreed terms marked **SQIM** (the “**Service Quality Inspection Methodology**”) and as set out in Appendix 1 to this Schedule 7.3.
- (c) any ODP Services Employee who is involved in the operation of any Station Service or Passenger Service (including any person who is responsible for the management and operation of any such Station Service or Passenger Service) in respect of which a Service Quality Inspection is to be undertaken is not notified or otherwise made aware of the date or time of any proposed or actual Service Quality Inspection;
- (d) each Station and each vehicle comprised within the Train Fleet is the subject of a Service Quality Inspection in accordance with the requirements set out in Appendix 1.

### 3.9 **Maintenance of Records**

The ODP shall, for the duration of the Rail Services Term, maintain true, up to date and complete records of the results of each Service Quality Inspection and its calculations of

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the SQ Level Rates in relation to such Service Quality Inspections. The ODP shall, immediately at the request of the Authority, make any such records available to the Authority.

**3.10 Independent Service Quality Audit**

(a) On or about the date of expiry of each period of three (3) ODP Years (the first such period commencing on the Start Date and each period of three (3) ODP Years known as an “**Independent Audit Reporting Period**”), the ODP shall (at its cost) procure the carrying out of an independent audit (which for these purposes shall include the carrying out of sample inspections which are conducted on a basis that is, as far as reasonably practicable, consistent with the Service Quality Inspections undertaken in the relevant Independent Audit Reporting Period) to verify and confirm that the:

- (i) Service Quality Management System complies with the requirements of paragraph 3.3 and has been implemented as required pursuant to paragraph 3.4;
- (ii) Service Quality Inspections undertaken in the relevant Independent Audit Reporting Period comply with the requirements of Appendix 1;
- (iii) SQ Level Rates reported by the ODP for Reporting Periods within the relevant Independent Audit Reporting Period have been calculated in accordance with the requirements of paragraph 4.1;
- (iv) SQ Level Rates reported by the ODP for the relevant Independent Audit Reporting Period have been calculated in accordance with paragraphs 4.1(b)(ii) and/or 4.1(b)(iii); and

(b) such audit shall:

- (i) also confirm that, after having regards to the findings of such inspections, its assessment of the matters referred to in paragraphs 3.10(a)(i) to 3.10(a)(iv) and any other relevant information at the disposal of any person conducting the Independent Service Quality Audit, it can reasonably be concluded that the SQ Level Rates reported by the ODP for the relevant Independent Audit Reporting Period and/or for Reporting Periods within the relevant Independent Audit Reporting Period are a fair, accurate and impartial reflection of the ODP's performance against each Service Quality Standard; or
- (ii) state that such confirmation cannot be provided.

(the “**Independent Service Quality Audit**”).

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- 3.11 Any Independent Service Quality Audit shall be for the benefit of the Authority. Each term of reference for the procurement of an Independent Service Quality Audit and the identity of any independent person proposed to undertake such audit shall be approved by the Authority prior to any procurement by the ODP of any such Independent Service Quality Audit.
- 3.12 The Authority (and any of its employees, agents, representatives and/or advisers, each such employee, agent, representative and/or adviser to be referred to as its nominee for the purposes of this paragraph 2) shall have the right to witness any Service Quality Inspection or Independent Service Quality Audit (as the case may be). The ODP shall cooperate in good faith with the Authority in permitting the Authority (including its nominees) to exercise its rights under this paragraph 3.12 including by promptly providing to it the details of how and when any Independent Service Quality Audit will be conducted in a reasonable time (and in any event not less than two (2) weeks) prior to the commencement of any such Independent Service Quality Audit.
- 3.13 The ODP shall provide the report of any Independent Service Quality Audit to the Authority as soon as reasonably practicable after the end of the relevant Independent Audit Reporting Period to which it relates and in any event by no later than the date that is three (3) Reporting Periods after the end of the relevant Independent Audit Reporting Period. To the extent that any confirmation required pursuant to paragraph 3.10 cannot be provided in respect of any Independent Service Quality Audit the ODP shall procure that any such audit report specifies in detail the reasons why such confirmation cannot be given (including details of any material discrepancies between any SQ Level Rate reported by the ODP in accordance with paragraphs 4.1(b)(ii) and/or 4.1(b)(iii) and a comparable SQ Level Rate derived from the inspections carried out as part of the Independent Service Quality Audit (and in particular where any such material discrepancies are in favour of the ODP)).

#### **Authority's right of audit**

- 3.14 Without prejudice to any other audit rights the Authority may have under the ODP Grant Agreement, the Authority (and its employees, representatives, agents and advisers on its behalf) shall have the right to carry out audits (the “**Authority Audits**”) for the purposes of verifying, as a minimum, the matters referred to in paragraph 3.10.
- 3.15 The ODP shall grant such access to information, individuals and facilities including:
- (a) access to the Stations, the Train Fleet and any premises used for the monitoring of CCTVs;
  - (b) access to schedules of the locations and times of any actual or planned Service Quality Inspections; and

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- (c) access to the relevant ODP Services Employees, records and information (including access to relevant third parties and information, records and other materials kept by such third parties on behalf of the ODP),

as is reasonably necessary to enable the Authority (and its nominees) to witness any Service Quality Inspections or Independent Service Quality Audits pursuant to paragraph 3.10 or to exercise its audit rights under paragraphs 3.14 or to undertake Authority Service Quality Inspections. The ODP shall ensure that it has necessary arrangements in place with any relevant third parties for the purposes of ensuring that it can comply with its obligations under this paragraph 3.15.

3.16 The Authority shall use reasonable endeavours to ensure that the persons employed in undertaking any Authority Audits carry out such audits diligently and objectively.

3.17 The Authority shall use reasonable endeavours to notify the ODP of the result of any Authority Audit that is undertaken.

3.18 In carrying out any Authority Audit or witnessing any Service Quality Inspections or Independent Service Quality Audits, the Authority shall, subject to paragraph 3.19, be responsible for ensuring that its nominees:

(a) are appropriately trained and briefed with respect to such reasonable location-specific safety rules and regulations; and

(b) obey such reasonable location-specific rules and regulations in respect of security and access,

in each case, as have been notified to the Authority under paragraph 3.19.

3.19 The ODP shall provide reasonable prior notice of current location-specific access, security and safety rules and regulations to the Authority for the purpose of ensuring that the Authority (and its nominees) can carry out its respective inspection and auditing rights in an efficient, secure and safe manner.

### **Consequences of a Failed Authority Audit or Independent Service Quality Audit**

3.20 If:

(a) following an Independent Service Quality Audit or Authority Audit (as the case may be) any such audit cannot verify or confirm any of the matters referred to in paragraph 3.10 or any confirmation required by paragraph 3.10 cannot be provided; or

(b) the ODP fails to:

(i) carry out a Service Quality Inspection as required by paragraph 3.7; or

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- (ii) calculate the SQ Level Rates and/or report to the Authority the SQ Level Rates as required pursuant to paragraphs 4 and 5; or
  - (iii) procure that an Independent Service Quality Audit is carried out or fails to provide an audit report as required pursuant to paragraph 3.10,

then the provisions of paragraphs 3.21 and 3.22 shall apply.

3.21 If any of the circumstances specified in paragraph 3.20 occur then:

- (a) the Authority may in the case of an Authority Audit, require the ODP to reimburse to the Authority the reasonable and proper costs incurred in undertaking any such Authority Audit; and
- (b) the Authority may in all cases:
  - (i) require the ODP to carry out additional Service Quality Inspections at the ODP's cost (that is, in excess of those required pursuant to paragraph 3.7);
  - (ii) require the ODP to procure a further Independent Service Quality Audit (or the Authority may carry out a further Authority Audit) for the purposes of verifying whether any deficiencies in the Service Quality Management System that have led or contributed to the failure of any Independent Service Quality Audit or Authority Audit to confirm or verify any of the matters referred to in paragraph 3.10 have been subsequently rectified by the ODP; or
  - (iii) select to step in and carry out inspections of the Service Quality Inspections (or by a nominee on its behalf) (the “**Authority Service Quality Inspections**”) in place of Service Quality Inspections for the duration of the Rail Services Term or such other period as the Authority may specify (the “**Authority Service Quality Inspection Period**”) and in these circumstances:
    - (A) the results of each Authority Service Quality Inspection shall be used for the purposes of calculating the SQ Level Rates in accordance with paragraph 4.1(b)(ii) and 4.1(b)(iii); and
    - (B) the Authority may require the ODP to reimburse the Authority the reasonable and proper costs incurred by the Authority in undertaking any such Authority Service Quality Inspection during the Authority Service Quality Inspection Period.

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3.22 On the first occasion that any Independent Service Quality Audit or Authority Audit (as the case may be) reveals that the value of a SQ Level as reported by the ODP was incorrect (including where any such Independent Service Quality Audit or Authority Audit (as the case may be) fails to confirm or verify any of the matters specified in paragraphs 3.10(a) or 3.10(b)), the Authority shall discuss with the ODP in good faith with a view to agreeing the value of the relevant SQ Level (or on failure to agree, the Authority shall reasonably determine the value of the SQ Level).

3.23 If in the circumstance specified in paragraph 3.22, an Independent Service Quality Audit or Authority Audit (as the case may be) reveals that the value of a SQ Level as reported by the ODP was incorrect on more than one occasion, then the Authority may serve a Performance Plan Notice on the ODP requiring it to propose such steps as the ODP considers appropriate for the purpose of securing compliance with such SQ Level.

#### **4 REPORTING ARRANGEMENTS – SERVICE QUALITY STANDARDS**

4.1 Commencing with the Initial SQ Reporting Period, the ODP shall provide to the Authority within fourteen (14) days of expiry of each Reporting Period:

- (a) a statement setting out the following:
  - (i) the number of Service Quality Inspections carried out in respect of each Service Quality Standard in that Reporting Period;
  - (ii) the number of Service Quality Inspections where a “fail” was recorded in respect of a Service Quality Standard in that Reporting Period and setting out (to the extent known) the reasons why such failures occurred; and
  - (iii) the number of Service Quality Inspections where a “pass” was recorded in respect of a Service Quality Standard in that Reporting Period.

- (b) in respect of that Reporting Period, its calculation of:
  - (i) the SQ Level Rate for each of the Service Quality Standards, such SQ Level Rate to be calculated as follows:

$$P_r = \frac{Q_p}{Q_t}$$

where:

$P_r$  is the SQ Level Rate for a Service Quality Standard for that Reporting Period



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$Q_p$  is the total number of Service Quality Inspections carried out in respect of that Service Quality Standard in that Reporting Period which did not result in a “fail”; and

$Q_t$  is the total number of Service Quality Inspections carried out in respect of that Service Quality Standard in that Reporting Period.

- (ii) the aggregate SQ Level Rate for each of the Service Quality Standards relating to Stations, such SQ Level Rate to be calculated as follows:

$$P_{r\ stations} = \frac{\sum_s Q_{ps}}{\sum_s Q_{ts}}$$

where:

$P_{r\ stations}$  is the aggregate SQ Level Rate for the Service Quality Standards relating to Stations for that Reporting Period;

$Q_{ps}$  is the total number of Service Quality Inspections in respect of Service Quality Standards relating to Stations carried out in that Reporting Period which did not result in a “fail”; and

$Q_{ts}$  is the total number of Service Quality Inspections carried out in respect of Service Quality Standards relating to Stations in that Reporting Period.

$\sum_s$  is the sum over all Service Quality Standards relating to Stations.

- (iii) the aggregate SQ Level Rate for each of the Service Quality Standards relating to Trains, such SQ Level Rate to be calculated as follows:

$$P_{r\ Trains} = \frac{\sum_t Q_{pt}}{\sum_t Q_{tt}}$$

where:

$P_{r\ Trains}$  is the aggregate SQ Level Rate for the Service Quality Standards relating to Trains for that Reporting Period;

$Q_{pt}$  is the total number of Service Quality Inspections in respect of Service Quality Standards relating to Trains carried out in that Reporting Period which did not result in a “fail”;

and

$Q_{tt}$  is the total number of Service Quality Inspections carried out in respect of Service Quality Standards relating to Trains in that Reporting Period.

$\sum_t$  is the sum over all Service Quality Standards relating to Trains.

4.2 Excluding ODP Year 1, within fourteen (14) days after the end of each ODP Year, the ODP shall provide to the Authority its calculation of the SQ Level Rate for that ODP Year in respect of:

(a) each Service Quality Standard, such SQ Level Rate to be calculated as follows:

$$FP_r = \frac{Q_{pF}}{Q_{tF}}$$

where:

$FP_r$  is the SQ Level Rate for a Service Quality Standard for that ODP Year;

$Q_{pF}$  is the total number of Service Quality Inspections carried out in respect of that Service Quality Standard in that ODP Year which did not result in a “fail”;

and

$Q_{tF}$  is the total number of Service Quality Inspections carried out in respect of that Service Quality Standard in that ODP Year.

(b) the aggregate SQ Level Rate for each of the Service Quality Standards relating to Stations, such SQ Level Rate to be calculated as follows:

$$FP_{r\ stations} = \frac{\sum_s Q_{psF}}{\sum_s Q_{tsF}}$$

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where:

$FP_{r\ stations}$  is the aggregate SQ Level Rate for the Service Quality Standards relating to Stations for that ODP Year;

$Q_{ps}F$  is the total number of Service Quality Inspections in respect of Service Quality Standards relating to Stations carried out in that ODP Year which did not result in a “fail”;  
and

$Q_{ts}F$  is the total number of Service Quality Inspections carried out in respect of Service Quality Standards relating to Stations in that ODP Year.

$\sum_s$  is the sum over all Service Quality Standards relating to Stations.

- (c) the aggregate SQ Level Rate for each of the Service Quality Standards relating to Trains, such SQ Level Rate to be calculated as follows:

$$FP_{r\ Trains} = \frac{\sum_t Q_{pt}F}{\sum_t Q_{tt}}$$

where:

$FP_{r\ Trains}$  is the aggregate SQ Level Rate for the Service Quality Standards relating to Trains for that ODP Year;

$Q_{pt}F$  is the total number of Service Quality Inspections in respect of Service Quality Standards relating to Trains carried out in that ODP Year which did not result in a “fail”;  
and

$Q_{tt}F$  is the total number of Service Quality Inspections carried out in respect of Service Quality Standards relating to Trains in that ODP Year.

$\sum_t$  is the sum over all Service Quality Standards relating to Trains.

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- 4.3 The ODP shall publish (as a minimum):
- (a) the SQ Level Rate for each Service Quality Standard for each Reporting Period and each ODP Year alongside each applicable SQ Level on its website and the Customer Report; and
  - (b) the aggregate SQ Level Rate for the Service Quality Standards relating to both Stations and Trains for each Reporting Period and each ODP Year alongside each applicable SQ Level on its website and the Customer Report.

**5 REPORTING ARRANGEMENTS – TIME TO FIX SERVICE LEVELS**

5.1 Commencing with the Initial SQ Reporting Period, the ODP shall provide to the Authority within fourteen (14) days of expiry of each Reporting Period:

- (a) a statement setting out the following:
  - (i) the number of Service Quality Defects reported in that Reporting Period for which a Time To Fix Service Level applies;
  - (ii) the number of Service Quality Failures reported in that Reporting Period and setting out (to the extent known) the reasons why the required Time To Fix Service Level was not achieved;
  - (iii) the number of Service Quality Defects for which the relevant Time To Fix Service Level was achieved in that Reporting Period; and
  - (iv) the number of Service Quality Defects that resulted in the Authority granting to the ODP a revised Time To Fix Service Level in accordance with paragraph 6.5.
- (b) in respect of that Reporting Period, its calculation of:
  - (i) the aggregate SQ Level Rate for each of the Time To Fix Service Levels relating to Stations, such SQ Level Rate to be calculated as follows:

$$TTF_{r\ stations} = \frac{\sum_s T_{ps}}{\sum_s T_{ts}}$$

where:

$TTF_{r\ stations}$  is the aggregate SQ Level Rate for the Time To Fix Service Levels relating to Stations for that Reporting Period;

$T_{ps}$  is the total number of Service Quality Defects reported in relation to Stations in

that Reporting Period for which the relevant Time To Fix Service Level has been achieved; and

$T_{ts}$  is the total number of Service Quality Defects reported in relation to Stations in that Reporting Period for which a relevant Time To Fix Service Level applies.

$\sum_s$  is the sum over all Time To Fix Service Levels relating to Stations.

- (ii) the aggregate SQ Level Rate for each of the Time To Fix Service Levels relating to Trains, such SQ Level Rate to be calculated as follows:

$$TTF_{r\ Trains} = \frac{\sum_t T_{pt}}{\sum_t T_{tt}}$$

where:

$TTF_{r\ Trains}$  is the aggregate SQ Level Rate for the Time To Fix Service Levels relating to Trains for that Reporting Period;

$T_{pt}$  is the total number of Service Quality Defects reported in relation to Trains in that Reporting Period for which the relevant Time To Fix Service Level has been achieved; and

$T_{tt}$  is the total number of Service Quality Defects reported in relation to Trains in that Reporting Period for which a relevant Time To Fix Service Level applies.

$\sum_t$  is the sum over all Time To Fix Service Levels relating to Trains.

5.2 Excluding ODP Year 1, within fourteen (14) days of expiry of each ODP Year, the ODP shall provide to the Authority its calculation of the SQ Level Rate for that ODP Year in respect of:

- (a) the aggregate SQ Level Rate for each of the Time To Fix Service Levels relating to Stations, such SQ Level Rate to be calculated as follows:

$$TTF_{r\ stations} = \frac{\sum_s T_{ps}F}{\sum_s T_{ts}F}$$

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where:

$TTF_{r\ stations}$  is the aggregate SQ Level Rate for the Time To Fix Service Levels relating to Stations for that ODP Year;

$T_{psF}$  is the total number of Service Quality Defects reported in relation to Stations for which the relevant Time To Fix Service Level has been achieved in that ODP Year; and

$T_{tsF}$  is the total number of Service Quality Defects reported in relation to Stations for which a Time To Fix Service Level applies that have been reported in that in that ODP Year.

$\sum_s$  is the sum over all Time To Fix Service Levels relating to Stations.

- (b) the aggregate SQ Level Rate for each of the Time To Fix Service Levels relating to Trains, such SQ Level Rate to be calculated as follows:

$$TTF_{r\ Trains} = \frac{\sum_t T_{ptF}}{\sum_t T_{ttF}}$$

where:

$TTF_{r\ Trains}$  is the aggregate SQ Level Rate for the Time To Fix Service Levels relating to Trains for that ODP Year;

$T_{ptF}$  is the total number of Service Quality Defects in relation to Trains for which the relevant Time To Fix Service Level has been met in that ODP Year; and

$T_{ttF}$  is the total number of Service Quality Defects reported in relation to Trains for which a Time To Fix Service Level applies that have been reported in that in that ODP Year.

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$\sum_t$  is the sum over all Time To Fix Service Levels relating to Trains.

- 5.3 The ODP shall publish (as a minimum):
- (a) the SQ Level Rate for each Time To Fix Service Level for each Reporting Period and each ODP Year alongside each applicable SQ Level on its website and the Customer Report; and
  - (b) the aggregate SQ Level Rate for the Time To Fix Service Levels relating to both Stations and Trains for each Reporting Period and each ODP Year alongside each applicable SQ Level on its website and the Customer Report.

## **6 VARIATIONS TO THE SERVICE QUALITY REGIME**

- 6.1 Without prejudice to paragraph 6.2, the Authority and the ODP may from time to time agree to vary the contents of the Service Quality Standards, Time To Fix Service Levels or the SQ Levels. Any variation agreed by the Authority and the ODP pursuant to this paragraph 6 shall be effective from the date agreed by the parties for this purpose. Any such variation as agreed by the Authority and the ODP shall not constitute a Change.
- 6.2 The parties agree that the Authority shall have the right at any time during the Rail Services Term to vary the provisions of this Schedule 7.3 (including in respect of any of the matters referred to in paragraph 6.1). The exercise by the Authority of its rights under this paragraph 6.2 shall be a Change.
- 6.3 In performing the calculations pursuant to this Schedule 7.3, the Authority shall disregard any failure to achieve a Service Quality Standard or Time To Fix Service Level that is caused by the occurrence or continuing effect of a Force Majeure.
- 6.4 In the event that the ODP anticipates that a Service Quality Failure may occur due to circumstances that are outside the reasonable control of the ODP, the ODP may request in writing from the Authority an extension of time in relation to the relevant Time To Fix Service Level. The ODP shall set out in such written request to the Authority the following:
- (a) Unique identifier of the Service Quality Defect;
  - (b) Time and date when ODP was informed or became aware of the Service Quality Defect;
  - (c) Location and description of Service Quality Defect;
  - (d) Status of Service Quality Defect and planned resolution; and
  - (e) Elapsed time between ODP becoming aware of the Service Quality Defect and anticipated resolution time.

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6.5 The Authority may, at the reasonable discretion of the Authority, grant an extension of time in relation to the relevant Time To Fix Service Level following receipt by the Authority of the written request from the ODP set out in paragraph 6.4.

## **7 CONSEQUENCES OF PERFORMANCE FALLING BELOW THE SQ LEVELS.**

7.1 If the:

- (a) SQ Level Rates calculated in accordance with paragraphs 4.1(b)(ii), 4.1(b)(iii), 5.1(b)(i) or 5.1(b)(ii) is below the Operational SQ Level in any seven (7) Reporting Periods out of thirteen (13) consecutive Reporting Periods; or
- (b) average SQ Level Rate calculated in accordance with paragraphs 4.2(b), 4.2(c), 5.2(a) or 5.2(b) is below the Operational SQ Level; or
- (c) SQ Level Rate calculated in accordance with paragraphs 4.1(b)(ii) or 4.1(b)(iii) for any Service Quality Standard or Time To Fix Service Level is below the Escalation SQ Level in any three (3) Reporting Periods out of six (6) consecutive Reporting Periods,

the Authority may serve a Performance Plan Notice on the ODP requiring it to propose such steps as the ODP considers appropriate for the purpose of ensuring that the SQ Level Rates will, as soon as reasonably practicable, be provided at a SQ Level that is equal to or above the Operational SQ Level.

7.2 The Performance Plan Period shall be five (5) Weekdays unless an alternative extended period is set out in the Performance Plan Notice.

### **7.3 Performance Plans**

- (a) If the Authority issues a Performance Plan Notice, the ODP shall submit a Performance Plan to the Authority within the Performance Plan Period.
- (b) The Authority shall notify the ODP if it accepts or rejects the Performance Plan within five (5) Weekdays of receipt of the Performance Plan from the ODP or such other period as the Parties may agree. If the Authority does not accept the Performance Plan it shall inform the ODP of its reasons and the ODP shall take such reasons into account in the preparation of an amended Performance Plan, which shall be resubmitted to the Authority within five (5) Weekdays of the rejection of the first Performance Plan by the Authority.
- (c) Each Performance Plan shall set out:
  - (i) an explanation of the circumstances that has resulted in the SQ Level Rate calculated in accordance with paragraph 4.1 for any Service Quality Standard being below the relevant SQ Level;



- 
- (ii) the steps proposed for the purposes of ensuring that the Service Quality Standard will, as soon as reasonably practicable, be provided at a level that is equal to or above the relevant SQ Level;
  - (iii) the time period within which the ODP proposes to implement those steps;  
and
  - (iv) any other information requested by the Authority in the Performance Plan Notice.
- (d) It is a term of the ODP Grant Agreement that the ODP (at its own cost) complies with each approved Performance Plan in accordance with its terms.
- 7.4 In the event of failure by the ODP to comply with the Performance Plan the Authority may issue a Warning Notice to the ODP concerning such failure.
- 7.5 If the SQ Level Rate is below the Critical SQ Level in any Reporting Period the Authority may in relation to such failure:
- (a) serve a Performance Plan Notice on the ODP; or
  - (b) issue a Warning Notice on the ODP.

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**Appendix 1 to Schedule 7.3 – Not Used**

**Appendix 2 to Schedule 7.3 – Service Quality Standards and Time To Fix Service Levels**

| Column 1             | Column 2   | Column 3                   |                          |                    |
|----------------------|--|----------------------------|--------------------------|--------------------|
| Service Quality Area | Service Quality Standard   | Time To Fix Service Levels |                          |                    |
| Station service      |  | Hub                        | Interchange and Suburban | Standard (Low Use) |
| Car parking          | Fail: if any of the following apply:<br><br><b>1</b> Car parking or waiting bays are not clearly marked.<br><br><b>2</b> There is no information or signage informing passengers of who may park in the car park and/or the sign is not legible. | 72 hours                   | 7 days                   | 14 days            |
| Cycle parking        | Fail: if any of the following apply:<br><br><b>1</b> Cycle racks/lockers/hoops are<br>(a) not fit for purpose<br>(b) not present and is shown on map   | 72 hours                   | 7 days                   | 14 days            |

| Column 1             | Column 2   | Column 3                   |                          |                    |
|----------------------|--|----------------------------|--------------------------|--------------------|
| Service Quality Area | Service Quality Standard   | Time To Fix Service Levels |                          |                    |
| Station service      |  | Hub                        | Interchange and Suburban | Standard (Low Use) |
|                      | (c) contain litter rendering use impossible.   |                            |                          |                    |
| CCTV                 | <p>CCTV present at a Station should be operational to the standard set for each specific location. All cameras should be checked for operation including tilt, pan and zoom.</p> <p>A CCTV camera will not be compliant if:</p> <p>(a) a camera which should tilt, pan or zoom fails to; or</p> <p>(b) a camera is broken or fails completely; or</p> <p>(c) the picture is substandard.</p> | 24 hours                   | 48 hours                 | 72 hours           |
| CIS                  | Fail: If any of the following apply:   | 48 hours                   | 72 hours                 | 7 days             |

| Column 1             | Column 2  | Column 3                   |                          |                    |
|----------------------|---|----------------------------|--------------------------|--------------------|
| Service Quality Area | Service Quality Standard  | Time To Fix Service Levels |                          |                    |
| Station service      |   | Hub                        | Interchange and Suburban | Standard (Low Use) |
|                      | (a) screen not present although shown on map for the station<br>(b) screen is not functioning to specification or information is illegible<br>(c) the information displayed appears to be incorrect at the time of the audit including the expected time of arrival (accurate to within 5 minutes) and the destination of those trains. |                            |                          |                    |
| Cleanliness          | Fail: If ANY or all of the following apply<br>(a) generally unclean in areas that passengers may come into contact with<br>(b) staining of floor and walls, fluids on floor   | 24 hours                   | 48 hours                 | 72 hours           |

| Column 1             | Column 2   | Column 3                   |                          |                    |
|----------------------|--|----------------------------|--------------------------|--------------------|
| Service Quality Area | Service Quality Standard   | Time To Fix Service Levels |                          |                    |
| Station service      |  | Hub                        | Interchange and Suburban | Standard (Low Use) |
|                      | (c) dirt noticeable on glass surfaces<br>(d) any area smells unpleasant through spillage, litter or lack of cleanliness<br>(e) any litter bin is completely full.  |                            |                          |                    |
| Station Litter       | Fail: if<br>(a) there are more than 10 items of litter, each larger than the size of a credit card found within any area of the Station in line with the station map, for example, platform or ICP; and/or | 24 hours                   | 48 hours                 | 72 hours           |
| Track Litter         | Fail: if   | 72 hours                   | 7 days                   | 14 days            |

| Column 1             | Column 2   | Column 3                                     |  |  |
|----------------------|--|--|--|--|
| Service Quality Area | Service Quality Standard   | Time To Fix Service Levels                   |  |  |
| Station service      |  | Hub  | Interchange and Suburban                     | Standard (Low Use)                         |
|                      | (a) more than 10 items of litter is present on the track bed or if any effluent discharge is visible.  |  |  |  |
| Graffiti and etching | Fail: If any of the following apply<br><br>(a) collectively there is graffiti/and or etching of an area more than 1xA3 in lobby or WC<br><br>(b) collectively there is graffiti/and or etching of an area more than 2xA3 in all other areas<br><br>(c) there is graffiti/and or etching that could be viewed as racist or obscene and likely to cause offence any size (to be reported to maintenance operator for removal within 24hrs) | 24 hours<br><br>48 hours for etched graffiti | 48 hours<br><br>72 hours for etched graffiti | 72 hours<br><br>7 days for etched graffiti |

| Column 1                | Column 2   | Column 3  |   |   |
|-------------------------|--|---|---|---|
| Service Quality Area    | Service Quality Standard   | Time To Fix Service Levels  |   |   |
| Station service         |  | Hub   | Interchange and Suburban  | Standard (Low Use)  |
|                         | (d) there is one or more unauthorised poster or flyer.   |   |   |   |
| Hazardous damage        | Fail: If an area has damage that could pose a danger to passengers and staff or an immediate threat to other stakeholders using the station (example: exposed wiring/broken glass or a trip hazard). | 4 hours to make safe, e.g. through signage, removal of broken glass etc.<br>Fix time for relevant SQ area applies thereafter. | 4 hours to make safe, e.g. through signage, removal of broken glass etc.<br>Fix time for relevant SQ area applies thereafter. | 4 hours to make safe, e.g. through signage, removal of broken glass etc.<br>Fix time for relevant SQ area applies thereafter. |
| Help point/call for aid | Fail: If help point<br>(a) not present and is shown on the map<br>(b) not operational<br>(c) is faulty or poor reception for use or  | 24 hours  | 48 hours  | 72 hours  |



| Column 1             | Column 2  | Column 3                   |                          |                    |
|----------------------|---|----------------------------|--------------------------|--------------------|
| Service Quality Area | Service Quality Standard  | Time To Fix Service Levels |                          |                    |
| Station service      |   | Hub                        | Interchange and Suburban | Standard (Low Use) |
|                      | (d) the operator fails to answer call within 30 seconds.  |                            |                          |                    |
| Lifts and escalators | Fail: Fail if lift and/or escalator are not functional and operational from 15 minutes before the departure of the first train and 10 minutes after the actual arrival of the last train.   | 96 hours                   | N/A?                     | N/A?               |
| Lighting             | Fail: If lighting is required or on at time of audit and more than 10% of all lights found within any area of the station in line with the station map (e.g. platform, waiting room) are defective, (lights obscured by vegetation or dirt on light fittings that causes inconsistent illumination shall be regarded as defective) and also lights which do not have a cover and/or cover is cracked or broken. | 48 hours                   | 72 hours                 | 7 days             |

| Column 1             | Column 2  | Column 3                   |                          |                    |
|----------------------|---|----------------------------|--------------------------|--------------------|
| Service Quality Area | Service Quality Standard  | Time To Fix Service Levels |                          |                    |
| Station service      |   | Hub                        | Interchange and Suburban | Standard (Low Use) |
| Posters and frames   | Fail: If any one or more of the following applies: <ul style="list-style-type: none"> <li>(a) poster and/or frame not present but shown on the map for the station.</li> <li>(b) the poster frame is damaged/rusting or insecure in any way</li> <li>(c) information is not visible through the full area of the front panel</li> <li>(d) the poster is not in correct location as agreed criteria</li> <li>(e) the poster is showing incorrect or out of date information</li> </ul> | 72 hours                   | 7 days                   | 14 days            |

| Column 1             | Column 2   | Column 3                   |                          |                    |
|----------------------|--|----------------------------|--------------------------|--------------------|
| Service Quality Area | Service Quality Standard   | Time To Fix Service Levels |                          |                    |
| Station service      |  | Hub                        | Interchange and Suburban | Standard (Low Use) |
|                      | (f) the poster should not be torn or damaged.  |                            |                          |                    |
| Public address       | Fail: If<br>(a) not present if shown on map'<br>(b) not operational<br>(c) inaudible<br>(d) announcement not made before the arrival of a train<br>(e) announcement not made in the Welsh language<br>(f) information provided was not timely or was incorrect at the time of audit. | 48 hours                   | 72 hours                 | 7 days             |

| Column 1             | Column 2  | Column 3                   |                          |                    |
|----------------------|---|----------------------------|--------------------------|--------------------|
| Service Quality Area | Service Quality Standard  | Time To Fix Service Levels |                          |                    |
| Station service      |   | Hub                        | Interchange and Suburban | Standard (Low Use) |
| Seating              | Fail: If seats are<br>(a) missing if shown on map<br>(b) damaged and unusable (including torn upholstery >5cm, splinters wooden and metal likely to cause injury or damage to clothing)<br>(c) dirty (including rust stains) likely to cause soiling to clothing<br>(d) seat is unsecure or unstable. | 7 days                     | 14 days                  | 28 days            |
| Shelter/canopy       | Includes all canopies, stand-alone shelters and waiting rooms at stations and any covered area where the public are able to stand.  | 7 days                     | 14 days                  | 28 days            |

| Column 1               | Column 2  | Column 3                   |                                 |                           |
|------------------------|---|----------------------------|---------------------------------|---------------------------|
| Service Quality Area   | Service Quality Standard  | Time To Fix Service Levels |                                 |                           |
| <b>Station service</b> |   | <b>Hub</b>                 | <b>Interchange and Suburban</b> | <b>Standard (Low Use)</b> |
|                        | <p>Fail: If</p> <p>(a) any shelter/canopy/waiting area is damaged in any way that results in it not functioning to its design limits or is missing.</p> <p>(b) Any shelter will not be fit for purpose if there are holes in the panels, panels are missing or polycarbonate panels are completely opaque or have been burnt in any way.</p> <p>(c) The shelter/canopy/waiting room is leaking or otherwise not waterproof where designed to be so.</p> |                            |                                 |                           |

| Column 1             | Column 2  | Column 3                   |                          |                    |
|----------------------|---|----------------------------|--------------------------|--------------------|
| Service Quality Area | Service Quality Standard  | Time To Fix Service Levels |                          |                    |
| Station service      |   | Hub                        | Interchange and Suburban | Standard (Low Use) |
|                      | (d) Any closed shelter or waiting room is closed when it should be open.  |                            |                          |                    |
| Signs                | <p>Fail: If required and there are no signs directing passengers to any of the following facilities, or where they exist they are damaged or defaced in a way that information is not legible:</p> <ul style="list-style-type: none"> <li>(a) platforms and destinations</li> <li>(b) exits</li> <li>(c) bridges/subways</li> <li>(d) Station ticket offices</li> <li>(e) TVMs</li> </ul> | 72 hours                   | 7 days                   | 14 days            |

| Column 1                 | Column 2  | Column 3                   |                          |                    |
|--------------------------|---|----------------------------|--------------------------|--------------------|
| Service Quality Area     | Service Quality Standard  | Time To Fix Service Levels |                          |                    |
| Station service          |   | Hub                        | Interchange and Suburban | Standard (Low Use) |
|                          | (f) waiting rooms<br>(g) car parks<br>(h) car park ticket machines<br>(i) disabled access route.  |                            |                          |                    |
| Ticket buying facilities | Fail: If<br>(a) Any ticket machine is not present but shown on the map.<br>(b) Any ticket machine is not working.<br>(c) If the following information is missing or not legible, name, address of operator, range of fares available, instructions on use, methods of | 48 hours                   | 72 hours                 | 72 hours           |

| Column 1                               | Column 2  | Column 3                   |                          |                    |
|--|---|----------------------------|--------------------------|--------------------|
| Service Quality Area                   | Service Quality Standard  | Time To Fix Service Levels |                          |                    |
| Station service                        |   | Hub                        | Interchange and Suburban | Standard (Low Use) |
|  | <p>payment and information on what passengers should do to contact in the event of a problem or to obtain a refund.</p> <p>(d) Station ticket office is not open to the public when it should be available.</p>   |                            |                          |                    |
| Toilets – availability and consumables | <p>Station toilets should be:</p> <p>(a) open, sanitary and available for use (at least 50% of units and 50% of cubicles per washroom should be available for use by the public). Closure for cleaning purposes will not fail if the period of closure is less than 20 minutes and a sign indicating the reopening time is clearly displayed;</p> | 24 hours                   | 72 hours                 | 7 days             |



| Column 1                   | Column 2   | Column 3                   |                          |                    |
|----------------------------|--|----------------------------|--------------------------|--------------------|
| Service Quality Area       | Service Quality Standard   | Time To Fix Service Levels |                          |                    |
| Station service            |  | Hub                        | Interchange and Suburban | Standard (Low Use) |
|                            | (b) stocked with required consumables, (e.g. toilet paper, soap);<br>(c) provided with a functioning water supply for washing purposes and a means of drying;<br>(d) free of graffiti covering an area greater than 0.5m, or which is obscene or racist; and<br>(e) be clean and well presented. |                            |                          |                    |
| Landscaping and vegetation | Fail: If any of the following apply<br>(a) vegetation is obstructing walkways, signs, lighting or CCTV   | 72 hours                   | 7 days                   | 14 days            |

| Column 1             | Column 2   | Column 3                   |                          |                    |
|----------------------|--|----------------------------|--------------------------|--------------------|
| Service Quality Area | Service Quality Standard   | Time To Fix Service Levels |                          |                    |
| Station service      |  | Hub                        | Interchange and Suburban | Standard (Low Use) |
|                      | <p>(b) vegetation is likely to present a tripping hazard (not to be failed under hazardous damage question)</p> <p>(c) any growth of vegetation poses a risk of injury to persons or damage (including staining) to their clothing or articles</p> <p>(d) any area intended to be laid out with vegetation is not overgrown.</p> <p>(e) there are leaves which are slippery underfoot in an area where passengers may come into contact with it.</p> |                            |                          |                    |

| Column 1               | Column 2  | Column 3   |                                 |                           |
|------------------------|---|--|---------------------------------|---------------------------|
| Service Quality Area   | Service Quality Standard  | Time To Fix Service Levels   |                                 |                           |
| <b>Station service</b> |   | <b>Hub</b>   | <b>Interchange and Suburban</b> | <b>Standard (Low Use)</b> |
| Winterisation          | Fail: If no evidence of grit application or snow clearing has taken place at the time audit takes place if required by weather conditions.  | 4 hours  | 4 hours                         | 4 hours                   |
| <b>Train service</b>   |   |  |                                 |                           |
| Exterior cleanliness   | A Train exteriors should not: <ul style="list-style-type: none"> <li>(a) have any part of its external surface subject to graffiti of more than 0.5 m2 or any graffiti of an obscene or racist nature; or</li> <li>(b) have its external surfaces or windows in an unsightly condition due the clear lack of recent cleaning; or</li> </ul> | Train should not re-enter service after its last diagram until the failure is fixed. |                                 |                           |

| Column 1                       | Column 2  | Column 3   |                          |                    |
|--------------------------------|---|--|--------------------------|--------------------|
| Service Quality Area           | Service Quality Standard  | Time To Fix Service Levels   |                          |                    |
| Station service                |   | Hub  | Interchange and Suburban | Standard (Low Use) |
|                                | (c) be subject to material damage to its bodywork;<br>or<br><br>(d) have stickers, posters or flyers posted on any external surfaces of the Train other than by the ODP where authorised in accordance with this Agreement. |  |                          |                    |
| Passenger information displays | Fail if either the external or internal customer information screens are<br><br>(a) not functioning<br><br>(b) illegible and/or<br><br>(c) showing incorrect information  | Train should not re-enter service after its last diagram until the failure is fixed. |                          |                    |

| Column 1              | Column 2  | Column 3   |                    |  |
|-----------------------|---|--|--------------------|--|
| Service Quality Area  | Service Quality Standard  | Time To Fix Service Levels   |                    |  |
| Station service       | Hub   | Interchange and Suburban   | Standard (Low Use) |  |
| Public address system | Fail if any of the following apply <ul style="list-style-type: none"> <li>(a) the announcement is not audible or capable of being understood</li> <li>(b) an announcement of the train destination is not made immediately prior to departure from any terminal station</li> <li>(c) an announcement of the next station and appropriate interchange is not made on approach to the next station</li> <li>(d) an announcement is not made following a delay of 5 or more minutes</li> </ul> | Train should not re-enter service after its last diagram until the failure is fixed. |                    |  |

| Column 1             | Column 2   | Column 3   |                          |                    |
|----------------------|--|--|--------------------------|--------------------|
| Service Quality Area | Service Quality Standard   | Time To Fix Service Levels   |                          |                    |
| Station service      |  | Hub  | Interchange and Suburban | Standard (Low Use) |
|                      | (e) announcements are not made in the Welsh language.  |  |                          |                    |
| Internal CCTV        | <p>CCTV present on a Train should be operational to the standard set for each specific location. All cameras should be checked for operation including tilt, pan and zoom.</p> <p>A CCTV camera will not be compliant if:</p> <p>(a) a camera which should tilt, pan or zoom fails to; or</p> <p>(b) a camera is broken or fails completely; or</p> <p>(c) the picture is substandard.</p> | Train should not re-enter service after its last diagram until the failure is fixed. |                          |                    |

| Column 1             | Column 2   | Column 3   |                          |                    |
|----------------------|--|--|--------------------------|--------------------|
| Service Quality Area | Service Quality Standard   | Time To Fix Service Levels   |                          |                    |
| Station service      |  | Hub  | Interchange and Suburban | Standard (Low Use) |
| Interior lighting    | Fail if either/both of the following apply<br><br>(a) any light does not illuminate when the power is on<br><br>(b) any light cover is cracked, broken, loose, missing or otherwise unfit for purpose.                             | Train should not re-enter service after its last diagram until the failure is fixed. |                          |                    |
| Interior condition   | Fail if any 2 of the following list apply:-<br><br>(a) unsightly damaged panel(s) or damaged panel trim(s)<br><br>(b) tear(s) in seat fabric more than 25mm<br><br>(c) heavy wear pattern on floor coverings and/or seat coverings | Train should not re-enter service after its last diagram until the failure is fixed. |                          |                    |

| Column 1             | Column 2  | Column 3   |                          |                    |
|----------------------|---|--|--------------------------|--------------------|
| Service Quality Area | Service Quality Standard  | Time To Fix Service Levels   |                          |                    |
| Station service      |   | Hub  | Interchange and Suburban | Standard (Low Use) |
|                      | (d) loose and/or missing window seal(s)<br>(e) broken and/or cracked window(s)<br>(f) hole in vinyl or carpet   |  |                          |                    |
| Graffiti and etching | Fail if any of the following apply<br>(a) graffiti/etching is present which can be viewed as racist or obscene<br>(b) outside the vehicle any graffiti covers an area greater than a A4 sized piece of paper<br>(c) inside the vehicle any graffiti found is greater than an area 10cm <sup>2</sup> . | Train should not re-enter service after its last diagram until the failure is fixed. |                          |                    |
| Interior cleanliness | A Train interior should not:  | Train should not re-enter service after its last diagram until the failure is fixed. |                          |                    |



| Column 1             | Column 2   | Column 3   |                          |                    |
|----------------------|--|--|--------------------------|--------------------|
| Service Quality Area | Service Quality Standard   | Time To Fix Service Levels   |                          |                    |
| Station service      |  | Hub  | Interchange and Suburban | Standard (Low Use) |
|                      | <p>(a) have stickers, posters or flyers posted on any internal surfaces of the Train other than by the ODP where authorised in accordance with this Agreement;</p> <p>(b) have internal surfaces subject to excessive dust, dirt, staining or chewing gum;</p> <p>(c) have any contamination or spillage of any unpleasant substance (including vomit or urine) anywhere within the Train.</p> |  |                          |                    |
| Litter               | <p>Fail if either/both of the following apply</p> <p>(a) more than 6 items of litter (apart from current newspapers) per vehicle interior</p>  | Train should not re-enter service after its last diagram until the failure is fixed. |                          |                    |

| Column 1               | Column 2   | Column 3   |                          |                    |
|------------------------|--|--|--------------------------|--------------------|
| Service Quality Area   | Service Quality Standard   | Time To Fix Service Levels   |                          |                    |
| Station service        |  | Hub  | Interchange and Suburban | Standard (Low Use) |
|                        | (b) any litter bins are full to the extent no more litter can be placed in the bins.   |  |                          |                    |
| Posters                | Poster frames should be in good condition and at the correct location on the Train. Information should be clearly visible through the polycarbonate or other frontage over the whole area of the poster frame.                                 | Train should not re-enter service after its last diagram until the failure is fixed. |                          |                    |
| Toilets - availability | Fail if any of the following apply: The door handle or locking mechanism is faulty;<br><br>(a) Lavatory seat not in place.<br><br>(b) Lavatory blocked or soiled or flush system not operational.<br><br>(c) Hand wash system not operational. | Train should not re-enter service after its last diagram until the failure is fixed. |                          |                    |

| Column 1                           | Column 2  | Column 3   |                          |                    |
|------------------------------------|---|--|--------------------------|--------------------|
| Service Quality Area               | Service Quality Standard  | Time To Fix Service Levels   |                          |                    |
| Station service                    |   | Hub  | Interchange and Suburban | Standard (Low Use) |
|                                    | (d) Toilet unavailable or "out of use".<br>(e) Baby changing facilities (if fitted) are not clean and working.<br>(f) Disabled Access and facilities (if fitted) are not working.   |  |                          |                    |
| Toilets – presentation/consumables | Fail if any of the following apply:<br>(a) Toilet tissue not replenished.<br>(b) Litter and disposal bins overflowing.<br>(c) Soap not replenished.<br>(d) Any fixtures, fittings and surfaces dirty / soiled including toilet pan, seat, panels, floor, hand | Train should not re-enter service after its last diagram until the failure is fixed. |                          |                    |

| Column 1             | Column 2  | Column 3   |                          |                    |
|----------------------|---|--|--------------------------|--------------------|
| Service Quality Area | Service Quality Standard  | Time To Fix Service Levels   |                          |                    |
| Station service      |   | Hub  | Interchange and Suburban | Standard (Low Use) |
|                      | <p>driers and mirrors or the floor has puddles (not splashes).</p> <p>(e) Hand towels not replenished (No means of hand drying available - not toilet tissue).</p> <p>(f) Toilet unavailable / "locked out of use".</p> |  |                          |                    |
| Mobile data coverage | Fail if it is not possible to connect to the internet and view and refresh a webpage via the service provided by the train operator.  | Train should not re-enter service after its last diagram until the failure is fixed. |                          |                    |

**Appendix 3 to Schedule 7.3 – Regular Reporting**

**1** Wales and Cross Border Lines

|          |                 | Column 1             |                |        | Column 2            |                |        | Column 3          |                |        |
|----------|-----------------|----------------------|----------------|--------|---------------------|----------------|--------|-------------------|----------------|--------|
|          |                 | Operational SQ Level |                |        | Escalation SQ Level |                |        | Critical SQ Level |                |        |
|          |                 | 2019 -<br>2020       | 2021 -<br>2023 | 2024 - | 2019 -<br>2020      | 2021 -<br>2023 | 2024 - | 2019 -<br>2020    | 2021 -<br>2023 | 2024 - |
| Stations | Hub/Interchange | 90%                  | 92%            | 95%    | 80%                 | 82%            | 85%    | 65%               | 67%            | 70%    |
|          | Standard        | 87%                  | 90%            | 95%    | 77%                 | 80%            | 85%    | 62%               | 65%            | 70%    |
| Trains   |                 | 86%                  | 90%            | 95%    | 76%                 | 80%            | 85%    | 61%               | 65%            | 70%    |

**2** Core Valley Lines

|          |                 | Column 1             |                |        | Column 2            |                |        | Column 3          |                |        |
|----------|-----------------|----------------------|----------------|--------|---------------------|----------------|--------|-------------------|----------------|--------|
|          |                 | Operational SQ Level |                |        | Escalation SQ Level |                |        | Critical SQ Level |                |        |
|          |                 | 2019 -<br>2020       | 2021 -<br>2023 | 2024 - | 2019 -<br>2020      | 2021 -<br>2023 | 2024 - | 2019 -<br>2020    | 2021 -<br>2023 | 2024 - |
| Stations | Hub/Interchange | 89%                  | 92%            | 95%    | 79%                 | 82%            | 85%    | 64%               | 67%            | 70%    |
|          | Standard        | 82%                  | 88%            | 95%    | 72%                 | 78%            | 85%    | 57%               | 63%            | 70%    |
| Trains   |                 | 87%                  | 90%            | 95%    | 77%                 | 80%            | 85%    | 62%               | 65%            | 70%    |

**Appendix 4 to Schedule 7.3 – Time To Fix Reporting**

**1** Wales and Cross Border Lines

|          |                  | Column 1             | Column 2            | Column 3          |
|----------|------------------|----------------------|---------------------|-------------------|
|          |                  | Operational SQ Level | Escalation SQ Level | Critical SQ Level |
| Stations | Hub/Interchange  | 95%                  | 85%                 | 70%               |
|          | Standard         | 95%                  | 85%                 | 70%               |
|          | Standard low use | 90%                  | 80%                 | 65%               |
| Trains   |                  | 90%                  | 80%                 | 65%               |

**2** Core Valley Lines

|          |                  | Column 1             | Column 2            | Column 3          |
|----------|------------------|----------------------|---------------------|-------------------|
|          |                  | Operational SQ Level | Escalation SQ Level | Critical SQ Level |
| Stations | Hub/Interchange  | 95%                  | 85%                 | 70%               |
|          | Standard         | 95%                  | 85%                 | 70%               |
|          | Standard low use | 90%                  | 80%                 | 65%               |
| Trains   |                  | 90%                  | 80%                 | 65%               |



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**Schedule 7.4 – Ticketless Travel Regime**

**1 DEFINITIONS**

1.1 For the purposes of this Schedule 7.4 (Ticketless Travel Regime) only, the following words and expressions shall have the following meanings:

**“Annual Ticketless Travel Breach Benchmark”** means, in relation to an ODP Year, the benchmark for that ODP Year as specified in Column 3 of table 1 and table 2 in Part 1 of Appendix 1 to this Schedule 7.4;

**“Annual Ticketless Travel Target Benchmark”** means, in relation to an ODP Year, the benchmark for that ODP Year as specified in Column 2 of table 1 and table 2 in Part 1 of Appendix 1 to this Schedule 7.4;

**“Annual Ticketless Travel Benchmark”** means any of the Annual Ticketless Travel Breach Benchmark and/or Annual Ticketless Travel Target Benchmark;

**“Annual Ticketless Travel Rate”** means, that proportion (expressed as a percentage to three decimal places) of revenue estimated by the Ticketless Travel Survey to be at risk from passengers travelling on the Passenger Services without a valid ticket or other valid permission to travel;

**“Performance Plan”** means the plan that the ODP is required to produce in accordance with paragraph 3 of this Schedule 7.4 for the purpose of reducing the Annual Ticketless Travel Rate below the Annual Ticketless Travel Breach Benchmark and such plan shall be deemed to be a Remedial Plan for the purpose of Schedule 10.1;

**“Performance Plan Notice”** means a notice served by the Authority on the ODP in accordance with paragraph 3 of this Schedule 7.4 requiring the ODP to produce a Performance Plan;

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|   |   |
|---|---|
| <b>“Performance Plan Period”</b>              | means the time period set out in each Performance Plan Notice within which the ODP will provide to the Authority an appropriate Performance Plan; |
| <b>“Ticketless Travel Payment Adjustment”</b> | means a payment adjustment made to the Rail Services Payment as determined in accordance with paragraph 4 of this Schedule 7.4;                   |
| <b>“Ticketless Travel Surveys”</b>            | means the survey carried out by or on behalf of the ODP in each ODP Year to determine the Annual Ticketless Travel Rate for such period; and      |
| <b>“Ticketless Travel Survey Methodology”</b> | means the document in the agreed terms marked TTSM and set out in Appendix 2 to this Schedule 7.4.  |

## **2 TICKETLESS TRAVEL SURVEYS**

- 2.1 The ODP (or a nominee on its behalf) shall carry out a Ticketless Travel Survey in each ODP Year in accordance with the Ticketless Travel Survey Methodology.
- 2.2 The ODP shall co-operate with the Authority as it may reasonably request from time to time to allow or facilitate the carrying out of Ticketless Travel Surveys. When so requested by the Authority the ODP shall permit the Authority (or a nominee on its behalf) to have access to passengers and other persons who use the Passenger Services (such access to be provided on relevant trains and/or at relevant Stations or as otherwise reasonably required by the Authority) for the purposes of the Authority (or its nominee on its behalf) carrying out Ticketless Travel Surveys.
- 2.3 It is acknowledged and agreed by the ODP that:
- (a) nothing in this paragraph 2 shall prevent the Authority from carrying out any other ticketless travel surveys as the Authority may wish to undertake from time to time (such surveys not to be subject to the provisions of this paragraph 2); and
  - (b) the ODP may (but shall not be obliged to) determine not to carry out, or suspend or delay or discontinue any Ticketless Travel Survey planned or commenced if the Authority notifies the ODP that in the circumstances it is inappropriate or impractical to carry out or continue such survey.

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- 2.4 The ODP shall procure that the results of any Ticketless Travel Surveys are provided to the Authority as soon as reasonably practicable following the completion of such surveys.

### **3 CONSEQUENCES FOR POOR PERFORMANCE**

#### **3.1 Performance Plan Notices**

- (a) If for any ODP Year the Annual Ticketless Travel Rate is equal to or higher than the Annual Ticketless Travel Breach Benchmark, the Authority may serve a Performance Plan Notice on the ODP requiring it to propose such steps as the ODP considers appropriate for the purpose of securing or facilitating the reduction of the Annual Ticketless Travel Rate to a level that is below Annual Ticketless Travel Breach Benchmark.
- (b) The Performance Plan Period shall be ten (10) Weekdays unless an alternative extended period is set out in the Performance Plan Notice.

#### **3.2 Performance Plans**

- (a) If the Authority issues a Performance Plan Notice, the ODP shall submit a Performance Plan to the Authority within the Performance Plan Period.
- (b) The Authority shall notify the ODP if it accepts or rejects the Performance Plan within five (5) Weekdays of receipt of the Performance Plan from the ODP or such other period as the Parties may agree. If the Authority does not accept the Performance Plan it shall inform the ODP of its reasons and the ODP shall take such reasons into account in the preparation of an amended Performance Plan, which shall be resubmitted to the Authority within five (5) Weekdays of the rejection of the first Performance Plan by the Authority.
- (c) Each Performance Plan shall set out:
- (i) an explanation of the circumstances that has resulted in the Annual Ticketless Travel Rate being equal to or higher than the Annual Ticketless Travel Breach Benchmark;
  - (ii) the steps proposed for the purposes of reducing the Annual Ticketless Travel Rate below the Annual Ticketless Travel Breach Benchmark;
  - (iii) the time period within which the ODP proposes to implement those steps; and
  - (iv) any other information requested by the Authority in the Performance Plan Notice.

- 
- (d) It is a term of the ODP Grant Agreement that the ODP (at its own cost) complies with each approved Performance Plan in accordance with its terms.
- (e) In the event of failure by the ODP to comply with the Performance Plan the Authority may issue a Warning Notice to the ODP concerning such failure.

#### **4 TICKETLESS TRAVEL PAYMENT ADJUSTMENT**

4.1 At the end of each ODP Year, the ODP shall declare to the Authority the outcome of the Annual Ticketless Travel Survey to be the Annual Ticketless Travel Rate for that ODP Year separately for Wales and Cross-Border Lines Services and for CVL Rail Services. The Annual Ticketless Travel Rates shall then be used to calculate the ODP's performance against the Annual Ticketless Travel Benchmarks as described in paragraph 4 of this Schedule 7.4.

4.2 If the value of the Annual Ticketless Travel Rate for Wales and Cross Border Lines Services or CVL Rail Services for an ODP Year as described in 4.1 above is:

- (a) equal to or more than the Annual Ticketless Travel Target Benchmark for that ODP Year but less than the Annual Ticketless Travel Breach Benchmark for that ODP Year for those Passenger Services then the Ticketless Travel Payment Adjustment payable by the ODP to the Authority shall be an amount calculated as follows:

$$(ACTUAL - TARGET) \times TTP$$

where:

ACTUAL is the Annual Ticketless Travel Rate (the number of percentage points expressed as a number for calculation);

TARGET is the Annual Ticketless Travel Target Benchmark for that ODP Year for those Passenger Services;

TTP is:

- (i) in respect of the first ODP Year an amount that is determined as follows:

$$TTP \times 0.5$$

where:

TTP is the amount that is equal to the amount specified in Part 2 of Appendix 1 to this Schedule 7.4 in the second row of table 1 in relation to Wales and Cross Border Lines Services and the second row of table 2 in relation to CVL Rail Services;

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(ii) in respect of any subsequent ODP Year ("Year n") an amount calculated as follows:

$$TTP \times RPI$$

where:

TTP has the meaning given to it in this paragraph 4.2(a); and

RPI has the meaning given to it in Appendix 1 (Annual Rail Services Payments) to Schedule 8.1 (Rail Services Payments).

(b) equal to or more than the Annual Ticketless Travel Breach Benchmark for that ODP Year for those Passenger Services then the Ticketless Travel Payment Adjustment payable by the ODP to the Authority shall be an amount calculated as follows:

$$(BREACH - TARGET) \times TTP$$

where:

BREACH is the Annual Ticketless Travel Breach Benchmark for that ODP Year for those Passenger Services;

TARGET is the Annual Ticketless Travel Target Benchmark for that ODP Year for those Passenger Services; and

TTP has the meaning given to it in paragraph 4.2(a).

(c) Each Ticketless Travel Payment Adjustment in respect of any ODP Year shall be paid in accordance with Schedule 8.1 (Rail Services Payments).

**Appendix 1 to Schedule 7.4 - Ticketless Travel Regime**

**Part 1 to Appendix 1**

**1** Wales and Cross Border Lines Services: Annual Ticketless Travel Benchmarks

| Column 1 | Column 2  | Column 3  |
|----------|---|---|
| ODP Year | Annual Ticketless Travel Target Benchmark (the number of percentage points expressed as a number for calculation) | Annual Ticketless Travel Breach Benchmark (the number of percentage points expressed as a number for calculation) |
| Year 1   | 6.00  | 6.00  |
| Year 2   | 5.00  | 6.00  |
| Year 3   | 4.00  | 5.00  |
| Year 4   | 3.50  | 5.00  |
| Year 5   | 3.00  | 5.00  |
| Year 6   | 2.75  | 4.75  |
| Year 7   | 2.50  | 4.50  |
| Year 8   | 2.50  | 4.25  |
| Year 9   | 2.50  | 4.00  |
| Year 10  | 2.50  | 4.00  |
| Year 11  | 2.50  | 4.00  |
| Year 12  | 2.50  | 4.00  |
| Year 13  | 2.50  | 4.00  |
| Year 14  | 2.50  | 4.00  |
| Year 15  | 2.50  | 4.00  |
| Year 16  | 2.50  | 4.00  |
| Year 17  | 2.50  | 4.00  |
| Year 18  | 2.50  | 4.00  |

**2** Core Valley Lines: Annual Ticketless Travel Benchmark

| Column 1 | Column 2  | Column 3  |
|----------|---|---|
| ODP Year | Annual Ticketless Travel Target Benchmark (the number of percentage points expressed as a number for calculation) | Annual Ticketless Travel Breach Benchmark (the number of percentage points expressed as a number for calculation) |
| Year 1   | 18.00   | 18.00   |
| Year 2   | 16.00   | 18.00   |
| Year 3   | 14.00   | 17.00   |
| Year 4   | 12.00   | 15.00   |
| Year 5   | 10.00   | 13.00   |
| Year 6   | 8.00  | 11.00   |
| Year 7   | 7.00  | 10.00   |
| Year 8   | 6.00  | 9.00  |
| Year 9   | 5.00  | 8.00  |
| Year 10  | 4.00  | 7.00  |
| Year 11  | 3.50  | 6.50  |
| Year 12  | 3.25  | 6.00  |
| Year 13  | 3.00  | 5.50  |
| Year 14  | 3.00  | 5.00  |
| Year 15  | 3.00  | 5.00  |
| Year 16  | 3.00  | 5.50  |
| Year 17  | 3.00  | 5.00  |
| Year 18  | 3.00  | 5.00  |

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**Part 2 to Appendix 1**

**1** Wales and Cross Border Lines Services: Payment Table

| Definitions | Amount (£) |
|-------------|------------|
| TTP         | [REDACTED] |

**2** CVL Rail Services: Payment Table

| Definitions | Amount (£) |
|-------------|------------|
| TTP         | [REDACTED] |



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## **Appendix 2 to Schedule 7.4 - Ticketless Travel Survey Methodology (TTSM)**

### **1 TICKETLESS TRAVEL SURVEY METHODOLOGY**

- 1.1 To ensure that Passenger Revenue is being maximised, the ODP Grant Agreement contains a requirement for the ODP to undertake Ticketless Travel Surveys across the Rail Services in line with this '*Ticketless Travel Survey Methodology*.' The Ticketless Travel Surveys are to be carried out annually or otherwise as agreed between the Authority and ODP with the first survey to be completed in ODP Year 1. Subsequent Ticketless Travel Surveys should be undertaken at the same time of year to enable a comparison over time.
- 1.2 The level of ticketless travel across the ODP Grant Agreement Term will be a key measure of ODP performance. Annual Ticketless Travel Benchmarks have been agreed between the ODP and the Authority in support of a reduction in ticketless travel. Financial incentives have been put in place to encourage the ODP to meet and improve upon these Annual Ticketless Travel Benchmarks.

#### **Purpose**

- 1.3 The purpose of the Ticketless Travel Surveys is to quantify the rate of ticketless travel and the associated revenue-at-risk across the Rail Services and the ODP shall ensure that each Ticketless Travel Survey must identify rates for ticketless travel and revenue-at-risk. Ideally the Ticketless Travel Surveys will quantify the rate of fraudulent travel, but it is accepted that, where ticket purchase on board is a valid option, this is not possible and ticketless travel is what is recorded.
- 1.4 The Ticketless Travel Surveys are required to provide the Authority with the evidence that the ODP is taking relevant and appropriate action to minimise the level of ticketless travel and, consequently, is behaving as a responsible rail operator.
- 1.5 This methodology note covers:
- (a) **Survey Scope:** principles for the undertaking of the survey fieldwork that are expected to be followed to ensure that a sufficiently robust sample is collected for the purposes of calculating ticketless travel; and
  - (b) **Calculation of ticketless travel and revenue-at-risk metrics:** the nature of the calculations to be made to produce equivalent figures to compare with the Annual Ticketless Travel Benchmarks.

#### **Survey Scope**

- 1.6 Ticketless travel rates vary by geographical location and time of day. For example, existing evidence suggests larger proportions of passengers travel late at night without

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an appropriate ticket than during the weekday peak periods. In addition, some geographical locations have a higher prevalence for ticketless travel than others.

1.7 It is therefore necessary to ensure that the sample collected is sufficiently representative of the volumes and revenues across the network and times of day/day of week for the purposes of calculating the level of ticketless travel and revenue-at-risk, respectively.

1.8 The Annual Ticketless Travel Rates are defined by:

- (a) Core Valley Lines (CVL); and
- (b) Wales and Cross Border Lines (WCB).

1.9 The WCB is subdivided into a further seven service groups for the purpose of ensuring a geographically representative survey:

- (a) HL02 - South, West and Central Wales;
- (b) HL03 - Wales to England;
- (c) HL04 - Cambrian;
- (d) HL05 - Cardiff Valleys – Non-Core-Valley Line;
- (e) HL06 - Marches;
- (f) HL07 - ATW North Wales Rural; and
- (g) HL08 - ATW North Wales Inter-Urban.

1.10 The time bands are:

- (a) Weekday
  - (i) 06:00 – 09:59: AM peak;
  - (ii) 10:00 – 15:59: Inter-peak;
  - (iii) 16:00 – 18:59: PM peak; and
  - (iv) 19:00 – 01:00: Evening.
- (b) Weekends
  - (i) Saturday 00:00 to 23:59; and
  - (ii) Sunday 00:00 to 23:59.

- 
- 1.11 Combined, the eight service groups and six time bands provide 48 survey '*allocations*'. The purpose of the *allocations* is to ensure that sampling is distributed in line with passenger demand and revenue and therefore underpin accuracy of the data collected.

### **Sample Size**

- 1.12 The methodology should deliver an appropriate margin of error, which in turn leads to an appropriate overall sample size. In addition, to ensure a robust distribution across the survey *allocations* described above there should be a minimum sample size of 100 for each *allocation*. To deliver this, the survey should deliver a sample which meets the following criteria:

- (a) Minimum of 100 observations in any one survey *allocation*;
- (b) Representative distribution across all survey *allocations*;
- (c) 1% margin of error on CVL obtained by a minimum of 5,000 observations;
- (d) 0.5% margin of error on WCB obtained by a minimum of 7,000 observations; and
- (e) Total sample size of greater than 15,000.

- 1.13 If the survey design can be shown to deliver the same margins of error and robustness for a smaller sample size this would be acceptable if presented with convincing evidence. Reasonable efforts should be made to achieve these minimum sample sizes, including the use of contingency survey shifts, but, fewer observations than minimum levels may be acceptable in the case of a Force Majeure Event.

### **Planning the Survey Fieldwork**

- 1.14 The following principles should be followed in planning the fieldwork:

#### **Survey schedule**

- 1.15 A detailed schedule should be drawn up to capture a representative and appropriately sized sample for each service group and time period, to ensure the estimation of irregularity rate and associated revenue-at-risk delivers the required margins of error.

- 1.16 The detailed schedule should be drawn up according to the following objectives:

- (a) Covering as large a geographical area as possible;
- (b) Sampling all service groups from end-to-end;
- (c) Sampling all service groups on different days of the week and throughout the day;
- (d) Seeking to ensure the sample is closely aligned to the survey sample requirements; and

- 
- (e) Focussing appropriately on the direction of passenger flow, eg peak, rather than contra-peak.

1.17 Possible constraints for the development of a robust schedule which have to be taken into account are:

- (a) Maintaining sensible wait times for surveyors between trains;
- (b) Ensuring survey value for money (i.e. not surveying too many low usage vehicles); and
- (c) Avoiding unrepresentative times, such as any planned engineering works, school holidays and major events, e.g. rugby matches that may bias the survey.

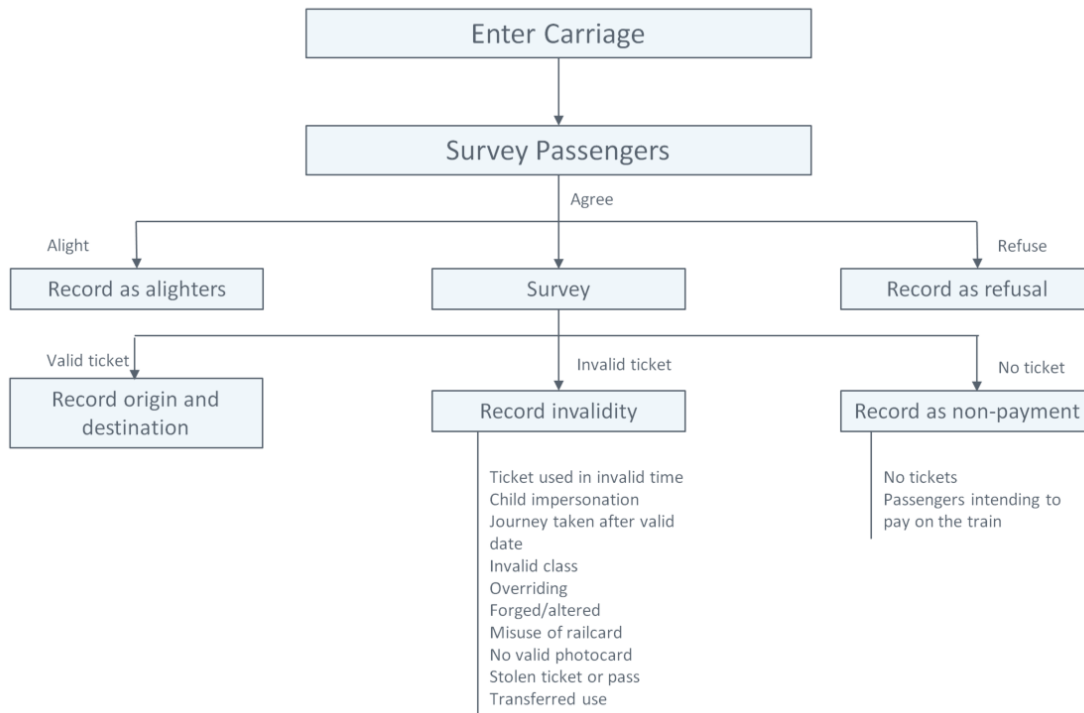
### **Collecting Sample Observations**

1.18 This section describes a preferred method for sampling passengers across the network.

1.19 Sampling will only occur on board train services rather than at stations. In all cases, i.e. for every single service sampled, the surveyor will record the route, date and time of the service and adopt the approach shown below to determine the status of each passenger's ticket type:

- (a) The surveyor will enter the carriage to survey passengers.
- (b) Any passengers that either are seen to alight from the carriage or refuse to participate are recorded, together with the station at which they alighted.
- (c) Of those who do participate in the survey the surveyor will determine if:
  - (i) the passenger is travelling with a valid ticket;
    - (A) if so the type of ticket together with the origin and destination of the journey is recorded. The surveyor should also record if the ticket is held within smart media or on paper.
  - (ii) the passenger is travelling with an invalid ticket
    - (A) the surveyor must record the reason for this
  - (iii) the passenger is travelling without any ticket
    - (A) the surveyor must record instances where the passenger stated (ideally unprompted) an intention to buy their ticket on the train

1.20 The figure below provides an overview of the approach to be adopted.



- 1.21 All surveyors will need to be equipped with a 'reader' that allows the status of any smart card media that exists at the time to be ascertained.
- 1.22 The surveys will be undertaken by a team of suitably trained surveyors who, for health and safety reasons, will work in pairs of two at all times, but survey passengers on an individual basis. So arrival at stations, entry into carriages and time in carriages will be in pairs, whilst surveys will be carried out in the same carriage with each surveyor working individually to maximise speed of sample collection.
- 1.23 At the beginning of each shift, surveyors will be provided with a detailed schedule, which stipulates the routes that are to be covered and the times and stations of boarding and alighting the trains. A clear distinction here is that surveyors are not permitted to select trains at random throughout the day, but rather collect samples to a predefined survey plan, described above.
- 1.24 Surveys at the weekend are required to have an even distribution between Saturdays and Sundays. It is important that the survey period avoids line closures through engineering works, event days, school holidays or public holidays, etc. as far as reasonably practicable.

### Managing refusals

- 1.25 The level of accuracy of any ticketless travel survey is in part dictated by the uncertainty surrounding refusals. As such, a key objective of this specification is to seek to reduce

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the level of refusals to a minimum. The following steps have been identified to assist with this:

- (a) Surveyors must be dressed professionally in line with what would be expected of a railway official.
- (b) Prior to commencing surveys, a surveyor will make an announcement to all passengers on entering each carriage, stating they are performing a survey looking at ticket usage on behalf of the Authority.
- (c) Surveyors will have to use judgement to choose the best approach with different groups of travellers.
- (d) Surveyors will be carrying out a data collection only role and thus will not be taking punitive action against those travelling without a valid ticket. Explaining this clearly to travellers is likely to lower the refusal rate.
- (e) Surveyors must wear professionally produced name badges which will bear both the ODP and Authority logos.

1.26 Refusals should be recorded against the service survey.

#### **Working with revenue protection staff**

1.27 During the course of a survey, it may be possible for surveyors to encounter conductors, or other staff engaged in revenue protection activity. When boarding any train, surveyors should first attempt to find any conductor or revenue protection staff. Even if a staff member is present and has checked passenger tickets, you are expected to still go through the whole train to survey passengers, even if they have already had their tickets checked. You should also be aware that in some circumstances a conductor may follow you through the train checking tickets.

#### **Ticketless Travel and Revenue-at-risk Metrics**

1.28 For each survey a report should be produced detailing the results, covering at least the following areas:

- (a) Methodology and sample
- (b) Breakdown of irregularities
- (c) Irregularity rates – weighted by demand and revenue
- (d) Estimated revenue-at-risk

1.29 Captured data is processed in two stages once the survey is completed:

- 
- (a) Data cleaning; and
  - (b) Irregularity weighting calculations.

#### **Data cleaning**

1.30 Data cleaning involves cross-checking the data to

- (a) Recode any records that have been misclassified; and
- (b) Exclude any observations that have been biased in some way.

1.31 Exclusions normally occur when much of a carriage refused to be surveyed due to a group effect, i.e. one person refusing and several others subsequently doing the same, and when passengers were recorded carrying ambiguous ticket types.

#### **Irregularity weighting calculations**

1.32 A process of re-weighting the survey sample is necessary to develop the network weighted results of ticketless travel and revenue-at-risk. Whereas the survey sample gives each observation equal weight regardless of the service group or time period in which it was taken, re-weighting allows those service groups and time periods with the highest volume of passengers to contribute more to the overall ticketless travel rate than those with lower number of passengers.

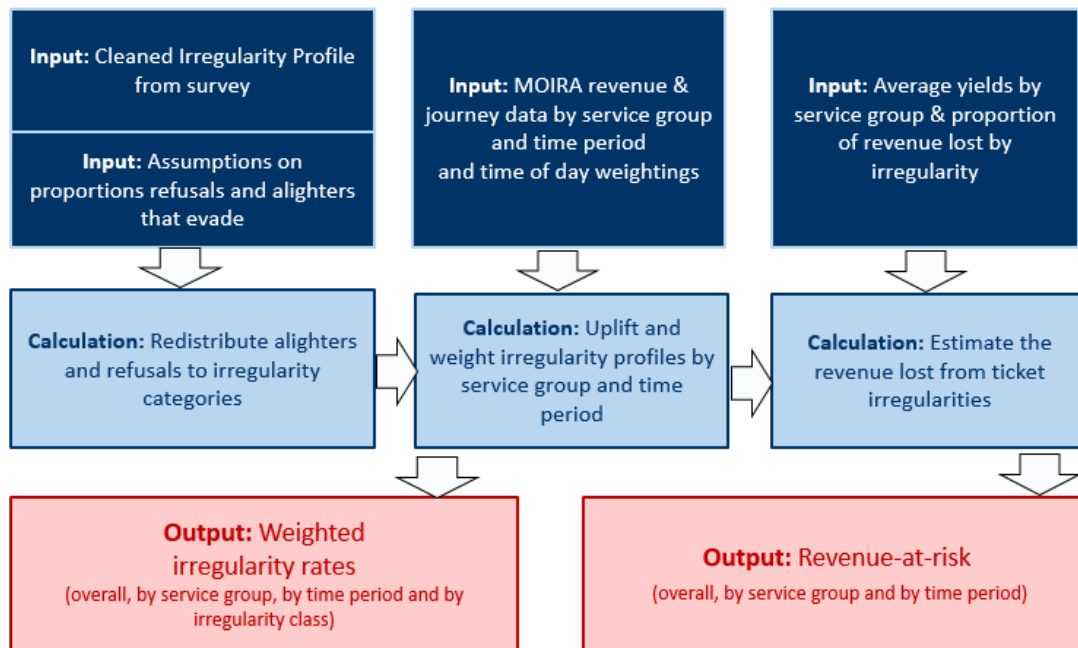
1.33 Data is grouped by service group and time period into segments which form the basic blocks to which the following two reassigning and weighting calculations are performed, as described below:

- (a) Reassigning alighters and refusals; and
- (b) Weighting according to passenger journeys in each service group/time period segment.

1.34 The output is a weighted irregularity rate, which is an estimate of the percentage of journeys taken without a valid ticket. Weighted irregularity rates are calculated for each service group and time period, and combined to give the overall weighted irregularity rate for the franchise.

1.35 The irregularity profile is combined with average yields for each service group and the revenue lost for each irregularity type calculated to produce the revenue-at-risk figure and rates.

1.36 The figure below illustrates the calculation process.



### Refusals and Alighters

- 1.37 Assumptions are required on the likely status of those passengers who either refused to have their tickets checked or alighted before the check could be undertaken. Different assumptions on refusals and alighters produce three cases:
- High Case – assumes that 75% of refusals fare evade and 25% alighters fare evade
  - Central Case – assumes that 50% of refusals fare evade and alighters fare evade at the average rate observed from all other respondents in the relevant service group and time period segment
  - Low Case – assumes that both refusals and alighters fare evade at the average rate observed from all other respondents in the relevant service groups and time period segment

### Weighting for service group and time period

- 1.38 Recorded observations are grouped by service group and time period. Each group then needs to be given an appropriate weight to reflect the different number of journeys taken on different service groups and at different times of the day/week. The weightings used are ideally derived from annual LENNON data covering the appropriate year. Table 1 below illustrate the values used for the base year survey calculation, which, because of data availability issues were based on MOIRA, rather than LENNON, data.

**Table 1: Journeys-based weights**



| Route                                    | Mond<br>ay-<br>Friday<br>06:00-<br>09:59 | Mond<br>ay-<br>Friday<br>10:00-<br>15:59 | Mond<br>ay-<br>Friday<br>16:00-<br>18:59 | Mond<br>ay-<br>Friday<br>19:00-<br>01:00 | Sat'da<br>y | Sunda<br>y  | Total              |
|--|--|--|--|--|-------------|-------------|--------------------|
| <b>CVL</b>                               | <b>9.5%</b>                              | <b>6.4%</b>                              | <b>9.1%</b>                              | <b>1.5%</b>                              | <b>2.4%</b> | <b>1.6%</b> | <b>30.6%</b>       |
| <b>WCB</b>                               | <b>18.9%</b>                             | <b>16.3%</b>                             | <b>17.5%</b>                             | <b>4.5%</b>                              | <b>7.2%</b> | <b>5.1%</b> | <b>69.4%</b>       |
| <i>South, West and Central<br/>Wales</i> | 3.6%                                     | 3.2%                                     | 3.4%                                     | 0.8%                                     | 1.4%        | 1.0%        | 13.4%              |
| <i>Wales to England</i>                  | 1.1%                                     | 0.8%                                     | 1.2%                                     | 0.2%                                     | 0.4%        | 0.3%        | 4.0%               |
| <i>Cambrian</i>                          | 3.8%                                     | 3.5%                                     | 3.4%                                     | 1.0%                                     | 1.5%        | 1.0%        | 14.1%              |
| <i>Cardiff Valleys - Non-CVL</i>         | 4.0%                                     | 2.1%                                     | 3.2%                                     | 0.6%                                     | 1.3%        | 0.9%        | 12.1%              |
| <i>Marches</i>                           | 3.2%                                     | 3.0%                                     | 3.0%                                     | 0.9%                                     | 1.3%        | 0.9%        | 12.2%              |
| <i>ATW North Wales Rural</i>             | 0.4%                                     | 0.5%                                     | 0.3%                                     | 0.1%                                     | 0.2%        | 0.1%        | 1.6%               |
| <i>ATW North Wales Inter<br/>Urban</i>   | 2.8%                                     | 3.2%                                     | 3.0%                                     | 1.0%                                     | 1.3%        | 0.9%        | 12.0%              |
| <b>Total</b>                             | <b>28.5%</b>                             | <b>22.6%</b>                             | <b>26.6%</b>                             | <b>6.0%</b>                              | <b>9.7%</b> | <b>6.7%</b> | <b>100.0<br/>%</b> |

### Estimating Revenue-at-risk

1.39 Weighted irregularity rates do not take account of the yield of each journey and therefore its contribution to overall revenue. The total revenue is weighted using LENNON data to calculate revenue for each service group. Again, the base case figures provided as an illustration here in Table 2, used MOIRA data rather than LENNON data.

**Table 2: Revenue-based weights**

| Route                                    | Mond<br>ay-<br>Friday<br>06:00-<br>09:59 | Mond<br>ay-<br>Friday<br>10:00-<br>15:59 | Mond<br>ay-<br>Friday<br>16:00-<br>18:59 | Mond<br>ay-<br>Friday<br>19:00-<br>01:00 | Sat'da<br>y  | Sunda<br>y  | Total         |
|--|--|--|--|--|--------------|-------------|---------------|
| <b>CVL</b>                               | <b>4.4%</b>                              | <b>2.9%</b>                              | <b>4.2%</b>                              | <b>0.7%</b>                              | <b>1.2%</b>  | <b>0.8%</b> | <b>14.2%</b>  |
| <b>WCB</b>                               | <b>21.2%</b>                             | <b>19.7%</b>                             | <b>20.0%</b>                             | <b>5.6%</b>                              | <b>10.6%</b> | <b>8.7%</b> | <b>85.8%</b>  |
| <i>South, West and Central<br/>Wales</i> | 3.4%                                     | 3.0%                                     | 3.2%                                     | 0.8%                                     | 1.6%         | 1.3%        | 13.2%         |
| <i>Wales to England</i>                  | 1.0%                                     | 0.7%                                     | 1.0%                                     | 0.2%                                     | 0.5%         | 0.4%        | 3.7%          |
| <i>Cambrian</i>                          | 4.6%                                     | 4.2%                                     | 4.1%                                     | 1.2%                                     | 2.2%         | 1.8%        | 18.0%         |
| <i>Cardiff Valleys - Non-CVL</i>         | 1.4%                                     | 0.7%                                     | 1.1%                                     | 0.2%                                     | 0.5%         | 0.4%        | 4.4%          |
| <i>Marches</i>                           | 6.8%                                     | 6.5%                                     | 6.3%                                     | 1.9%                                     | 3.4%         | 2.8%        | 27.6%         |
| <i>ATW North Wales Rural</i>             | 0.2%                                     | 0.2%                                     | 0.2%                                     | 0.0%                                     | 0.1%         | 0.1%        | 0.8%          |
| <i>ATW North Wales Inter<br/>Urban</i>   | 4.0%                                     | 4.4%                                     | 4.2%                                     | 1.4%                                     | 2.2%         | 1.8%        | 18.0%         |
| <b>Total</b>                             | <b>25.6%</b>                             | <b>22.6%</b>                             | <b>24.2%</b>                             | <b>6.3%</b>                              | <b>11.8%</b> | <b>9.5%</b> | <b>100.0%</b> |

1.40 In addition, the amount of revenue lost for each type of irregularity should be calculated. Table 3 shows an example of the rates used for the base year survey processing.

**Table 3: Revenue lost by irregularity type**

| Passenger Class                 | Proportion of average yield lost |
|---------------------------------|----------------------------------|
| Non-payment                     | 100%                             |
| Used at invalid time            | 100%                             |
| Child impersonation             | 50%                              |
| Journey taken after valid date  | 100%                             |
| Journey taken before valid date | 100%                             |
| Invalid Class                   | 74%                              |
| Overriding                      | 90%                              |
| Forged/Altered                  | 100%                             |
| Misuse of railcard              | 34%                              |
| No photocard                    | 100%                             |
| Transferred use                 | 100%                             |

1.41 For each service group/time period survey allocation, the proportions of each irregularity are multiplied by their revenue loss and then aggregated. To calculate the overall revenue-at-risk, weightings for each segment are then applied.

1.42 A high overall irregularity rate does not necessarily mean a high associated revenue-at-risk for the following reasons:

- (a) Variation in the distribution of revenue and journeys between service groups; and
- (b) Differing profiles of irregularities which has a direct impact on the revenue-at-risk

1.43 The revenue-at-risk should be calculated and reported on as a proportion of the total revenue of each service group (and of each time period).

### Results

1.44 The report should set out results for all of the relevant metrics, by survey allocation, for CVL and WCB, and overall:

- (a) Irregularity rate
- (b) Revenue at risk value
- (c) Revenue at risk rate, which is the rate used to compare against the benchmarks in the Grant Agreement.

1.45 Margins of error should be calculated, based on rate and sample size and reported at the 95% confidence interval. The high level results from the base year are shown in Table 4 below.

### Table 4: Grouped results

[REDACTED]



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**Schedule 7.5 - CVL Restrictions of Use**

**1 DEFINITIONS**

For the purposes of this Schedule 7.5 (CVL Restrictions of Use) only, the following words and expressions shall have the following meanings:

**“Applicable Timetable”** means, in respect of any day, that part of the Working Timetable in respect of that day which is required to be drawn up in accordance with Condition D2.1.1 of the Network Code as at 22:00 hours on the day prior to that day;

**“Applicable Timetable Planning Rules”** means the Timetable Planning Rules in force in respect of the Routes on the date on which Rail Services may first be operated by the ODP under the ODP Grant Agreement, as from time to time amended or replaced under Part D of the Network Code;

**“Corresponding Day”** means, in respect of any day (the “first day”):

- (a) a day which is contained in the same Timetable Period as the first day and on which the Services scheduled in the New Working Timetable are the same as would have been scheduled on the first day but for Restrictions of Use reflected in the New Working Timetable for the first day; or
- (b) if no day is found under paragraph (a) above, then a day which is contained in the equivalent Timetable Period for the time of year, in the year immediately preceding the Timetable Period which includes the first day and on which the Rail Services scheduled in the New Working Timetable are the same as would have been scheduled on the first day but for Restrictions of Use reflected

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in the New Working Timetable for the first day; or

- (c) if no day is found under paragraph (a) or (b) above, such other day as the parties may agree

**“Corresponding Day Timetable”** means, in relation to a Corresponding Day, the New Working Timetable or such other timetable as may be agreed between the parties;

**“D-26”** D-X refers to x number of weeks before the Timetable Change Date on which the Working Timetable containing the first proposed Restriction of use will come into effect;

**“Default Interest Rate”** is two (2) percent above the base lending rate of Barclays Bank PLC as varied from time to time;

**“Demand Factor”** means the multiplication factor based on the day of the week and time of year as set out in paragraph 8.16;

**“Disrupted”** means:

- (a) cancelled;
- (b) diverted off the Route over which it was scheduled to run in the Corresponding Day Timetable; and
- (c) starting or finishing short in comparison with the Service as timetabled in the Corresponding Day Timetable;

**“Excess Generalised Journey Time” or “EGJT”** means as calculated in accordance with paragraph 8.7;

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|  |  |
|--|--|
| <b>“Generalised Journey Time” or “GJT”</b>     | means as calculated in accordance with paragraph 8.7;  |
| <b>“New Working Timetable”</b>                 | means, in respect of any day, the version of the Working Timetable for that day provided by ODP;   |
| <b>“Notification Factor”</b>                   | means as calculated in accordance with paragraph 8.10;   |
| <b>“Over-run”</b>                              | occurs where there is a Disrupted CVL Rail Service not in accordance with the Restriction of Use Plan which is expected to over-run and the ODP is able to update the Working Timetable accordingly (i.e. at any time up to 22:00 the day before the Restriction of Use);  |
| <b>“Payment Rate”</b>                          | shall be as set out in Appendix 2 of this Schedule 7.5;  |
| <b>“Peak”</b>                                  | means Services Scheduled on any Weekday (excluding Public Holidays) (i) to arrive at Cardiff Central between 0630 and 0900 on a weekday; or Depart Cardiff Central between 1600 and 1830 on a weekday; or Arrive or depart Cardiff Central between 0900 and 1700 on a Saturday, and “Peak” shall be construed accordingly; |
| <b>“Possession Type Multiplication Factor”</b> | shall be calculated in accordance with paragraph 8.14;   |
| <b>“Public Holiday”</b>                        | means any day other than Saturday or Sunday on which the banks in the City of London or Cardiff are not open for business;   |
| <b>“Recovery Allowance”</b>                    | means an allowance for additional time incorporated in the New Working Timetable or the Applicable Timetable to allow a Train to   |

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|                                  |  |
|----------------------------------|--|
|                                  | regain time lost during an earlier part of its journey;  |
| <b>“Restriction of Use”</b>      | means, in respect of any day, any restriction of use of all or any part of the Routes (other than one caused by a Recovery Allowance) which was contained in the Applicable Timetable Planning Rules relevant to that day notified to each Timetable Participant on or before D-26 which results in: <ul style="list-style-type: none"> <li>(a) a difference between the Applicable Timetable on that day as compared with the New Working Timetable in respect of that day; and/or</li> <li>(b) a difference between the New Working Timetable on that day as compared with the Corresponding Day Timetable in respect of the Corresponding Day;</li> </ul> |
| <b>“Restriction of Use Day”</b>  | means any day on which ODP Restriction of Use is taken or deemed to be taken;  |
| <b>“Restriction of Use Plan”</b> | means the plan the ODP is required to prepare for the Authority’s approval subject to paragraph 3 and that aligns with the long term asset management strategy of the Authority for the CVL;   |
| <b>“Routes”</b>                  | means any route that forms part of the CVL;  |
| <b>“Service Group”</b>           | means any one or more (as the context may require) of the service groups described in this Schedule;   |
| <b>“Suspension Notice”</b>       | means a notice in writing served by the Authority on the ODP to suspend the Rail   |

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|                                    |  |
|------------------------------------|--|
|                                    | Services where a default has occurred and is continuing;   |
| <b>“Timetable Change Date”</b>     | shall have the meaning shown in Condition D2.1.3 of the Network Code;  |
| <b>“Timetable Participant”</b>     | shall have the meaning ascribed to it in Part D of the Network Code;   |
| <b>“Type 1 Restriction of Use”</b> | means a single Restriction of Use to any part of a network for a period of less than 60 consecutive hours which does not fall within the definition of Type 2 Restriction of Use and Type 3 Restriction of Use;  |
| <b>“Type 2 Restriction of Use”</b> | means: <ul style="list-style-type: none"> <li>(a) a single Restriction of Use of more than 60 consecutive hours (excluding any part of that Restriction of Use which occurs during a Public Holiday); and</li> <li>(b) which results in a Rail Service being Disrupted</li> </ul> but excluding any Restriction of Use which falls within the definition of Type 3 Restriction of Use; |
| <b>“Type 3 Restriction of Use”</b> | means a single Restriction of Use of more than 120 consecutive hours (including any part of that Restriction of Use which occurs during a Public Holiday);   |
| <b>“TW-22”</b>                     | TW refers to the commencement of a Timetable Week (TW). So for example, TW-22 refers to the 22nd week prior to the start of a given Timetable Week;  |



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**“Week”** means a period commencing at 00:00:00 hours on any Saturday and ending at 23:59:59 hours on the next following Friday; and

**“Working Timetable”** means as set out in Condition D2.1 and 2.1.6 of the Network Code.

## **2 PURPOSE AND APPLICATION OF SCHEDULE**

2.1 This Schedule shall apply in respect of all Restrictions of Use on the CVL where the Infrastructure Manager role is undertaken by the ODP.

2.2 This Schedule 7.5 sets out:

- (a) the Authority’s requirements for the Restriction of Use Plan and the process by which the ODP shall plan any Restriction of Use for any ODP Year;
- (b) the approval process for the Restriction of Use Plan;
- (c) the notification process for Restrictions of Use;
- (d) the ODP's obligation to report to the Authority each ODP Year on the actual Restrictions of Use; and
- (e) the calculation for payments due by ODP to the Authority where there are any Over-runs.

2.3 The provisions of this Schedule shall be without prejudice to:

- (a) any other rights the Authority may have under the ODP Grant Agreement;
- (b) the establishment of any amended Timetable under Part H of the Network Code; and
- (c) any rights the ODP may have to challenge any decision of the Authority.

2.4 The Parties accept that a Restriction of Use shall only be treated as a Restriction of Use and subject to this Schedule to the extent that it involves a Restriction of Use of all or any part of the Routes which is not covered by a restriction under any Suspension Notice.

2.5 Any reference in this contract to the term “possession”, whether on its own or in composite, should be construed as “Restriction of Use” as defined in this Schedule.

## **3 RESTRICTION OF USE PLAN: AUTHORITY REQUIREMENTS**

3.1 The Restriction of Use Plan shall, as a minimum, include:

- (a) the Type 1, Type 2 and Type 3 Restriction of Uses planned for that ODP Year;
- (b) the commencement date and schedule of each Restriction of Use;

- 
- (c) the routes affected by each Restriction of Use;
  - (d) any changes to the relevant TSR necessary to accommodate any Restriction of Use or the Restriction of Use Plan as a whole;
  - (e) the planned notification schedule to include proposed timings and methods of communication to ensure passengers and other stakeholders are provided with reasonable advance notice of the Restriction of Use; and
  - (f) the identification of any reasonably predictable risks that might impact on the Restriction of Use Plan and set out ODP's proposed mitigation arrangements.

#### **4 RESTRICTION OF USE PLAN: APPROVAL PROCESS**

- 4.1 By no later than sixteen (16) weeks prior to the Asset Transfer Date, and each anniversary of the ODP Year thereafter, the ODP shall provide for the Authority's approval a Restriction of Use Plan for that ODP Year. The initial Restriction of Use Plan shall cover the period after the Asset Transfer Date and up to the next ODP Year anniversary.
- 4.2 The Authority may require ODP to provide further information in addition to the above criteria for the Restriction of Use Plan. The ODP shall use all reasonable endeavours to update the Restriction of Use Plan and provide the additional information to the Authority within four (4) weeks of receiving a request from the Authority.
- 4.3 The Parties shall agree the Restriction of Use Plan no less than twelve (12) weeks before the Asset Transfer Date or each anniversary of the ODP Year thereafter (for the relevant ODP Year).
- 4.4 If the Parties fail to reach an agreement within twenty eight (28) days, either party may refer the matter for resolution in accordance with the dispute resolution procedure set out in clause 11 of this Agreement..

#### **5 APPROVAL PROCESS FOR CHANGES TO THE RESTICTION OF USE PLAN**

- 5.1 As soon as reasonably practicable, the ODP shall inform the Authority with written notice of any proposed change to the Restriction of Use Plan including but not limited to where a planned allowance for journey time may be exceeded.
- 5.2 The Authority shall consider the proposal and may approve a proposed change(s) to the Restriction of Use Plan. Consent from the Authority is not to be unreasonably withheld.
- 5.3 Any change to the Restriction of Use Plan, regardless of any consent given by the Authority, shall trigger the payment obligations under paragraph 8 below.

#### **6 NOTIFICATION PERIODS**

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- 6.1 The ODP shall use reasonable endeavours to provide the Authority and passengers with as much notice as reasonably possible of any Over-run or Restriction of Use. As a minimum, the ODP shall ensure that at least twelve (12) weeks before each Restriction of Use set out in the Restriction of Use Plan commences:
- (a) any timetable affected by the relevant Restriction of Use has been updated accordingly; and
  - (b) the Authority and/or passengers have been updated of such changes to the timetable.
- 6.2 To the extent that any change to the Working Timetable caused by a Restriction of Use is not reflected by the ODP amending such Timetable pursuant to Paragraph 6.1(a), such a change, which shall include any unscheduled delay to the completion of any planned Restriction of Use, shall be subject to the provisions of Schedule 7.1 (Operational Performance).
- 6.3 The ODP shall be liable for any and all costs arising from or in connection with a Restriction of Use including but not limited to: costs of communications, lost revenue costs and costs incurred in managing the disruptions such as procurement of any rail replacement bus services.

## **7 REPORTING**

- 7.1 The ODP shall report to the Authority every Reporting Period from the Asset Transfer Date or each anniversary of the ODP Year thereafter on the following:
- (a) progress of current Restrictions of Use as set out in the Restrictions of Use Plan;
  - (b) any issues that may cause an Over-run;
  - (c) any mitigation factors that the ODP is taking in relation to any possible Over-run;
  - (d) any divergences from the Restrictions of Use Plan; and
  - (e) explanation of how the ODP intends to keep the excess journey times within the planned allowance.
- 7.2 The ODP shall as soon as reasonably practicable after the end of each ODP Year report to the Authority on the following:
- (a) descriptions of each Restriction of Use taken;
  - (b) the actual number of Restrictions of Use for the ODP Year; and
  - (c) comparison of actual Restrictions of Use against the Restriction of Use Plan including a value for EGJT (calculated in accordance with paragraph 8.7).

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## 8 CALCULATION OF PAYMENTS BY ODP TO THE AUTHORITY

8.1 The ODP shall pay the Authority in accordance with this paragraph 8 where there are any Over-runs and/or any change to the Restriction of Use Plan (regardless of whether Authority approval has been given in accordance with paragraph 5 above).

### 8.2 Calculation Formula

Restriction of Use Payment =  $\text{Min}(0, \text{Total Agreed Plan Possession Payment} - \text{Total Actual Possession Payment}) \times (\text{RPI} + 0.04)$

Where:

- (a) Total Agreed Plan Possession Payment = the amount of total payment that would be due under the Restriction of Use Plan had the original agreed planned level of possessions been carried out
- (b) Total Agreed Plan Possession Payment =  $\sum \text{Daily Agreed Plan Possession Payment}$
- (c) Daily Agreed Plan Possession Payment =  $\text{Payment Rate} * \text{EGJT} * \text{NF} * \text{PTMF} * \text{DF}$
- (d) Total Actual Possession Payment = the amount of total payment that would be due as a result of the actual level of possessions carried out

Total Actual Possession Payment =  $\sum \text{Daily Actual Possession Payment}$

8.3 The Daily Agreed Plan Possession Payment and the Daily Actual Possession Payment calculation shall be applied to each day in which the Actual Plan Restriction of Use is different from the Agreed Restriction of Use Plan.

8.4 The calculation shall be made on an annual basis starting with the Asset Transfer Date and each anniversary of the ODP Year thereafter until the end of the ODP Grant Agreement Term.

Where:

- (a) EGJT is calculated in accordance with the formula set out in paragraph 8.7.
- (b) Notification Factor (“**NF**”) shall be determined as set out in paragraph 8.10.
- (c) Possession Type Multiplication Factor (“**PTMF**”) is set out below in paragraph 8.14.
- (d) Demand Factor (“**DF**”) shall be determined in accordance with paragraph 8.16.

8.5 The Restriction of Use Payment shall be subject to an annual cap of [REDACTED] (indexed) (the “**Possessions Payment Cap**”).

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8.6 There shall be no bonus payment where the Total Actual Possession Payment is lower than the Total Agreed Planned Possession Payment.

8.7 Excess Generalised Journey Time Calculation

$$EGJT = GJT_p - GJT_n$$

Where:

EGJT = Excess Generalised Journey Time

$GJT_p$  = Generalised Journey Time during possession

$GJT_n$  = Generalised Journey Time during normal operation

8.8 Both  $GJT_p$  and  $GJT_n$  are calculated daily for each day of a possession, as the demand-weighted average GJT, where demand-weighted average GJT should take into account different levels of demand by time of day, direction and train service group. The ODP shall calculate the EGJT by day type for the length of the Restriction of Use: Weekday, Saturday, Sunday and Bank Holiday. Both  $GJT_p$  and  $GJT_n$  shall be calculated across all flows for which the majority of the journey (as determined by portion of the mileage on the flow) is made on CVL Rail Services.

8.9 Both  $GJT_p$  and  $GJT_n$  are calculated according to the following formula:

$$GJT = (\text{Modal penalty} * \text{In-vehicle journey time}) + \text{Service interval frequency penalty} + \text{Interchange penalty}$$

Where:

Modal penalty = 1 for rail services and 2 for non-rail (i.e. bus replacement) services.

Interchange penalty includes both the PDFH-related value for time cost of an interchange and the time taken between services.

The In-vehicle journey time, Service interval frequency penalty and the Interchange penalty should adhere to the requirements of the Passenger Demand Forecasting Handbook (“PDFH”) that is available within the year to which the calculation refers.

8.10 **Notification Factors**

8.11 **Early notification**

The Notification Factor in respect of a Restriction of Use in respect of any Service Group shall have the value specified for that Service Group in column C of Appendix 1 to this Schedule 7.5 if and to the extent that:

- 
- (a) the Restriction of Use is reflected in the New Working Timetable; or
  - (b)
    - (i) details of the Restriction of Use are notified to the Authority on or before D-26 for the Timetable Period in respect of the Restriction of Use Day but, at the request of the Authority (as accepted by ODP), are not reflected in the New Working Timetable; and
    - (ii) subject to paragraph 8.11(b)(iii), the Restriction of Use is reflected in the Working Timetable as entered into the train service database at 22:00 hours on the day which is twelve (12) Weeks before the Restriction of Use Day; or
    - (iii) where paragraph 8.11(b)(ii) does not apply because the ODP has failed to revise the Access Proposal in accordance with Condition D3.4.9 of the Network Code, the Restriction of Use is reflected in the Applicable Timetable in respect of the Restriction of Use Day.

#### 8.12 Notification by TW-22

The NF in respect of a Restriction of Use in respect of any Service Group shall have the value specified for that Service Group in column D of Appendix 1 to this Schedule 7.5 if and to the extent that paragraph 8.11 does not apply, and:

- (a) details of the Restriction of Use are notified to the Authority by TW -22; and
- (b)
  - (i) the Restriction of Use is reflected in the Working Timetable as entered into the train service database at 22:00 hours on the day which is twelve (12) Weeks before the Restriction of Use Day; or
  - (ii) where paragraph 8.12(b)(i) does not apply because the ODP has failed to revise the Access Proposal in accordance with Condition D3.4.9 of the Network Code, the Restriction of Use is reflected in the Applicable Timetable in respect of the Restriction of Use Day.

#### 8.13 Late Notification

The NF in respect of a Restriction of Use in respect of any Service Group shall have the value specified for that Service Group in column E of Appendix 1 to this Schedule 7.5 if and to the extent paragraphs 8.11 and 8.12 do not apply but the Restriction of Use is reflected in the Applicable Timetable, and includes where paragraph 8.11(b) or paragraph 8.12 would have been applicable but for a failure by ODP to fulfil the terms of paragraph

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8.11(b)(i) or paragraph 8.12(b)(i) respectively, notwithstanding the revised Access Proposal in accordance with Condition D3.4.9 of the Network Code.

**8.14 Possession Type Multiplication Factor**

8.15 The Possession Type Multiplication Factor shall correspond to the relevant Type of Restriction of Use: Type 1 Restriction of Use, Type 2 Restriction of Use and Type 3 Restriction of Use.

| <b>Possession Type</b>    | <b>Possession Type Multiplication Factor</b> |
|---------------------------|--|
| Type 1 Restriction of Use | 1.0  |
| Type 2 Restriction of Use | 1.2  |
| Type 3 Restriction of Use | 1.5  |

**8.16 Demand Factor**

8.17 The Demand Factor shall be based on the day of the week that the Restriction of Use occurs:

| <b>Day of the Week</b> | <b>Multiplication Factor</b> |
|------------------------|------------------------------|
| Weekday                | 1.15                         |
| Saturday               | 0.80                         |
| Sunday                 | 0.50                         |
| Bank Holiday           | 0.80                         |

**8.18 Changes to Restrictions of Use**

8.19 Where a single Restriction of Use falls within the definition of one type of Restriction of Use and there is a change which means that no Restriction of Use occurs or that the Restriction of Use occurs as another type of Restriction of Use, then that Restriction of Use shall be treated, for the purposes of the calculation and payment of compensation, as if it had always been the latter type of Restriction of Use (or, where applicable, as if it had not been a Restriction of Use).

8.20 A Restriction of Use shall be deemed to be taken if and to the extent that it results in any difference between timetables of the type referred to in the definition of "Restriction of

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Use” when notified, whether or not the restriction giving rise to that Restriction of Use was subsequently cancelled in whole or in part.

**9 PAYMENT PROCEDURES**

9.1 The ODP shall calculate the payments due to the Authority under this Schedule 7.5 annually, starting with the Start Date of the ODP Year and ending at the conclusion of the ODP Grant Agreement Term.

9.2 The ODP shall send the calculation to the Authority within seven (7) days of the end of each ODP Year (“**Proposed Payment**”).

9.3 Following receipt of the Proposed Payment, the Authority may review and amend the calculation. The Parties shall negotiate to agree the Proposed Payment for no longer than fourteen (14) days.

9.4 Once the Authority is satisfied it shall give written approval of the Proposed Payment. The ODP shall then pay the Authority the determined amount due within fourteen (14) days of the Authority’s written notice that the Proposed Payment is agreed.

**9.5 Payments in the event of a dispute**

9.6 Where any amount under this Schedule 7.5 is in dispute:

- (a) the undisputed amount shall be paid in accordance with paragraph 9;
- (b) the disputed amount shall be paid within twenty eight (28) days after the dispute is resolved or determined to the extent that amount in dispute is adjudged or resolved to be payable; and
- (c) the disputed amount shall carry interest (incurred daily and compounded monthly) at the Default Interest Rate from the date which such amount would but for such dispute have been due to be paid until the date of payment.



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**Appendix 1 to Schedule 7.5 – Notification Factors**

|                                  | <b>A</b>                  | <b>B</b>    | <b>C</b>       | <b>D</b>        | <b>E</b>           |
|----------------------------------|---------------------------|-------------|----------------|-----------------|--------------------|
| <b>Service Group Description</b> | <b>Service Group Code</b> | <b>Type</b> | <b>By D-26</b> | <b>By TW-22</b> | <b>After TW-22</b> |

|                 |      |          |     |      |      |
|-----------------|------|----------|-----|------|------|
| Cardiff Valleys | HL05 | Off Peak | 0.5 | 0.68 | 0.85 |
| Cardiff Valleys | HL05 | Peak     | 0.5 | 0.68 | 0.85 |

**Appendix 2 to Schedule 7.5 – Payment Rates**

| Year  |           | ODP Year            | Payment Rate |
|---|-----------|---------------------|--------------|
| From  | To        |                     |              |
| 14-Oct-18                                   | 31-Mar-19 | Year 1              | [REDACTED]   |
| 01-Apr-19                                   | 31-Mar-20 | Year 2              | [REDACTED]   |
| 01-Apr-20                                   | 31-Mar-21 | Year 3              | [REDACTED]   |
| 01-Apr-21                                   | 31-Mar-22 | Year 4              | [REDACTED]   |
| 01-Apr-22                                   | 31-Mar-23 | Year 5              | [REDACTED]   |
| 01-Apr-23                                   | 31-Mar-24 | Year 6              | [REDACTED]   |
| 01-Apr-24                                   | 31-Mar-25 | Year 7              | [REDACTED]   |
| 01-Apr-25                                   | 31-Mar-26 | Year 8              | [REDACTED]   |
| 01-Apr-26                                   | 31-Mar-27 | Year 9              | [REDACTED]   |
| 01-Apr-27                                   | 31-Mar-28 | Year 10             | [REDACTED]   |
| 01-Apr-28                                   | 31-Mar-29 | Year 11             | [REDACTED]   |
| 01-Apr-29                                   | 31-Mar-30 | Year 12             | [REDACTED]   |
| 01-Apr-30                                   | 31-Mar-31 | Year 13             | [REDACTED]   |
| 01-Apr-31                                   | 31-Mar-32 | Year 14             | [REDACTED]   |
| 01-Apr-32                                   | 31-Mar-33 | Year 15             | [REDACTED]   |
| 01-Apr-33                                   | 15-Oct-33 | Year 16 (core)      | [REDACTED]   |
| <b>Up to 26 Reporting Periods Extension</b> |           |                     |              |
| 16-Oct-33                                   | 31-Mar-34 | Year 16 (extension) | [REDACTED]   |
| 01-Apr-34                                   | 31-Mar-35 | Year 17 (extension) | [REDACTED]   |
| 01-Apr-35                                   | 13-Oct-35 | Year 18 (extension) | [REDACTED]   |

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## **Schedule 8**

### **Payments**

|               |  |
|---------------|--|
| Schedule 8.1: | Rail Services Payments   |
|               | Appendix 1: Annual Rail Services Payments                            |
|               | Appendix 2: Figures for Calculation of Annual Rail Services Payments |
| Schedule 8.2: | Profit Share Mechanism   |
|               | Appendix 1: Profit Share Thresholds                                  |
|               | Appendix 2: Components of AFA, IAFA and DFR                          |
| Schedule 8.3: | Track Access Adjustments and Station Charge Adjustments              |
| Schedule 8.4: | Revenue Support Adjustment   |
|               | Appendix 1: Contractualised Revenue Line                             |
| Schedule 8.5: | Infrastructure Manager Services Payments                             |
|               | Appendix 1: Fixed Charge Tables                                      |
|               | Appendix 2: Firm charge Tables                                       |
|               | Appendix 3: Emerging Charges Tables                                  |

**Schedule 8.1 – Rail Services Payments**

**1 RAIL SERVICES PAYMENTS**

1.1 The Rail Services Payment for any Reporting Period shall be an amount equal to:

|               |  |
|---------------|--|
| <b>£RSP =</b> | PRSP + TAA + SCA + (PTLCVL x PTLCVLF) + (PTLWCB x PTLWCBF) + (TTCVL x TTCVLF) + (TTWCB x TTWCBF) + SF + PS + RSuA + RSuRA + RSMDP – (RPDRA + RPERA + RPSCRA) |
|---------------|--|

**where:**

|   |  |   |
|---|--|---|
| <b>PRSP</b><br><br>(Periodic Rail Services Payment) | means that part of the Annual Rail Services Payment which is to be made on that Reporting Period's Payment Date being calculated in accordance with the following formula: |   |
|   | $\left( \frac{RPD}{FYD} \times ARSP \right)$   |   |
|   | PRSP may be a positive or negative number. PRSP may be payable by the Authority or the ODP;  |   |
|   | <b>where:</b>  |   |
|   | <b>RPD</b>   | means the number of days in that Reporting Period;  |
|   | <b>FYD</b>   | means the number of days in the ODP Year in which that Reporting Period occurs being three hundred and sixty five (365), or if February 29 falls during that ODP Year, three hundred and sixty six (366) days for every ODP Year other than in respect of any Reporting Period: |
|   | (a)  | which commences during the ODP Year commencing on the Start Date, in which case FYD shall be the number of days during the period from 14 October 2018 to 31 March 2019 (inclusive);  |
|   | (b)  | which commences between 1 April 2033 and 15 October 2033 (inclusive), in which case FYD shall be the number of days between such dates (inclusive);   |

|  |             |  |
|--|-------------|--|
|  |             | <p>(c) which commences between 16 October 2033 and 31 March 2034 (inclusive), in which case FYD shall be the number of days between such dates (inclusive); and</p> <p>(d) which commences between 1 April 2034 and 13 October 2035 (inclusive), in which case FYD shall be the number of days between such dates (inclusive);</p> |
|  | <b>ARSP</b> | means the Annual Rail Services Payment for the ODP Year in which that Reporting Period occurs, as determined in accordance with Appendix 1 ( <i>Annual Rail Services Payments</i> ) to Schedule 8.1 ( <i>Rail Services Payments</i> );   |

|                |  |
|----------------|--|
| <b>TAA</b>     | means any Track Access Adjustment to be made on that Reporting Period's Payment Date. TAA may be a positive or negative number. TAA may be payable by the Authority or the ODP;  |
| <b>SCA</b>     | means any Station Charge Adjustment to be made on that Reporting Period's Payment Date. SCA may be a positive or negative number. SCA may be payable by the Authority or the ODP;  |
| <b>PTLCVL</b>  | means any CVL PTL Performance Payment to be made on that Reporting Period's Payment Date pursuant to paragraph 7.2 of Schedule 7.1 (Operational Performance);  |
| <b>PTLCVLF</b> | <p>means:</p> <p>(a) if the ODP elects prior to the beginning of the ODP Year in which that Reporting Period occurs to be eligible to be paid Revenue Support Adjustments pursuant to paragraph 2 of Schedule 8.4 and the Authority exercises its consequent right to require that contractual incentive mitigations shall apply in relation to the relevant ODP Year and PTLCVL is a negative number, then PTLCVLF shall equal 2.00; or</p> <p>(b) otherwise, PTLCVLF shall equal 1.00;</p> |
| <b>PTLWCB</b>  | means any WCB PTL Performance Payment to be made on that Reporting Period's Payment Date pursuant to paragraph 7.2 of Schedule 7.1 (Operational Performance);  |
| <b>PTLWCBF</b> | means:   |

|               |  |
|---------------|--|
|               | <p>(a) if the ODP elects prior to the beginning of the ODP Year in which that Reporting Period occurs to be eligible to be paid Revenue Support Adjustments pursuant to paragraph 2 of Schedule 8.4 and the Authority exercises its consequent right to require that contractual incentive mitigations shall apply in relation to the relevant ODP Year and PTLWCB is a negative number, then PTLWCBF shall equal 1.85; or</p> <p>(b) otherwise PTLWCBF shall equal 1.00;</p>            |
| <b>TTCVL</b>  | means any Ticketless Travel Payment Adjustment in relation to CVL to be made on that Reporting Period's Payment Date pursuant to paragraph 4 of Schedule 7.4 (Ticketless Travel);  |
| <b>TTCVLF</b> | <p>means:</p> <p>(a) if the ODP elects prior to the beginning of the ODP Year in which that Reporting Period occurs to be eligible to be paid Revenue Support Adjustments pursuant to paragraph 2 of Schedule 8.4 and the Authority exercises its consequent right to require that contractual incentive mitigations shall apply in relation to the relevant ODP Year and TTCVL is a negative number, then TTCVLF shall equal 1.6; or</p> <p>(b) otherwise, TTCVLF shall equal 1.00;</p> |
| <b>TTWCB</b>  | means any Ticketless Travel Payment Adjustment in relation to WCB to be made on that Reporting Period's Payment Date pursuant to paragraph 4 of Schedule 7.4 (Ticketless Travel);  |
| <b>TTWCBF</b> | <p>means:</p> <p>(a) if the ODP elects prior to the beginning of the ODP Year in which that Reporting Period occurs to be eligible to be paid Revenue Support Adjustments pursuant to paragraph 2 of Schedule 8.4 and the Authority exercises its consequent right to require that contractual incentive mitigations shall apply in relation to the relevant ODP Year and TTWCB is a negative number, then TTWCBF shall equal 1.6; or</p> <p>(b) otherwise, TTWCBF shall equal 1.00;</p> |
| <b>SF</b>     | means any Short Formation Performance Sum to be made on that Reporting Period's Payment Date pursuant to paragraph 7.3 (Short Formation Performance Sum) of Schedule 7.1;  |

|               |   |
|---------------|---|
| <b>PS</b>     | means the amount of any payment determined in accordance with paragraph 1.6 of Schedule 8.2 ( <i>Profit Share Mechanism</i> ) to be made on that Reporting Period's Payment Date. PS shall be a negative number for the purposes of this formula. PS is payable by the ODP; |
| <b>RSuA</b>   | means the amount of any payment determined in accordance with paragraph 3 of Schedule 8.4 (Revenue Support Mechanism) to be made on that Reporting Period's Payment Date. RSuA may be a positive or negative number;  |
| <b>RSuRA</b>  | means the amount of any payment determined in accordance with paragraph 6 of Schedule 8.4 (Revenue Support Mechanism) to be made on that Reporting Period's Payment Date. RSuRA may be a positive or negative number;   |
| <b>RSMDP</b>  | means the amount of any Rail Services Milestone Delay Payments.   |
| <b>RPDRA</b>  | means the amount of any payment determined in accordance with paragraph 4.2 of this Schedule 8.1;   |
| <b>RPERA</b>  | means the amount of any payment determined in accordance with paragraph 4.5 of this Schedule 8.1; and.  |
| <b>RPSCRA</b> | means the amount of any payment determined in accordance with paragraph 4.8 of this Schedule 8.1.   |

1.2 **NOT USED.**

1.3 The Parties agree that:

- (a) where **£RSP is a positive number**, the Authority shall pay that amount to the ODP on the Payment Date for that Reporting Period;
- (b) where **£RSP is a negative number**, the ODP shall pay the corresponding positive amount to the Authority on the Payment Date for that Reporting Period;

## **2 PAYMENT OF RAIL SERVICES PAYMENTS**

2.1 The Authority shall notify the ODP, no less than seven (7) days prior to the end of each Reporting Period, of the amount of the Rail Services Payment payable in respect of that Reporting Period.

2.2 Each such notification shall set out in reasonable detail how the Rail Services Payment has been calculated.

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2.3 The Payment Date for a Reporting Period shall be the last Weekday of that Reporting Period.

2.4 Each Rail Services Payment shall be payable by the ODP or, as the case may be, the Authority in the amount notified by the Authority in accordance with paragraph 2.1 on the Payment Date of the Reporting Period to which it relates.

2.5 Each Rail Services Payment shall be made:

- (a) by automatic electronic funds transfer in pounds sterling to such bank account in the United Kingdom as the payee of such payment may have previously specified to the payer in writing; and

so that cleared funds are received in that account on or before the due date for payment.

### **3 INTEREST**

3.1 If either Party fails to pay any amount to the other Party on its due date, it shall in addition pay interest on such amount at the Interest Rate, calculated on a daily basis, from the due date for payment to the date on which payment is made.

3.2 If the amount of any Rail Services Payment is agreed or determined to be incorrect and:

- (a) either Party has made a payment to the other Party which is greater than it would have made if the amount of the Rail Services Payment had been correct, then the recipient shall repay the excess within three (3) Weekdays of the agreement or determination; or
- (b) either Party has made a payment to the other Party which is less than it would have made if the amount of the Rail Services Payment had been correct, then the payer shall pay the amount of any shortfall to the payee within three (3) Weekdays of the agreement or determination,

together, in each case, with interest on the amount payable at the Interest Rate, calculated on a daily basis from the date on which the Rail Services Payment was paid until the date on which such excess amount or shortfall is paid.

### **4 WAGES, DIESEL AND EC4T RECONCILIATION AMOUNT**

4.1 From the beginning of Year 8 of the ODP Grant Agreement, and each ODP Year thereafter, as set out in table 1 to paragraph 4 below, the ODP shall at the same time as the Annual Financial Information is delivered under paragraph 9.4 of Schedule 11.2 (Management Information) deliver to the Authority a report identifying for the previous two (2) ODP Years:

- (a) the actual volumes/usage (as applicable) of diesel and EC4T used to deliver the Rail Services (broken down in respect of each applicable ODP Year);



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- (b) the actual unit rates incurred by the ODP in respect of diesel and EC4T used to deliver the Rail Services;
  - (c) the wage costs incurred by the ODP in respect of the ODP Service Employees;
  - (d) supporting evidence sufficient for the Authority to verify such diesel, EC4T rates and wages evidencing the source and basis for such data to ensure that if procured through Parent or Affiliates of the ODP or OpCo, that there is no double counting. If the diesel or EC4T is procured via a Parent or Affiliate the ODP shall demonstrate to the Authority that such prices reflect wider market rates to avoid excess profits on those contracts

(being, the "**Wages, Diesel and EC4T Report**").

4.1A For clarity, the reference to previous 2 ODP years in paragraph 4.1 above shall be on a rolling basis, i.e. In Year 8, Years 6 & 7 shall form the basis for the report and in Year 9, Years 7 & 8 shall form the basis of the report and this shall continue throughout the term of the Agreement. Furthermore, the Parties acknowledge and agree that, subject to paragraph 4.1(d) above in respect of reflecting wider market rates, nothing in this Schedule 8.1 will restrict the ODP's ability to enter into arrangements with third parties that fix or hedge prices/charges for diesel or EC4T to alleviate the impact on the volatility of these commodities.

4.2 Where the Wages, Diesel and EC4T Report identifies the ODP's costs in relation to the actual two (2) year rolling average outturn unit rates for diesel are less than the average forecast unit rates over the same period (indexed to nominal from column 3 of table 1 to paragraph 4 below), which will be determined to be the case where the value of "ADRA" below is calculated to be greater than zero, the Authority shall reduce the Rail Services Payment for the following ODP Year by the Reporting Period Diesel Reconciliation Adjustment ("RPDRA"). This reduction shall apply from Reporting Period 4 of the ODP Year immediately following the two (2) year review period and be spread over ten (10) equal payments over Reporting Periods 4 to 13 inclusive. At the end of the ODP Grant Agreement, if a deduction is due under this paragraph 4 for the purposes of the ADRA or ADRA1 for the final two ODP Years, then the ODP shall make a single payment to the Authority within twenty-eight (28) days of the end of the ODP Grant Agreement Term. In the event that the final ODP Year is less than 13 Reporting Periods (other than identified part years set out in table 1 to paragraph 4) then the calculation shall be pro rated, using an approach jointly agreed by both parties, to reflect the part year element. In the event an approach cannot be agreed, then the figures will be pro rated to reflect actual days in the period as a proportion of anticipated days for that specific ODP Year (reflective of the days in period set out in table 1 to paragraph 4). In this event the ODP shall make a single payment to the Authority within twenty-eight (28) days of the end of the ODP Grant Agreement Term.

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Where the ODP Year contains 13 Reporting Periods, "RPDRA " shall be calculated as follows:

$$\mathbf{RPDRA (Yrn) = ADRA (Yrn) / 10}$$

Where

**RPDRA (Yrn)** is the RPRDA payment to be made in each of Reporting Periods 4 to 13 inclusive of ODP Year n; and

$$\mathbf{ADRA (Yrn) = (((a + b) / 2) - ((c + d) / 2)) \times 0.65}$$

- (a) is, for the previous ODP Year n-1, the amount shown in column 2 of table 1 to paragraph 4 multiplied by the amount shown in column 3 of table 1 to paragraph 4 indexed by the Retail Price Index (in the same way as variable costs are indexed in Appendix 1 (Annual Rail Services Payment) to Schedule 8.1 (Rail Services Payment) for the ODP Year n-1, provided that if the Authority exercises its right to extend the ODP Grant Agreement pursuant to clause 5.2 (Additional Reporting Periods), if n=17 then the amounts for ODP Year n-1 (i.e. ODP Year 16) shall be the aggregate of the amounts in the relevant columns for the periods referred to as Year 16 – (core) and Year 16 (ext) in table 1 to paragraph 4.
- (b) is, for the ODP Year two years prior to the relevant ODP Year (ODP Year n-2), the amount shown in column 2 of table 1 to paragraph 4 multiplied by the amount shown in column 3 of table 1 to paragraph 4 indexed by the Retail Price Index (in the same way as variable costs are indexed in Appendix 1 (Annual Rail Services Payment) to Schedule 8.1 (Rail Services Payment) for the ODP Year n-2, provided that if the Authority exercises its right to extend the ODP Grant Agreement pursuant to clause 5.2 (Additional Reporting Periods), if n=18 then the amounts for ODP Year n-2 (i.e. ODP Year 16) shall be the aggregate of the amounts in the relevant columns for the periods referred to as Year 16 – (core) and Year 16 (ext) in table 1 to paragraph 4.
- (c) is the actual outturn unit rate for ODP Year n-1 multiplied by the forecast volumes in ODP Year n-1 as set out in column 2 of table 1 to paragraph 4, provided that if the Authority exercises its right to extend the ODP Grant Agreement pursuant to clause 5.2 (Additional Reporting Periods), if n=17 then the amounts for ODP Year n-1 (i.e. ODP Year 16) shall be the aggregate of the amounts in the relevant columns for the periods referred to as Year 16 – (core) and Year 16 (ext) in table 1 to paragraph 4.
- (d) is the actual outturn unit rate for ODP Year n-2 multiplied by the forecast volumes in the ODP Year n-2 as set out in column 2 of table 1 to paragraph 4, provided that if the Authority exercises its right to extend the ODP Grant Agreement pursuant to clause 5.2 (Additional Reporting Periods), if n=18 then the amounts for ODP Year n-2 (i.e. ODP

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Year 16) shall be the aggregate of the amounts in the relevant columns for the periods referred to as Year 16 – (core) and Year 16 (ext) in Table 1 to paragraph 4.

- 4.3 The formula set out at paragraph 4.2 shall apply only if the total actual volume of diesel used to deliver the Rail Services (i.e. as recorded in the Wages, Diesel and EC4T Report) over the two-year period are less than or equal to the total forecast volume (i.e. the aggregate of the corresponding volumes for the applicable years set out in column 2 of table 1 to paragraph 4 below) over the same period. In the event that the total actual volumes are more than the total forecast volumes then the RPDRA shall be moderated as follows:

$$\text{RPDRA (Yn)} = \text{ADRA 1 (Yrn)} / 10$$

$$\text{ADRA 1 (Yrn)} = (((a + b) / 2) - ((c1 + d1) / 2)) \times 0.65$$

a and b shall have the meaning given to those terms in paragraph 4.2 above

c1) is the actual outturn unit rate for ODP Year n-1 multiplied by the actual volume in ODP Year n-1 as recorded in set out in the “Wages, Diesel and EC4T Report”

d1) is the actual outturn unit rate for ODP Year n-2 multiplied by the actual volume in ODP Year n-2 as recorded in set out in the “Wages, Diesel and EC4T Report”

- 4.4 The Authority shall never pay more than the forecast volumes in the relevant year multiplied by the forecast unit rates £ per litre (as set out in columns 2 and 3 respectively in table 1 to paragraph 4 below, subject to RPI as applicable) but gain share will be moderated in the event of actual volumes being more than forecast volumes.
- 4.5 Where the Wages, Diesel and EC4T Report identifies the ODP’s costs in relation to actual two (2) year rolling average outturn unit rates for EC4T are less than the average forecast unit rates over the same period (indexed to nominal from column 5 of table 1 to paragraph 4 below), which will be determined to be the case where the value of “AERA” below is calculated to be greater than zero, the Authority shall reduce the Rail Service Payment for the following ODP Year by the Reporting Period EC4T Reconciliation Adjustment (“RPERA”). This reduction shall apply from Reporting Period 4 of the ODP year immediately following the 2 year review period and be spread over ten (10) equal payments over Reporting Periods 4 to 13 inclusive. At the end of the ODP Grant Agreement, if a deduction is due under this paragraph 4 for the purposes of the AERA or AERA1 for the final two ODP Years, then the ODP shall make a single payment to the Authority within twenty-eight (28) days of the end of the ODP Grant Agreement Term. In the event that the final ODP Year is less than 13 Reporting Periods (other than identified part years set out in table 1 to paragraph 4) then the calculation shall be pro rated, using an approach jointly agreed by both parties, to reflect the part year element. In the event an approach cannot be agreed, then the figures will be pro rated to reflect actual days in

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the period as a proportion of anticipated days for that specific ODP Year (reflective of the days in period set out in table 1 to paragraph 4). In this event the ODP shall make a single payment to the Authority within twenty-eight (28) days of the end of the ODP Grant Agreement Term.

"**RPERA** " shall be calculated as follows:

$$\mathbf{RPERA (Yrn) = AERA (Yrn) / 10}$$

Where:

**RPERA (Yrn)** is the payment to be made in each of Reporting Periods 4 to 13 inclusive of Year n; and

$$\mathbf{AERA (Yrn) = (((a + b) / 2) - ((c + d) / 2)) \times 0.50}$$

a) is, for the previous ODP Year n-1, the amount shown in column 4 of table 1 to paragraph 4 multiplied by the amount shown in column 5 of table 1 to paragraph 4 indexed by the Retail Price Index (in the same way as variable costs are indexed in Appendix 1 (Annual Rail Services Payment) to Schedule 8.1 (Rail Services Payment) for the ODP Year n-1, provided that if the Authority exercises its right to extend the ODP Grant Agreement pursuant to clause 5.2 (Additional Reporting Periods), if n=17 then the amounts for ODP Year n-1 (i.e. ODP Year 16) shall be the aggregate of the amounts in the relevant columns for the periods referred to as Year 16 – (core) and Year 16 (ext) in table 1 to paragraph 4.

b) is, for ODP Year two years prior to the relevant ODP Year (ODP Year n-2), the amount shown in column 4 of table table 1 to paragraph 4 multiplied by the amount shown in column 5 of table 1 to paragraph 4 indexed by the Retail Price Index (in the same way as variable costs are indexed in Appendix 1 (Annual Rail Services Payment) to Schedule 8.1 (Rail Services Payment) for the ODP Year n-2, provided that if the Authority exercises its right to extend the ODP Grant Agreement pursuant to clause 5.2 (Additional Reporting Periods), if n=18 then the amounts for ODP Year n-2 (i.e. ODP Year 16) shall be the aggregate of the amounts in the relevant columns for the periods referred to as Year 16 – (core) and Year 16 (ext) in table 1 to paragraph 4.

c) is the actual outturn unit rate for ODP Year n-1 multiplied by the forecast volumes in ODP Year n-1 as set out in column 4 of table 1 to paragraph 4, provided that if the Authority exercises its right to extend the ODP Grant Agreement pursuant to clause 5.2 (Additional Reporting Periods), if n=17 then the amounts for ODP Year n-1 (i.e. ODP Year 16) shall be the aggregate of the amounts in the relevant columns for the periods referred to as Year 16 – (core) and Year 16 (ext) in table 1 to paragraph 4.

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d) is the actual outturn unit rate for ODP Year n-2 multiplied by the forecast volumes in ODP Year n-2 as set out in column 4 of table 1 to paragraph 4, provided that if the Authority exercises its right to extend the ODP Grant Agreement pursuant to clause 5.2 (Additional Reporting Periods), if n=18 then the amounts for ODP Year n-2 (i.e. ODP Year 16) shall be the aggregate of the amounts in the relevant columns for the periods referred to as Year 16 – (core) and Year 16 (ext) in table 1 to paragraph 4.

- 4.6 The formula set out at paragraph 4.5 shall apply only if the total actual volumes of EC4T used to deliver the Rail Services (i.e. as recorded in the Wages, Diesel and EC4T Report) over the two-year period are less than or equal to the total forecast volumes for EC4T (i.e. the aggregate of the corresponding volumes for the applicable years set out in column 4 of table 1 to paragraph 4 below) over the same period. In the event that the total actual volumes are more than the total forecast volumes then the RPERA shall be moderated as follows:

$$\text{RPERA (Yn)} = \text{AERA 1 (Yrn)} / 10$$

$$\text{AERA 1 (Yrn)} = (((a + b) / 2) - ((c1 + d1) / 2)) \times 0.50$$

a and b shall have the meaning given to those terms in paragraph 4.5 above

c1) is the actual outturn unit rate for (Yrn) multiplied by the actual volume in ODP Year n-1 as recorded in the “Wages, Diesel and EC4T Report”

d1) is the actual outturn unit rate for (Yrn-1) multiplied by the actual volume in ODP Year n-2 as recorded in the “Wages, Diesel and EC4T Report”

- 4.7 The Authority shall never pay more than the forecast volumes in the relevant year multiplied by the forecast unit rates £ per litre (as set out in columns 4 and 5 respectively in table 1 to paragraph 4 below, subject to RPI as applicable) but gain share will be moderated in the event of actual volumes being more than forecast volumes.

Table 1 to paragraph 4

|           |           |          | Diesel Costs            |  | EC4T Costs     |  |
|-----------|-----------|----------|-------------------------|--|----------------|--|
| From      | To        | ODP Year | Diesel Volumes (Litres) | Forecast Unit Rates £ per litre (subject to RPI) | EC4T (kWh)     | Forecast EC4T Unit Cost £ per kWh (subject to RPI) |
|           |           | Column 1 | DV Column 2             | DUCRPI Column 3                                  | EC4TV Column 4 | EC4TRPI Column 5                                   |
| 14 Oct 18 | 31 Mar 19 | Year 1   | [REDACTED]              | [REDACTED]                                       | [REDACTED]     | [REDACTED]   |
| 01 Apr 19 | 31 Mar 20 | Year 2   | [REDACTED]              | [REDACTED]                                       | [REDACTED]     | [REDACTED]   |
| 01 Apr 20 | 31 Mar 21 | Year 3   | [REDACTED]              | [REDACTED]                                       | [REDACTED]     | [REDACTED]   |
| 01 Apr 21 | 31 Mar 22 | Year 4   | [REDACTED]              | [REDACTED]                                       | [REDACTED]     | [REDACTED]   |
| 01 Apr 22 | 31 Mar 23 | Year 5   | [REDACTED]              | [REDACTED]                                       | [REDACTED]     | [REDACTED]   |
| 01 Apr 23 | 31 Mar 24 | Year 6   | [REDACTED]              | [REDACTED]                                       | [REDACTED]     | [REDACTED]   |
| 01 Apr 24 | 31 Mar 25 | Year 7   | [REDACTED]              | [REDACTED]                                       | [REDACTED]     | [REDACTED]   |
| 01 Apr 25 | 31 Mar 26 | Year 8   | [REDACTED]              | [REDACTED]                                       | [REDACTED]     | [REDACTED]   |
| 01 Apr 26 | 31 Mar 27 | Year 9   | [REDACTED]              | [REDACTED]                                       | [REDACTED]     | [REDACTED]   |
| 01 Apr 27 | 31 Mar 28 | Year 10  | [REDACTED]              | [REDACTED]                                       | [REDACTED]     | [REDACTED]   |
| 01 Apr 28 | 31 Mar 29 | Year 11  | [REDACTED]              | [REDACTED]                                       | [REDACTED]     | [REDACTED]   |
| 01 Apr 29 | 31 Mar 30 | Year 12  | [REDACTED]              | [REDACTED]                                       | [REDACTED]     | [REDACTED]   |
| 01 Apr 30 | 31 Mar 31 | Year 13  | [REDACTED]              | [REDACTED]                                       | [REDACTED]     | [REDACTED]   |
| 01 Apr 31 | 31 Mar 32 | Year 14  | [REDACTED]              | [REDACTED]                                       | [REDACTED]     | [REDACTED]   |

|   |                 |                     |            |            |            |            |
|---|-----------------|---------------------|------------|------------|------------|------------|
| 01<br>Apr<br>32   | 31<br>Mar<br>33 | Year 15             | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| 01<br>Apr<br>33   | 15<br>Oct<br>33 | Year 16<br>– (core) | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| <b>Up to 26 Reporting Periods extension</b>   |                 |                     |            |            |            |            |
| 16<br>Oct<br>33   | 31<br>Mar<br>34 | Year 16<br>(ext)    | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| 01<br>Apr<br>34   | 31<br>Mar<br>35 | Year 17<br>(ext)    | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| 01<br>Apr<br>35   | 13<br>Oct<br>35 | Year 18<br>(ext)    | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| Note:   |                 |                     |            |            |            |            |
| 1. The real unit costs for diesel and EC4T recorded above will be converted to nominal using the standard indexation approach set out in Schedule 8. Worked examples of the Diesel, EC4T and Wages are contained within the supplementary material. |                 |                     |            |            |            |            |

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4.8 Where the Wages, Diesel and EC4T Report identifies the ODP's costs in relation to actual outturn Wages Cost inflation is less than the forecast indexation rate for wage costs, the Authority shall reduce the Rail Service Payment for the following ODP Year by the Reporting Period Staff Cost Reconciliation Adjustment ("**RPSCRA**"), except in respect of the final ODP Year where the ODP shall make a single ASCRA payment to the Authority within twenty-eight (28) days from the end of the ODP Grant Agreement Term. In the event that the final ODP Year is less than 13 Reporting Periods (other than identified part years set out in table 2 to paragraph 4) then the calculation shall be pro rated, using an approach jointly agreed by both parties, to reflect the part year element. In the event an approach cannot be agreed, then the figures will be pro rated to reflect actual days in the period as a proportion of anticipated days for that specific ODP Year (reflective of the days in period set out in table 2 to paragraph 4). In this event the ODP shall make a single payment to the Authority within twenty-eight (28) days of the end of the ODP Grant Agreement Term.

"**RPSCRA** " shall be calculated as follows:

$$\mathbf{RPSCRA} (Yrn) = \mathbf{ASCRA} (Yrn) / 10$$

**RPSCRA** (Yrn) is the payment to be made in each of Reporting Periods 4 to 13 inclusive of Year n; and

Where

$$\mathbf{ASCRA} (Yrn) = ((a(Yrn)) - (b(Yrn))) \times 0.50$$

a) is, for the ODP Year n-1, the figure set out in column 5 of table 2 to paragraph 4 below which is the unindexed amount shown in column 2 multiplied by the differential inflation figure set out in column 4 as indexed by the Retail Price Index (in the same way as variable costs are indexed in Appendix 1 (Annual Rail Services Payment) to Schedule 8.1 (Rail Services Payment), provided that if the Authority exercises its right to extend the ODP Grant Agreement pursuant to clause 5.2 (Additional Reporting Periods), if n=17 then the amounts for ODP Year n-1 (i.e. ODP Year 16) shall be the aggregate of the amounts in the relevant columns for the periods referred to as Year 16 – (core) and Year 16 (ext) in table 2 to paragraph 4.

b) is, for ODP Year n-1, the unindexed amount shown in column 2 of table 2 to paragraph 4 multiplied by the actual differential inflation figure agreed and adjusted to reflect actual RPI and any agreed real increases, provided that if the Authority exercises its right to extend the ODP Grant Agreement pursuant to clause 5.2 (Additional Reporting Periods), if n=17 then the amounts for ODP Year n-1 (i.e. ODP Year 16) shall be the aggregate of the amounts in the relevant columns for the periods referred to as Year 16 – (core) and Year 16 (ext) in table 2 to paragraph 4.



Table 2 to paragraph 4

|  |           |                  | Wage Costs            |  |  |                   |
|--|-----------|------------------|-----------------------|--|--|-------------------|
| From   | To        | ODP Year         | Unindexed Wages Costs | Annual Forecast Differential Inflation | Compound Forecast Differential Inflation | Real Wage Costs   |
|  |           | Column 1         | SCUI<br>Column 2      | Column 3                               | Column 4                                 | SCRPI<br>Column 5 |
| 14 Oct 18  | 31 Mar 19 | Year 1           | [REDACTED]            | [REDACTED]                             | [REDACTED]                               | [REDACTED]        |
| 01 Apr 19  | 31 Mar 20 | Year 2           | [REDACTED]            | [REDACTED]                             | [REDACTED]                               | [REDACTED]        |
| 01 Apr 20  | 31 Mar 21 | Year 3           | [REDACTED]            | [REDACTED]                             | [REDACTED]                               | [REDACTED]        |
| 01 Apr 21  | 31 Mar 22 | Year 4           | [REDACTED]            | [REDACTED]                             | [REDACTED]                               | [REDACTED]        |
| 01 Apr 22  | 31 Mar 23 | Year 5           | [REDACTED]            | [REDACTED]                             | [REDACTED]                               | [REDACTED]        |
| 01 Apr 23  | 31 Mar 24 | Year 6           | [REDACTED]            | [REDACTED]                             | [REDACTED]                               | [REDACTED]        |
| 01 Apr 24  | 31 Mar 25 | Year 7           | [REDACTED]            | [REDACTED]                             | [REDACTED]                               | [REDACTED]        |
| 01 Apr 25  | 31 Mar 26 | Year 8           | [REDACTED]            | [REDACTED]                             | [REDACTED]                               | [REDACTED]        |
| 01 Apr 26  | 31 Mar 27 | Year 9           | [REDACTED]            | [REDACTED]                             | [REDACTED]                               | [REDACTED]        |
| 01 Apr 27  | 31 Mar 28 | Year 10          | [REDACTED]            | [REDACTED]                             | [REDACTED]                               | [REDACTED]        |
| 01 Apr 28  | 31 Mar 29 | Year 11          | [REDACTED]            | [REDACTED]                             | [REDACTED]                               | [REDACTED]        |
| 01 Apr 29  | 31 Mar 30 | Year 12          | [REDACTED]            | [REDACTED]                             | [REDACTED]                               | [REDACTED]        |
| 01 Apr 30  | 31 Mar 31 | Year 13          | [REDACTED]            | [REDACTED]                             | [REDACTED]                               | [REDACTED]        |
| 01 Apr 31  | 31 Mar 32 | Year 14          | [REDACTED]            | [REDACTED]                             | [REDACTED]                               | [REDACTED]        |
| 01 Apr 32  | 31 Mar 33 | Year 15          | [REDACTED]            | [REDACTED]                             | [REDACTED]                               | [REDACTED]        |
| 01 Apr 33  | 15 Oct 33 | Year 16 – (core) | [REDACTED]            | [REDACTED]                             | [REDACTED]                               | [REDACTED]        |
| <b>Up to 26 Reporting Periods extension</b>  |           |                  |                       |  |  |                   |
| 16 Oct 33  | 31 Mar 34 | Year 16 (ext)    | [REDACTED]            | [REDACTED]                             | [REDACTED]                               | [REDACTED]        |
| 01 Apr 34  | 31 Mar 35 | Year 17 (ext)    | [REDACTED]            | [REDACTED]                             | [REDACTED]                               | [REDACTED]        |
| 01 Apr 35  | 13 Oct 35 | Year 18 (ext)    | [REDACTED]            | [REDACTED]                             | [REDACTED]                               | [REDACTED]        |
| <p>Note:</p> <p>1. The principal to apply in the assessment of wage costs is to use an RPI + X approach whereby the unindexed base annual wage cost forecasts are indexed by an element of differential inflation (X) (as set out in the ITSFT response) being the difference between unindexed and real costs and then a subsequent</p> |           |                  |                       |  |  |                   |

---

RPI adjustment to convert from real to nominal eg in the event that wage costs are forecast to increase by 4% per annum and RPI is forecast at 2.5%, this would equate to an RPI + 1.5% formula. If these figures are contracted but actual pay awards only increase by RPI + 1%, then the 0.5% differential would be shared 50:50 between the ODP and the Authority.

2. The differential inflation figures set out in column 3 will be the annual differential inflation figures. The figures included in column 4 are the compounded impacts of the annual movements.
3. Wages shall be the cost of Basic Wages and shall exclude any other Payroll costs, such as NI and Pensions etc. and Overtime, it shall be on a like for like basis, with the entries in the Financial Model, feeding into row 1634 of the O1\_Outputs Tab. The actual average wage calculated should be based upon the staff number forecast and breakdown supplied within the bid RoA and financial model ie actual average wages should not be influenced by differences between actual headcount and that forecast.

## **5 DISPUTES UNDER SCHEDULE 8**

- 5.1 If either Party disputes the amount of a Rail Services Payment, the dispute shall, unless the Parties otherwise agree, be resolved in accordance with the provisions of clause 17 (*Governing Law and Jurisdiction*) of the ODP Grant Agreement. Any such dispute shall not affect the obligation of either Party to pay a Rail Services Payment notified in accordance with this Schedule 8.1.

## **6 INDUSTRIAL ACTION**

- 6.1 The Authority, in its discretion, may at any time decide to reimburse or ameliorate net losses of the ODP arising from Industrial Action (however caused and of whatever nature) in circumstances where the ODP has demonstrated to the satisfaction of the Authority that it has taken all reasonable steps to avoid the Industrial Action and that, Industrial Action having nevertheless occurred, the ODP has taken all reasonable steps to mitigate its effects.

## **7 NO DOUBLE RECOVERY**

- 7.1 The ODP shall not be entitled to recover (by way of a Change or otherwise) more than once in respect of the same loss suffered by it.

## **8 FORCE MAJEURE AND PAYMENTS**

- 8.1 Following the occurrence of a Force Majeure Event, the payment of Rail Services Payments shall continue unaffected.

## Appendix 1 to Schedule 8.1 - Annual Rail Services Payments

The Annual Rail Services Payment for any ODP Year is an amount equal to:

|                |  |
|----------------|--|
| <b>£ARSP =</b> | $FXD + (VCRPI \times RPI) + (PRPI \times RPI) + (RRPI \times RPI)$ |
|----------------|--|

**where:**

|                |   |
|----------------|---|
| <b>“FXD”</b>   | means the OpCo’s costs which are not to be subject to indexation for the purpose of calculating ARSP being the figure shown in respect of the relevant ODP Year in Column 2 of Table 1 set out in Appendix 2 ( <i>Figures for Calculation of Annual Rail Services Payments</i> ) to this Schedule 8.1 ( <i>Rail Services Payments</i> ) (and which shall always be expressed as a positive number);   |
| <b>“VCRPI”</b> | means the OpCo’s costs which are to be subject to indexation by reference to the Retail Prices Index for the purpose of calculating ARSP being the figure shown in respect of the relevant ODP Year in Column 3 of Table 1 set out in Appendix 2 ( <i>Figures for Calculation of Annual Rail Services Payments</i> ) to this Schedule 8.1 ( <i>Rail Services Payments</i> ) (and which shall always be expressed as a positive number);   |
| <b>“RPI”</b>   | is the quotient of the Retail Prices Index for the January which immediately precedes the commencement of the relevant ODP Year divided by the Retail Prices Index for January 2017;  |
| <b>“PRPI”</b>  | means the OpCo’s profit figure before tax which is to be subject to indexation by reference to the Retail Prices Index for the purpose of calculating ARSP being the figure shown in respect of the relevant ODP Year in Column 4 of Table 1 set out in Appendix 2 ( <i>Figures for Calculation of Annual Rail Services Payments</i> ) to this Schedule 8.1 ( <i>Rail Services Payments</i> ) (and which shall always be expressed as a positive number);<br>and                  |
| <b>“RRPI”</b>  | means the OpCo’s passenger fare revenue and non passenger revenue which is to be subject to indexation by reference to the Retail Prices Index for the purpose of calculating ARSP being the figure shown in respect of the relevant ODP Year in Column 5 of Table 1 set out in Appendix 2 ( <i>Figures for Calculation of Annual Rail Services Payments</i> ) to this Schedule 8.1 ( <i>Rail Services Payments</i> ) (and which shall always be expressed as a negative number). |

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For the purpose of calculating the Annual Rail Services Payment, the “**relevant ODP Year**” shall in respect of any Reporting Period which commences:

- (a) between 1 April 2033 and 15 October 2033 (inclusive), be that referred to as Year 16 (core) in the table set out in Appendix 2 (*Figures for Calculation of Annual Rail Services Payments*) of this Schedule 8.1 (*Rail Services Payments*);
- (b) between 16 October 2033 and 31 March 2034 (inclusive), be that referred to as Year 16 (extension) in the table set out in Appendix 2 (*Figures for Calculation of Annual Rail Services Payments*) of this Schedule 8.1 (*Rail Services Payments*); and
- (c) between 1 April 2034 and 31 March 2035 (inclusive), be that referred to as Year 17 (extension) in the table set out in Appendix 2 (*Figures for Calculation of Annual Rail Services Payments*) of this Schedule 8.1 (*Rail Services Payments*);
- (d) on or after 1 April 2035, be that referred to as Year 18 (extension) in the table set out in Appendix 2 (*Figures for Calculation of Annual Rail Services Payments*) of this Schedule 8.1 (*Rail Services Payments*).

**Appendix 2 to schedule 8.1 - Figures for Calculation of Annual Rail Services Payments**

| Year      |           | Column 1            | Column 2   | Column 3   | Column 4   | Column 5   |
|-----------|-----------|---------------------|------------|------------|------------|------------|
| From      | To        | ODP<br>Year         | FXD        | VCRPI      | PRPI       | RRPI       |
| 14-Oct-18 | 31-Mar-19 | Year 1              | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| 01-Apr-19 | 31-Mar-20 | Year 2              | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| 01-Apr-20 | 31-Mar-21 | Year 3              | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| 01-Apr-21 | 31-Mar-22 | Year 4              | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| 01-Apr-22 | 31-Mar-23 | Year 5              | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| 01-Apr-23 | 31-Mar-24 | Year 6              | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| 01-Apr-24 | 31-Mar-25 | Year 7              | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| 01-Apr-25 | 31-Mar-26 | Year 8              | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| 01-Apr-26 | 31-Mar-27 | Year 9              | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| 01-Apr-27 | 31-Mar-28 | Year 10             | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| 01-Apr-28 | 31-Mar-29 | Year 11             | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| 01-Apr-29 | 31-Mar-30 | Year 12             | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| 01-Apr-30 | 31-Mar-31 | Year 13             | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| 01-Apr-31 | 31-Mar-32 | Year 14             | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| 01-Apr-32 | 31-Mar-33 | Year 15             | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| 01-Apr-33 | 15-Oct-33 | Year 16 –<br>(core) | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |

| Year              |                   | Column 1               | Column 2   | Column 3   | Column 4   | Column 5   |
|-------------------|-------------------|------------------------|------------|------------|------------|------------|
| From              | To                | ODP<br>Year            | FXD        | VCRPI      | PRPI       | RRPI       |
| 16-<br>Oct-<br>33 | 31-<br>Mar-<br>34 | Year 16<br>(extension) | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| 01-<br>Apr-<br>34 | 31-<br>Mar-<br>35 | Year 17<br>(extension) | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| 01-<br>Apr-<br>35 | 13-<br>Oct-<br>35 | Year 18<br>(extension) | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |

**Schedule 8.2 - Profit Share Mechanism**

**1 PROFIT SHARE**

1.1 For the purposes of this Schedule 8.2:

(a) First Profit Share Threshold

“**First Profit Share Threshold**” means an amount in respect of any ODP Year determined as follows:

**FPST x RPI x (FYD<sub>A</sub>/FYD)**

**where:**

|             |   |
|-------------|---|
| <b>FPST</b> | <p>is (as the case may be):</p> <p>(i) if the total of the Revenue Support Reconciliation Amount and the Revenue Support Adjustments in respect of the relevant ODP Year is zero (0), the amount prescribed for these purposes in Column 4 of the table set out at paragraph 1 of Appendix 1 (Profit Share Thresholds) to this Schedule 8.2 in respect of the relevant ODP Year; or</p> <p>(ii) if the total of the Revenue Support Reconciliation Amount and the Revenue Support Adjustments in respect of the relevant ODP Year is greater than zero (0), the amount prescribed for these purposes in Column 5 of the table set out at paragraph 1 of Appendix 1 (Profit Share Thresholds) to this Schedule 8.2 in respect of the relevant ODP Year,</p> <p>provided that if the Authority exercises its right to extend the ODP Grant Agreement pursuant to clause 5.2 (<i>Duration of the ODP Grant Agreement</i>), FPST for the ODP Year commencing 1 April 2033 shall be the aggregate of the amounts specified in paragraph 1 of Appendix 1 (<i>Profit Share Thresholds</i>) to this Schedule 8.2 for the periods referred to as ODP Year 16 (core) and ODP Year 16 (extension);</p> |
| <b>RPI</b>  | has the meaning given to it in Appendix 1 ( <i>Annual Rail Services Payments</i> ) to Schedule 8.1 ( <i>Rail Services Payments</i> );   |

|                        |   |
|------------------------|---|
| <b>FYD<sub>A</sub></b> | means the number of days in that ODP Year; and  |
| <b>FYD</b>             | <p>means the number of days in the ODP Year being three hundred and sixty five (365), or if February 29 falls during that ODP Year, three hundred and sixty six (366) days for every ODP Year other than in respect of:</p> <p>(i) the ODP Year commencing on the Start Date, in which case FYD shall be the number of days during the period from 14 October 2018 to 31 March 2019 (inclusive);</p> <p>(ii) the ODP Year commencing on 1 April 2033 if the Authority does not exercise its right to extend the ODP Grant Agreement pursuant to clause 5.2 (<i>Duration of the ODP Grant Agreement</i>), in which case FYD shall be the number of days during the period from 1 April 2033 to 15 October 2033 (inclusive);</p> <p>(iii) the ODP Year commencing on 1 April 2033 if the Authority exercises its right to extend the ODP Grant Agreement pursuant to clause 5.2 (<i>Duration of the ODP Grant Agreement</i>), in which case FYD shall be the number of days between 1 April 2033 and 31 March 2034 (inclusive); and</p> <p>(iv) the ODP Year commencing on 1 April 2035 if the Authority exercises its right to extend the ODP Grant Agreement pursuant to clause 5.2 (<i>Duration of the ODP Grant Agreement</i>), in which case FYD shall be the number of days between 1 April 2035 and 13 October 2035 (inclusive).</p> |

(b) Second Profit Share Threshold

“**Second Profit Share Threshold**” means an amount in respect of any ODP Year determined as follows:

$$\text{SPST} \times \text{RPI} \times (\text{FYD}_A/\text{FYD})$$

where:

|             |                          |
|-------------|--------------------------|
| <b>SPST</b> | is (as the case may be): |
|-------------|--------------------------|



|                        |   |
|------------------------|---|
|                        | <p>(i) if the total of the Revenue Support Reconciliation Amount and the Revenue Support Adjustments in respect of the relevant ODP Year is zero (0), the amount prescribed for these purposes in Column 4 of the table set out at paragraph 2 of Appendix 1 (Profit Share Thresholds) to this Schedule 8.2 in respect of the relevant ODP Year; or</p> <p>(ii) if the total of the Revenue Support Reconciliation Amount and the Revenue Support Adjustments in respect of the relevant ODP Year is greater than zero (0), the amount prescribed for these purposes in Column 5 of the table set out at paragraph 2 of Appendix 1 (Profit Share Thresholds) to this Schedule 8.2 in respect of the relevant ODP Year,</p> <p>provided that if the Authority exercises its right to extend the ODP Grant Agreement pursuant to clause 5.2 (<i>Duration of the ODP Grant Agreement</i>), SPST for the ODP Year commencing 1 April 2033 shall be the aggregate of the amounts specified in paragraph 2 of Appendix 1 (<i>Profit Share Thresholds</i>) to this Schedule 8.2 for the periods referred to as ODP Year 16 (core) and ODP Year 16 (extension);</p> |
| <b>RPI</b>             | has the meaning given to it in Appendix 1 ( <i>Annual Rail Services Payments</i> ) to Schedule 8.1 ( <i>Rail Services Payments</i> );   |
| <b>FYD<sub>A</sub></b> | means the number of days in that ODP Year;  |
| <b>FYD</b>             | <p>means the number of days in the ODP Year being three hundred and sixty five (365), or if February 29 falls during that ODP Year, three hundred and sixty six (366) days for every ODP Year other than in respect of:</p> <p>(i) the ODP Year commencing on the Start Date, in which case FYD shall be the number of days during the period from 14 October 2018 to 31 March 2019 (inclusive);</p> <p>(ii) the ODP Year commencing on 1 April 2033 if the Authority does not exercise its right to extend the ODP Grant Agreement pursuant to clause 5.2 (<i>Duration of the ODP Grant Agreement</i>), in which case FYD shall</p>  |

|  |   |
|--|---|
|  | <p>be the number of days during the period from 1 April 2033 to 15 October 2033 (inclusive);</p> <p>(iii) the ODP Year commencing on 1 April 2033 if the Authority exercises its right to extend the ODP Grant Agreement pursuant to clause 5.2 (<i>Duration of the ODP Grant Agreement</i>), in which case FYD shall be the number of days between 1 April 2033 and 31 March 2034 (inclusive); and</p> <p>(iv) the ODP Year commencing on 1 April 2035 if the Authority exercises its right to extend the ODP Grant Agreement pursuant to clause 5.2 (<i>Duration of the ODP Grant Agreement</i>), in which case FYD shall be the number of days between 1 April 2035 and 13 October 2035 (inclusive).</p> |
|--|---|

(c) Third Profit Share Threshold

“**Third Profit Share Threshold**” means an amount in respect of any ODP Year determined as follows:

$$\text{TPST} \times \text{RPI} \times (\text{FYD}_A / \text{FYD})$$

where:

|             |  |
|-------------|--|
| <b>TPST</b> | <p>is (as the case may be):</p> <p>(i) if the total of the Revenue Support Reconciliation Amount and the Revenue Support Adjustments in respect of the relevant ODP Year is zero (0), the amount prescribed for these purposes in Column 4 of the table set out at paragraph 3 of Appendix 1 (Profit Share Thresholds) to this Schedule 8.2 in respect of the relevant ODP Year; or</p> <p>(ii) if the total of the Revenue Support Reconciliation Amount and the Revenue Support Adjustments in respect of the relevant ODP Year is greater than zero (0), the amount prescribed for these purposes in Column 5 of the table set out at paragraph 3 of Appendix 1 (Profit Share Thresholds) to this Schedule 8.2 in respect of the relevant ODP Year,</p> |
|-------------|--|

|                        |  |
|------------------------|--|
|                        | provided that if the Authority exercises its right to extend the ODP Grant Agreement pursuant to clause 5.2 ( <i>Duration of the ODP Grant Agreement</i> ), TPST for the ODP Year commencing 1 April 2033 shall be the aggregate of the amounts specified in paragraph 3 of Appendix 1 (Profit Share Thresholds) to this Schedule 8.2 for the periods referred to as ODP Year 16(core) and ODP Year 16 (extension);  |
| <b>RPI</b>             | has the meaning given to it in Appendix 1 ( <i>Annual Rail Services Payments</i> ) to Schedule 8.1 ( <i>Rail Services Payments</i> );  |
| <b>FYD<sub>A</sub></b> | means the number of days in that ODP Year;   |
| <b>FYD</b>             | <p>means the number of days in the ODP Year being three hundred and sixty five (365), or if February 29 falls during that ODP Year, three hundred and sixty six (366) days for every ODP Year other than in respect of:</p> <ul style="list-style-type: none"> <li>(i) the ODP Year commencing on the Start Date, in which case FYD shall be the number of days during the period from 14 October 2018 to 31 March 2019 (inclusive);</li> <li>(ii) the ODP Year commencing on 1 April 2033 if the Authority does not exercise its right to extend the ODP Grant Agreement pursuant to clause 5.2 (<i>Duration of the ODP Grant Agreement</i>), in which case FYD shall be the number of days during the period from 1 April 2033 to 15 October 2033 (inclusive);</li> <li>(iii) The ODP Year commencing on 1 April 2033 if the Authority exercises its right to extend the ODP Grant Agreement pursuant to clause 5.2 (<i>Duration of the ODP Grant Agreement</i>), in which case FYD shall be the number of days between 1 April 2033 and 31 March 2034 (inclusive); and</li> <li>(iv) the ODP Year commencing on 1 April 2035 if the Authority exercises its right to extend the ODP Grant Agreement pursuant to clause 5.2 (<i>Duration of the ODP Grant Agreement</i>), in which case FYD shall be the number of days between 1 April 2035 and 13 October 2035 (inclusive).</li> </ul> |

(d) Fourth Profit Share Threshold

“**Fourth Profit Share Threshold**” means an amount in respect of any ODP Year determined as follows:

$$\text{FthPST} \times \text{RPI} \times (\text{FYD}_A/\text{FYD})$$

where:

|                        |  |
|------------------------|--|
| <b>FthPST</b>          | <p>is (as the case may be):</p> <p>(i) if the total of the Revenue Support Reconciliation Amount and the Revenue Support Adjustments in respect of the relevant ODP Year is zero (0), the amount prescribed for these purposes in Column 4 of the table set out at paragraph 4 of Appendix 1 (Profit Share Thresholds) to this Schedule 8.2 in respect of the relevant ODP Year; or</p> <p>(ii) if the total of the Revenue Support Reconciliation Amount and the Revenue Support Adjustments in respect of the relevant ODP Year is greater than zero (0), the amount prescribed for these purposes in Column 5 of the table set out at paragraph 4 of Appendix 1 (Profit Share Thresholds) to this Schedule 8.2 in respect of the relevant ODP Year,</p> <p>provided that if the Authority exercises its right to extend the ODP Grant Agreement pursuant to clause 5.2 (<i>Duration of the ODP Grant Agreement</i>), OPST for the ODP Year commencing 1 April 2033 shall be the aggregate of the amounts specified in paragraph 4 of Appendix 1 (Profit Share Thresholds) to this Schedule 8.2 for the periods referred to as ODP Year 16 (core) and ODP Year 16 (extension);</p> |
| <b>RPI</b>             | has the meaning given to it in Appendix 1 ( <i>Annual Rail Services Payments</i> ) to Schedule 8.1 ( <i>Rail Services Payments</i> );  |
| <b>FYD<sub>A</sub></b> | means the number of days in that ODP Year;   |
| <b>FYD</b>             | means the number of days in the ODP Year being three hundred and sixty five (365), or if February 29 falls during that ODP Year, three hundred and sixty six (366) days for every ODP Year other than in respect of:   |

|  |   |
|--|---|
|  | <p>(i) the ODP Year commencing on the Start Date, in which case FYD shall be the number of days during the period from 14 October 2018 to 31 March 2019 (inclusive);</p> <p>(ii) the ODP Year commencing on 1 April 2033 if the Authority does not exercise its right to extend the ODP Grant Agreement pursuant to clause 5.2 (<i>Duration of the ODP Grant Agreement</i>), in which case FYD shall be the number of days during the period from 1 April 2033 to 15 October 2033 (inclusive);</p> <p>(iii) The ODP Year commencing on 1 April 2033 if the Authority exercises its right to extend the ODP Grant Agreement pursuant to clause 5.2 (<i>Duration of the ODP Grant Agreement</i>), in which case FYD shall be the number of days between 1 April 2033 and 31 March 2034 (inclusive); and</p> <p>(iv) the ODP Year commencing on 1 April 2035 if the Authority exercises its right to extend the ODP Grant Agreement pursuant to clause 5.2 (<i>Duration of the ODP Grant Agreement</i>), in which case FYD shall be the number of days between 1 April 2035 and 13 October 2035 (inclusive).</p> |
|--|---|

## 1.2 Rail Services Relevant Profit

“**Rail Services Relevant Profit**” means, subject to paragraph 2, in respect of any ODP Year, the total profit of the OpCo for Rail Services for that ODP Year calculated by applying the accounting policies and standards set out in the Rail Services Record of Assumptions (and for the avoidance of doubt, not applying accounting standard IFRS 16 (Leases)) and applied through the Final Tender Financial Model, as presented in the Annual Management Accounts for that ODP Year;

- (a) after taking into account in respect of that ODP Year:
- (i) interest, finance income and finance charges (other than finance items recognised in respect of retirement benefits);
  - (ii) Rail Services Payments and the ODP shall ensure that all Rail Service Payments received by it under this Agreement shall be paid in full to the OpCo or InfraCo (as applicable);

- 
- (iii) all extraordinary and exceptional items, as defined under the accounting policies and standards set out in the Rail Services Record of Assumptions and applied through the Final Tender Financial Model;
  - (iv) with respect to Rail Services, contributions payable by the OpCo into (i) the ODP Services Sections; and (ii) any other pension scheme(s) to the extent connected with the ODP Grant Agreement, in each case as required under such schemes' rules and schedule of contributions;
  - (v) with respect to Rail Services, any payments by OpCo to Affiliates (including management fees and royalty fees) except to the extent that such payments exceed an amount to be determined as set out in paragraph 1.3;
  - (vi) with respect to Rail Services, any Inter ODP Affiliate Payments (including management fees and royalty fees) except to the extent that such payments exceed an amount to be determined as set out in paragraph 1.3;
  - (vii) any sums payable by or to the ODP or the OpCo pursuant to the terms of a Supplemental Agreement; and
  - (viii) any capital expenditure to the extent that it is recognised as an operating cost in the Annual Rail Services Management Accounts as defined in paragraph 9.4 of Schedule 11 and any depreciation on capital expenditure that is recognised as an expense in the Annual Rail Services Management Accounts, unless the depreciation policy and assumptions used in the Annual Rail Services Management Accounts are different to those set out in the Rail Services Record of Assumptions and applied through the Final Tender Financial Model, in which case an adjustment should be made to take account of the depreciation which would have been charged had the policy and assumptions set out in the Rail Services Record of Assumptions been applied for the relevant ODP Year; and
- (b) before taking into account in respect of that ODP Year:
- (i) any taxation on profits including corporation tax;
  - (ii) shares of the profit of any Affiliate of the ODP, except dividends received in cash;
  - (iii) non cash entries in respect of the ODP Services Sections and any other pension scheme(s) to the extent connected with the ODP Grant Agreement (excluding accruals or prepayments of any contributions

payable by the OpCo into (i) the ODP Services Sections; and (ii) any other pension scheme(s) to the extent connected with the ODP Grant Agreement, in each case as required under such schemes' rules and schedule of contributions);

- (iv) any payment made by the ODP consequent upon any breach or contravention of the ODP Grant Agreement and/or its Licences (including as a consequence of any penalty payment paid or payable pursuant to section 57A of the Railways Act 1993);
- (v) any profit share payments payable to the Authority in relation to any ODP Year; and
- (vi) fees, remuneration and pension contributions in respect of any director and officer of the ODP in excess of an amount to be determined as set out in paragraph 1.4.

### 1.3 Payments to Affiliates

|                                     |   |
|-------------------------------------|---|
| AFA x RPI x (FYD <sub>A</sub> /FYD) |   |
| where:                              |   |
| <b>AFA</b>                          | is the amount prescribed for these purposes in the table set out in paragraph 1 of Appendix 2 ( <i>Components of AFA, IAFA and DFR</i> ) to this Schedule 8.2 in respect of the relevant ODP Year provided that if the Authority exercises its right to extend the ODP Grant Agreement pursuant to clause 5.2 ( <i>Duration of the ODP Grant Agreement</i> ), AFA for the ODP Year commencing 1 April 2033 shall be the aggregate of the amounts specified in the table set out in paragraph 1 of Appendix 2 ( <i>Components of AFA and DFR</i> ) to this Schedule 8.2 for the periods referred to as ODP Year 16 (core) and ODP Year 16 (extension); |
| <b>RPI</b>                          | has the meaning given to it in Appendix 1 ( <i>Annual Rail Services Payments</i> ) of Schedule 8.1 ( <i>Rail Services Payments</i> );   |
| <b>FYD<sub>A</sub></b>              | means the number of days in that ODP Year;  |
| <b>FYD</b>                          | means the number of days in that ODP Year being three hundred and sixty five (365), or if February 29 falls during that ODP Year, three hundred and sixty six (366) days for every ODP Year other than in respect of:   |
| <b>(A)</b>                          | the ODP Year commencing on the Start Date, in which case FYD shall be the number of days during the period from 14 October 2018 to 31 March 2019 (inclusive);   |

|  |            |   |
|--|------------|---|
|  | <b>(B)</b> | the ODP Year commencing on 1 April 2033 if the Authority does not exercise its right to extend the ODP Grant Agreement pursuant to clause 5.2 ( <i>Duration of the ODP Grant Agreement</i> ), in which case FYD shall be the number of days during the period from 1 April 2033 to 15 October 2033 (inclusive); |
|  | <b>(C)</b> | the ODP Year commencing on 1 April 2033 if the Authority exercises its right to extend the ODP Grant Agreement pursuant to clause 5.2 ( <i>Duration of the ODP Grant Agreement</i> ), in which case FYD shall be the number of days between 1 April 2033 and 31 March 2034 (inclusive);                         |
|  | <b>(D)</b> | the ODP Year commencing on 1 April 2035, in which case FYD shall be the number of days during the period from 1 April 2035 to 13 October 2035 (inclusive).  |

#### 1.4 Inter ODP Affiliates Payments

|   |  |            |   |            |  |
|---|--|------------|---|------------|--|
| <b>IAFA x RPI x (FYD<sub>A</sub>/FYD)</b> |  |            |   |            |  |
| <b>where:</b>                             |  |            |   |            |  |
| <b>IAFA</b>                               | is the amount prescribed for these purposes in the table set out in paragraph 2 of Appendix 2 ( <i>Components of AFA, IAFA and DFR</i> ) to this Schedule 8.2 in respect of the relevant ODP Year provided that if the Authority exercises its right to extend the ODP Grant Agreement pursuant to clause 5.2 ( <i>Duration of the ODP Grant Agreement</i> ), AFA for the ODP Year commencing 1 April 2033 shall be the aggregate of the amounts specified in the table set out in paragraph 2 of Appendix 2 ( <i>Components of AFA and DFR</i> ) to this Schedule 8.2 for the periods referred to as ODP Year 16 (core) and ODP Year 16 (extension);  |            |   |            |  |
| <b>RPI</b>                                | has the meaning given to it in Appendix 1 ( <i>Annual Rail Services Payments</i> ) of Schedule 8.1 ( <i>Rail Services Payments</i> );  |            |   |            |  |
| <b>FYD<sub>A</sub></b>                    | means the number of days in that ODP Year;   |            |   |            |  |
| <b>FYD</b>                                | means the number of days in that ODP Year being three hundred and sixty five (365), or if February 29 falls during that ODP Year, three hundred and sixty six (366) days for every ODP Year other than in respect of: <table border="1" data-bbox="323 1753 1359 2004"> <tr> <td><b>(A)</b></td> <td>the ODP Year commencing on the Start Date, in which case FYD shall be the number of days during the period from 14 October 2018 to 31 March 2019 (inclusive);</td> </tr> <tr> <td><b>(B)</b></td> <td>the ODP Year commencing on 1 April 2033 if the Authority does not exercise its right to extend the ODP Grant Agreement pursuant to clause 5.2 (<i>Duration of</i></td> </tr> </table> | <b>(A)</b> | the ODP Year commencing on the Start Date, in which case FYD shall be the number of days during the period from 14 October 2018 to 31 March 2019 (inclusive); | <b>(B)</b> | the ODP Year commencing on 1 April 2033 if the Authority does not exercise its right to extend the ODP Grant Agreement pursuant to clause 5.2 ( <i>Duration of</i> |
| <b>(A)</b>                                | the ODP Year commencing on the Start Date, in which case FYD shall be the number of days during the period from 14 October 2018 to 31 March 2019 (inclusive);  |            |   |            |  |
| <b>(B)</b>                                | the ODP Year commencing on 1 April 2033 if the Authority does not exercise its right to extend the ODP Grant Agreement pursuant to clause 5.2 ( <i>Duration of</i>   |            |   |            |  |



|  |            |   |
|--|------------|---|
|  |            | <i>the ODP Grant Agreement</i> ), in which case FYD shall be the number of days during the period from 1 April 2033 to 15 October 2033 (inclusive);   |
|  | <b>(C)</b> | the ODP Year commencing on 1 April 2033 if the Authority exercises its right to extend the ODP Grant Agreement pursuant to clause 5.2 ( <i>Duration of the ODP Grant Agreement</i> ), in which case FYD shall be the number of days between 1 April 2033 and 31 March 2034 (inclusive); |
|  | <b>(D)</b> | the ODP Year commencing on 1 April 2035, in which case FYD shall be the number of days during the period from 1 April 2035 to 13 October 2035 (inclusive).  |

### 1.5 Payments to Directors and Officers

|  |  |            |   |            |   |            |  |
|--|--|------------|---|------------|---|------------|--|
| <b>DFR x RPI x (FYD<sub>A</sub>/FYD)</b> |  |            |   |            |   |            |  |
| <b>where:</b>                            |  |            |   |            |   |            |  |
| <b>DFR</b>                               | is the amount prescribed for these purposes in the table set out in paragraph 3 of Appendix 2 ( <i>Components of AFA, IAFA and DFR</i> ) to this Schedule 8.2 in respect of the relevant ODP Year provided that if the Authority exercises its right to extend the ODP Grant Agreement pursuant to clause 5.2 ( <i>Duration of the ODP Grant Agreement</i> ), DFR for the ODP Year commencing 1 April 2033 shall be the aggregate of the amounts specified in Column 2 of the table set out in paragraph 3 of Appendix 2 ( <i>Components of AFA and DFR</i> ) to this Schedule 8.2 for the periods referred to as ODP Year 16 (core) and ODP Year 16 (extension);  |            |   |            |   |            |  |
| <b>FYD<sub>A</sub></b>                   | means the number of days in that ODP Year  |            |   |            |   |            |  |
| <b>FYD</b>                               | means the number of days in that ODP Year being three hundred and sixty five (365), or if February 29 falls during that ODP Year, three hundred and sixty six (366) days for every ODP Year other than in respect of: <table border="1" data-bbox="323 1541 1359 2000"> <tr> <td><b>(A)</b></td> <td>the ODP Year commencing on the Start Date, in which case FYD shall be the number of days during the period from 14 October 2018 to 31 March 2019 (inclusive);</td> </tr> <tr> <td><b>(B)</b></td> <td>the ODP Year commencing on 1 April 2033 if the Authority does not exercise its right to extend the ODP Grant Agreement pursuant to clause 5.2 (<i>Duration of the ODP Grant Agreement</i>), in which case FYD shall be the number of days during the period from 1 April 2033 to 15 October 2033 (inclusive);</td> </tr> <tr> <td><b>(C)</b></td> <td>the ODP Year commencing on 1 April 2033 if the Authority exercises its right to extend the ODP Grant Agreement pursuant to clause 5.2 (<i>Duration of the ODP</i></td> </tr> </table> | <b>(A)</b> | the ODP Year commencing on the Start Date, in which case FYD shall be the number of days during the period from 14 October 2018 to 31 March 2019 (inclusive); | <b>(B)</b> | the ODP Year commencing on 1 April 2033 if the Authority does not exercise its right to extend the ODP Grant Agreement pursuant to clause 5.2 ( <i>Duration of the ODP Grant Agreement</i> ), in which case FYD shall be the number of days during the period from 1 April 2033 to 15 October 2033 (inclusive); | <b>(C)</b> | the ODP Year commencing on 1 April 2033 if the Authority exercises its right to extend the ODP Grant Agreement pursuant to clause 5.2 ( <i>Duration of the ODP</i> |
| <b>(A)</b>                               | the ODP Year commencing on the Start Date, in which case FYD shall be the number of days during the period from 14 October 2018 to 31 March 2019 (inclusive);  |            |   |            |   |            |  |
| <b>(B)</b>                               | the ODP Year commencing on 1 April 2033 if the Authority does not exercise its right to extend the ODP Grant Agreement pursuant to clause 5.2 ( <i>Duration of the ODP Grant Agreement</i> ), in which case FYD shall be the number of days during the period from 1 April 2033 to 15 October 2033 (inclusive);  |            |   |            |   |            |  |
| <b>(C)</b>                               | the ODP Year commencing on 1 April 2033 if the Authority exercises its right to extend the ODP Grant Agreement pursuant to clause 5.2 ( <i>Duration of the ODP</i>   |            |   |            |   |            |  |

|            |            |  |
|------------|------------|--|
|            |            | <i>Grant Agreement</i> ), in which case FYD shall be the number of days between 1 April 2033 and 31 March 2034 (inclusive);                                |
|            | <b>(D)</b> | the ODP Year commencing on 1 April 2035, in which case FYD shall be the number of days during the period from 1 April 2035 to 13 October 2035 (inclusive). |
| <b>RPI</b> |            | has the meaning given to it in Appendix 1 (Annual Rail Services Payments) of Schedule 8.1 (Rail Services Payments);  |

## 1.6 Payment Obligations

- (a) If the Rail Services Relevant Profit Report in respect of any ODP Year shows that the Rail Services Relevant Profit for that ODP Year exceeds the First Profit Share Threshold then, subject to paragraph 2 (*Additional Compensation or Settlement Payments*), the ODP shall pay to the Authority:
- (i) 0% of Rail Services Relevant Profit in excess of the First Profit Share Threshold but less than or equal to the Second Profit Share Threshold;
  - (ii) 20% of Rail Services Relevant Profit in excess of the Second Profit Share Threshold but less than or equal to the Third Profit Share Threshold;
  - (iii) 25% of Rail Services Relevant Profit in excess of the Third Profit Share Threshold but less than or equal to the Fourth Profit Share Threshold;
  - and
  - (iv) 50% of Rail Services Relevant Profit in excess of the Fourth Profit Share Threshold.
- (b) If the Rail Services Relevant Profit Report in respect of any ODP Year shows that the Rail Services Relevant Profit for that ODP Year exceeds the First Profit Share Threshold then, subject to paragraph 2 (*Additional Compensation or Settlement Payments*), the ODP shall pay to the Rail Services Reinvestment Fund:
- (i) 20% of Rail Services Relevant Profit in excess of the First Profit Share Threshold but less than or equal to the Second Profit Share Threshold;
  - (ii) 30% of Rail Services Relevant Profit in excess of the Second Profit Share Threshold but less than or equal to the Third Profit Share Threshold;
  - (iii) 50% of Rail Services Relevant Profit in excess of the Third Profit Share Threshold but less than or equal to the Fourth Profit Share Threshold;
  - and

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- (iv) 50% of Rail Services Relevant Profit in excess of the Fourth Profit Share Threshold.
- (c) Subject to paragraphs 3 and 4 below, payments due under paragraph 1.6(a) shall be paid as part of the Rail Services Payment for the first Reporting Period that falls thirty (30) or more days after delivery of the Rail Services Relevant Profit Report by the ODP to the Authority under paragraph 9.4 of Schedule 11.2 (*Management Information*) or if there is no such Reporting Period, within thirty (30) days of the date of such delivery.
- (d) Subject to paragraphs 3 and 4, payments due under paragraph 1.6(b) shall be paid at the same time as the Rail Services Payment, for the first Reporting Period that falls thirty (30) or more days after the delivery of the Rail Services Relevant Profit Report by the ODP to the Authority under paragraph 9.4 of Schedule 11.2 (*Management Information*) or if there is no such Reporting Period, within thirty (30) days of the date of such delivery.
- (e) Payments due under paragraph 1.6(b) shall be held by the Authority (the total of any such amounts held by the Authority shall be the “**Rail Services Reinvestment Fund**”).
- (f) The Rail Services Reinvestment Fund shall be used by the Authority to meet the objectives of the Authority in respect of the improvement of Rail Services including increasing efficiencies or creating long term value through capital investment.
- (g) The Authority and the ODP shall have the right, at any time following an initial deposit into the Rail Services Reinvestment Fund, to provide proposals to the other Party in respect to how amounts of the Rail Services Reinvestment Fund could be spent to meet the Authority's objectives, provided always that any such proposal made by the ODP shall be in addition to its commitments and obligations under the ODP Grant Agreement or other related agreements.
- (h) The Parties shall work together in good faith to reach an agreement on any proposal for the allocation of any or all of the amounts held in the Rail Service Reinvestment Fund. In the event that a mutually agreeable position cannot be reached between the Parties in respect of any such proposal then the Authority may, acting reasonably, determine in its sole discretion whether a drawdown of the Rail Service Reinvestment Fund shall or shall not occur in respect of any such proposal.
- (i) Where a drawdown from the Rail Service Reinvestment Fund is agreed between the Parties or determined by the Authority in accordance with 1.5(i), the ODP shall submit a proposed adjustment to Rail Services Payments following the requirements set out in paragraph 3 of Schedule 9.1.

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## 2 ADDITIONAL COMPENSATION OR SETTLEMENT PAYMENTS

2.1 If in any ODP Year (or any period of twelve (12) consecutive months after the end of the ODP Grant Agreement Period) (the “**Current ODP Year**”) the OpCo receives a compensation or other settlement payment relating to Rail Services of at least [REDACTED] x RPI arising from a single claim or series of related claims which relate wholly or partly to costs, losses or expenses (including loss of revenue) arising in any other ODP Year or ODP Years, then the ODP shall notify the Authority of such payment as soon as reasonably practicable and for the purposes of paragraphs 1 and 2 and notwithstanding its other terms:

- (a) the payment which relates to such other ODP Year shall be attributed to that other ODP Year and not treated as received in the Current ODP Year;
- (b) where and to the extent any payments under paragraphs 1 and 2 in respect of any other ODP Year would have been made or would have been higher had that amount actually been received in that other ODP Year, the ODP shall pay a reconciliation amount to the Authority within thirty (30) days after delivery of the Annual Rail Services Management Accounts that relate to the Current ODP Year by the ODP to the Authority under paragraph 9.4 of Schedule 11.2 (*Management Information*) or, if there is no further requirement on the ODP to deliver Annual Rail Services Management Accounts following the end of the ODP Grant Agreement Period, within thirty (30) days of the ODP or the OpCo receiving the relevant payment; and
- (c) **RPI** has the meaning given to it in Appendix 1 (*Annual Rail Services Payments*) of Schedule 8.1 (*Rail Services Payments*).

2.2 Where the Authority reasonably considers that in calculating Rail Services Relevant Profit any particular item or transaction has not been accounted for on a reasonable basis (including where the accounting treatment looks to the form rather than the substance, of the item or transaction) it shall be entitled to require it to be accounted for on such other basis as it may reasonably determine and notify to the ODP provided that the Authority shall not be entitled pursuant to this paragraph to alter the accounting policies of the OpCo from those set out in the Rail Services Record of Assumptions and applied through the Final Tender Financial Model.

2.3 Without prejudice to paragraph 2.1 where the Annual Rail Services Management Accounts in relation to any previous ODP Year are subject to adjustment or restatement the Authority shall have a discretion to require the recalculation of Rail Services Relevant Profit for the relevant ODP Year and to require that the ODP shall pay to the Authority the amount which is the difference between the profit share actually paid to the Authority pursuant to paragraph 1.5 and the amount that would have been paid had the Rail

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Services Relevant Profit been originally calculated on the basis that such adjustment or revision was included in the Annual Rail Services Management Accounts.

- 2.4 Any payment due to the Authority shall be paid by the ODP within thirty (30) days of the Authority notifying the ODP that it requires a payment to be made pursuant to this paragraph.

### **3 RAIL SERVICES RELEVANT PROFIT REPORT**

- 3.1 The ODP shall, at the same time as the Annual Rail Services Management Accounts are delivered under paragraph 9.4 of Schedule 11.2 (*Management Information*), deliver to the Authority a report (the “**Rail Services Relevant Profit Report**”) identifying:

- (a) the amount of total profit and the adjustments made in the calculation of Rail Services Relevant Profit pursuant to paragraphs 1 and 2;
- (b) any items falling under paragraph 2.1, including details of the allocation across ODP Years of such items; and
- (c) any adjustments or restatements made in relation to the Annual Rail Services Management Accounts in respect of any previous ODP Year.

and shall provide such additional information, records or documents as the Authority may reasonably require in relation to such matters.

- 3.2 The ODP shall procure that the OpCo shall include a statement referring to the Rail Services Relevant Profit in the Annual Rail Services Management Accounts. The format of such statement shall be agreed with the Authority.

- 3.3 The ODP and/or the OpCo’s auditors shall provide a reconciliation between:

- (a) profit as set out in its Annual Rail Services Management Accounts determined by applying GAAP applicable to the accounting period for which the accounts are prepared; and
- (b) Rail Services Relevant Profit determined by applying the accounting policies, as set out in the Rail Services Record of Assumptions at the time of bidding.

- 3.4 The ODP shall provide a statement in a format to be agreed with the Authority, confirming that the OpCo has, with appropriate due care and diligence, undertaken independent review procedures on the Rail Services Relevant Profit figures and associated accounting policies (“**Review Procedures**”). The nature and scope of the Review Procedures shall be agreed between the Authority and the ODP, with the Authority permitted to review and challenge the procedures undertaken and findings of the procedures.

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3.5 The statement referred to in paragraph 3.5 may be used by the Authority in considering whether the Rail Services Relevant Profit has been determined in a manner consistent with the requirements of this Agreement and the accounting policies as set out in the Rail Services Record of Assumptions.

#### **4 PAYMENT OF PROFIT SHARE AND DETERMINATION BY THE AUTHORITY**

4.1 Any profit share payment pursuant to paragraph 1.6(a) to be made in respect of the Final ODP Year shall be determined in accordance with paragraphs 1 and 2 but shall be paid within thirty (30) days of the Authority giving written notice to the ODP of the amount of such profit share payment.

4.2 If the ODP fails to provide the Annual Rail Services Management Accounts for the Final ODP Year within four (4) Reporting Periods of the expiry of the Final ODP Year pursuant to paragraph 9.4 of Schedule 11.2 (*Management Information*), the Authority shall be entitled (but not obliged) to determine any Rail Services Profit Share Adjustment in accordance with paragraphs 1 and 2 but by reference to any relevant information available to the Authority at the time of such determination, including any information contained in the latest cumulative, year-to-date Annual Rail Services Management Accounts.

**Appendix 1 to Schedule 8.2 - Profit Share Thresholds**

**1 FIRST PROFIT SHARE THRESHOLD**

1.1 The prescribed amounts for the component of FPST for the relevant ODP Year and for the purposes of the definition of First Profit Share Threshold are as set out in the table below:

| <b>Table 1</b>  |                 |                 |  |   |
|-----------------|-----------------|-----------------|--|---|
| <b>Column 1</b> | <b>Column 2</b> | <b>Column 3</b> | <b>Column 4</b>                                    | <b>Column 5</b>   |
| <b>Year</b>     |                 | <b>ODP Year</b> | <b>First Profit Share Threshold Amount or FPST</b> | <b>First Profit Share Threshold Amount or FPST (if the total of the Revenue Support Reconciliation Amount and the Revenue Support Adjustments in respect of the relevant ODP Year is greater than zero (0)) (£)</b> |
| <b>From</b>     | <b>To</b>       |                 |  |   |
| 14-Oct-18       | 31-Mar-19       | Year 1          | [REDACTED]   | [REDACTED]  |
| 01-Apr-19       | 31-Mar-20       | Year 2          | [REDACTED]   | [REDACTED]  |
| 01-Apr-20       | 31-Mar-21       | Year 3          | [REDACTED]   | [REDACTED]  |
| 01-Apr-21       | 31-Mar-22       | Year 4          | [REDACTED]   | [REDACTED]  |
| 01-Apr-22       | 31-Mar-23       | Year 5          | [REDACTED]   | [REDACTED]  |
| 01-Apr-23       | 31-Mar-24       | Year 6          | [REDACTED]   | [REDACTED]  |
| 01-Apr-24       | 31-Mar-25       | Year 7          | [REDACTED]   | [REDACTED]  |
| 01-Apr-25       | 31-Mar-26       | Year 8          | [REDACTED]   | [REDACTED]  |
| 01-Apr-26       | 31-Mar-27       | Year 9          | [REDACTED]   | [REDACTED]  |
| 01-Apr-27       | 31-Mar-28       | Year 10         | [REDACTED]   | [REDACTED]  |
| 01-Apr-28       | 31-Mar-29       | Year 11         | [REDACTED]   | [REDACTED]  |

| Table 1                                     |           |                        |   |  |
|---|-----------|------------------------|---|--|
| Column 1                                    | Column 2  | Column 3               | Column 4                                    | Column 5   |
| Year  |           | ODP Year               | First Profit Share Threshold Amount or FPST | First Profit Share Threshold Amount or FPST (if the total of the Revenue Support Reconciliation Amount and the Revenue Support Adjustments in respect of the relevant ODP Year is greater than zero (0)) (£) |
| From  | To        |                        |   |  |
| 01-Apr-29                                   | 31-Mar-30 | Year 12                | [REDACTED]                                  | [REDACTED]   |
| 01-Apr-30                                   | 31-Mar-31 | Year 13                | [REDACTED]                                  | [REDACTED]   |
| 01-Apr-31                                   | 31-Mar-32 | Year 14                | [REDACTED]                                  | [REDACTED]   |
| 01-Apr-32                                   | 31-Mar-33 | Year 15                | [REDACTED]                                  | [REDACTED]   |
| 01-Apr-33                                   | 15-Oct-33 | Year 16<br>(core)      | [REDACTED]                                  | [REDACTED]   |
| <b>Up to 26 Reporting Periods Extension</b> |           |                        |   |  |
| 16-Oct-33                                   | 31-Mar-34 | Year 16<br>(extension) | [REDACTED]                                  | [REDACTED]   |
| 01-Apr-34                                   | 31-Mar-35 | Year 17<br>(extension) | [REDACTED]                                  | [REDACTED]   |
| 01-Apr-35                                   | 13-Oct-35 | Year 18<br>(extension) | [REDACTED]                                  | [REDACTED]   |



## 2 Second Profit Share Threshold

2.1 The prescribed amounts for the component of SPST for the relevant ODP Year and for the purposes of the definition of Second Profit Share Threshold are as set out in the table below:

| <b>Table 2</b>  |                 |                 |   |  |
|-----------------|-----------------|-----------------|---|--|
| <b>Column 1</b> | <b>Column 2</b> | <b>Column 3</b> | <b>Column 4</b>                                     | <b>Column 5</b>  |
| <b>Year</b>     |                 | <b>ODP Year</b> | <b>Second Profit Share Threshold Amount or SPST</b> | <b>Second Profit Share Threshold Amount or SPST (if the total of the Revenue Support Reconciliation Amount and the Revenue Support Adjustments in respect of the relevant ODP Year is greater than zero (0)) (£)</b> |
| <b>From</b>     | <b>To</b>       |                 |   |  |
| 14-Oct-18       | 31-Mar-19       | Year 1          | [REDACTED]  | [REDACTED]   |
| 01-Apr-19       | 31-Mar-20       | Year 2          | [REDACTED]  | [REDACTED]   |
| 01-Apr-20       | 31-Mar-21       | Year 3          | [REDACTED]  | [REDACTED]   |
| 01-Apr-21       | 31-Mar-22       | Year 4          | [REDACTED]  | [REDACTED]   |
| 01-Apr-22       | 31-Mar-23       | Year 5          | [REDACTED]  | [REDACTED]   |
| 01-Apr-23       | 31-Mar-24       | Year 6          | [REDACTED]  | [REDACTED]   |
| 01-Apr-24       | 31-Mar-25       | Year 7          | [REDACTED]  | [REDACTED]   |
| 01-Apr-25       | 31-Mar-26       | Year 8          | [REDACTED]  | [REDACTED]   |
| 01-Apr-26       | 31-Mar-27       | Year 9          | [REDACTED]  | [REDACTED]   |
| 01-Apr-27       | 31-Mar-28       | Year 10         | [REDACTED]  | [REDACTED]   |
| 01-Apr-28       | 31-Mar-29       | Year 11         | [REDACTED]  | [REDACTED]   |
| 01-Apr-29       | 31-Mar-30       | Year 12         | [REDACTED]  | [REDACTED]   |
| 01-Apr-30       | 31-Mar-31       | Year 13         | [REDACTED]  | [REDACTED]   |

| Table 2                                     |           |                        |  |   |
|---|-----------|------------------------|--|---|
| Column 1                                    | Column 2  | Column 3               | Column 4                                     | Column 5  |
| Year  |           | ODP Year               | Second Profit Share Threshold Amount or SPST | Second Profit Share Threshold Amount or SPST (if the total of the Revenue Support Reconciliation Amount and the Revenue Support Adjustments in respect of the relevant ODP Year is greater than zero (0)) (£) |
| From  | To        |                        |  |   |
| 01-Apr-31                                   | 31-Mar-32 | Year 14                | [REDACTED]                                   | [REDACTED]  |
| 01-Apr-32                                   | 31-Mar-33 | Year 15                | [REDACTED]                                   | [REDACTED]  |
| 01-Apr-33                                   | 15-Oct-33 | Year 16<br>(core)      | [REDACTED]                                   | [REDACTED]  |
| <b>Up to 26 Reporting Periods Extension</b> |           |                        |  |   |
| 16-Oct-33                                   | 31-Mar-34 | Year 16<br>(extension) | [REDACTED]                                   | [REDACTED]  |
| 01-Apr-34                                   | 31-Mar-35 | Year 17<br>(extension) | [REDACTED]                                   | [REDACTED]  |
| 01-Apr-35                                   | 13-Oct-35 | Year 18<br>(extension) | [REDACTED]                                   | [REDACTED]  |

### 3 Third Profit Share Threshold

3.1 The prescribed amounts for the component of TPST for the relevant ODP Year and for the purposes of the definition of Third Profit Share Threshold are as set out in the table below:

| Table 3   |           |          |   |  |
|-----------|-----------|----------|---|--|
| Column 1  | Column 2  | Column 3 | Column 4                                    | Column 5   |
| Year      |           | ODP Year | First Profit Share Threshold Amount or TPST | Third Profit Share Threshold Amount or TPST (if the total of the Revenue Support Reconciliation Amount and the Revenue Support Adjustments in respect of the relevant ODP Year is greater than zero (0)) (£) |
| From      | To        |          |   |  |
| 14-Oct-18 | 31-Mar-19 | Year 1   | [REDACTED]                                  | [REDACTED]   |
| 01-Apr-19 | 31-Mar-20 | Year 2   | [REDACTED]                                  | [REDACTED]   |
| 01-Apr-20 | 31-Mar-21 | Year 3   | [REDACTED]                                  | [REDACTED]   |
| 01-Apr-21 | 31-Mar-22 | Year 4   | [REDACTED]                                  | [REDACTED]   |
| 01-Apr-22 | 31-Mar-23 | Year 5   | [REDACTED]                                  | [REDACTED]   |
| 01-Apr-23 | 31-Mar-24 | Year 6   | [REDACTED]                                  | [REDACTED]   |
| 01-Apr-24 | 31-Mar-25 | Year 7   | [REDACTED]                                  | [REDACTED]   |
| 01-Apr-25 | 31-Mar-26 | Year 8   | [REDACTED]                                  | [REDACTED]   |
| 01-Apr-26 | 31-Mar-27 | Year 9   | [REDACTED]                                  | [REDACTED]   |
| 01-Apr-27 | 31-Mar-28 | Year 10  | [REDACTED]                                  | [REDACTED]   |
| 01-Apr-28 | 31-Mar-29 | Year 11  | [REDACTED]                                  | [REDACTED]   |
| 01-Apr-29 | 31-Mar-30 | Year 12  | [REDACTED]                                  | [REDACTED]   |
| 01-Apr-30 | 31-Mar-31 | Year 13  | [REDACTED]                                  | [REDACTED]   |

| <b>Table 3</b>                              |                 |                        |  |   |
|---|-----------------|------------------------|--|---|
| <b>Column 1</b>                             | <b>Column 2</b> | <b>Column 3</b>        | <b>Column 4</b>                                    | <b>Column 5</b>   |
| <b>Year</b>                                 |                 | <b>ODP Year</b>        | <b>First Profit Share Threshold Amount or TPST</b> | <b>Third Profit Share Threshold Amount or TPST (if the total of the Revenue Support Reconciliation Amount and the Revenue Support Adjustments in respect of the relevant ODP Year is greater than zero (0)) (£)</b> |
| <b>From</b>                                 | <b>To</b>       |                        |  |   |
| 01-Apr-31                                   | 31-Mar-32       | Year 14                | [REDACTED]   | [REDACTED]  |
| 01-Apr-32                                   | 31-Mar-33       | Year 15                | [REDACTED]   | [REDACTED]  |
| 01-Apr-33                                   | 15-Oct-33       | Year 16<br>(core)      | [REDACTED]   | [REDACTED]  |
| <b>Up to 26 Reporting Periods Extension</b> |                 |                        |  |   |
| 16-Oct-33                                   | 31-Mar-34       | Year 16<br>(extension) | [REDACTED]   | [REDACTED]  |
| 01-Apr-34                                   | 31-Mar-35       | Year 17<br>(extension) | [REDACTED]   | [REDACTED]  |
| 01-Apr-35                                   | 13-Oct-35       | Year 18<br>(extension) | [REDACTED]   | [REDACTED]  |

#### 4 Fourth Profit Share Threshold

4.1 The prescribed amounts for the component of FthPST for the relevant ODP Year and for the purposes of the definition of Fourth Profit Share Threshold are as set out in the table below:

| Table 4   |           |          |  |   |
|-----------|-----------|----------|--|---|
| Column 1  | Column 2  | Column 3 | Column 4                                       | Column 5  |
| Year      |           | ODP Year | Fourth Profit Share Threshold Amount or FthPST | Fourth Profit Share Threshold Amount or FthPST (if the total of the Revenue Support Reconciliation Amount and the Revenue Support Adjustments in respect of the relevant ODP Year is greater than zero (0)) (£) |
| From      | To        |          |  |   |
| 14-Oct-18 | 31-Mar-19 | Year 1   | [REDACTED]                                     | [REDACTED]  |
| 01-Apr-19 | 31-Mar-20 | Year 2   | [REDACTED]                                     | [REDACTED]  |
| 01-Apr-20 | 31-Mar-21 | Year 3   | [REDACTED]                                     | [REDACTED]  |
| 01-Apr-21 | 31-Mar-22 | Year 4   | [REDACTED]                                     | [REDACTED]  |
| 01-Apr-22 | 31-Mar-23 | Year 5   | [REDACTED]                                     | [REDACTED]  |
| 01-Apr-23 | 31-Mar-24 | Year 6   | [REDACTED]                                     | [REDACTED]  |
| 01-Apr-24 | 31-Mar-25 | Year 7   | [REDACTED]                                     | [REDACTED]  |
| 01-Apr-25 | 31-Mar-26 | Year 8   | [REDACTED]                                     | [REDACTED]  |
| 01-Apr-26 | 31-Mar-27 | Year 9   | [REDACTED]                                     | [REDACTED]  |
| 01-Apr-27 | 31-Mar-28 | Year 10  | [REDACTED]                                     | [REDACTED]  |
| 01-Apr-28 | 31-Mar-29 | Year 11  | [REDACTED]                                     | [REDACTED]  |
| 01-Apr-29 | 31-Mar-30 | Year 12  | [REDACTED]                                     | [REDACTED]  |
| 01-Apr-30 | 31-Mar-31 | Year 13  | [REDACTED]                                     | [REDACTED]  |

| Table 4                                     |           |                        |  |   |
|---|-----------|------------------------|--|---|
| Column 1                                    | Column 2  | Column 3               | Column 4                                       | Column 5  |
| Year  |           | ODP Year               | Fourth Profit Share Threshold Amount or FthPST | Fourth Profit Share Threshold Amount or FthPST (if the total of the Revenue Support Reconciliation Amount and the Revenue Support Adjustments in respect of the relevant ODP Year is greater than zero (0)) (£) |
| From  | To        |                        |  |   |
| 01-Apr-31                                   | 31-Mar-32 | Year 14                | [REDACTED]                                     | [REDACTED]  |
| 01-Apr-32                                   | 31-Mar-33 | Year 15                | [REDACTED]                                     | [REDACTED]  |
| 01-Apr-33                                   | 15-Oct-33 | Year 16<br>(core)      | [REDACTED]                                     | [REDACTED]  |
| <b>Up to 26 Reporting Periods Extension</b> |           |                        |  |   |
| 16-Oct-33                                   | 31-Mar-34 | Year 16<br>(extension) | [REDACTED]                                     | [REDACTED]  |
| 01-Apr-34                                   | 31-Mar-35 | Year 17<br>(extension) | [REDACTED]                                     | [REDACTED]  |
| 01-Apr-35                                   | 13-Oct-35 | Year 18<br>(extension) | [REDACTED]                                     | [REDACTED]  |

**Appendix 2 to Schedule 8.2 - Components of AFA, IAFA and DFR**

**1 AFA**

1.1 The amounts for the purposes of the component of AFA in paragraph 1.3 of Schedule 8.2 are set out in the table below:

| <b>Table 1</b>                              |           |                     |                             |
|---|-----------|---------------------|-----------------------------|
| <b>Year</b>                                 |           | <b>ODP Year</b>     | <b>Component of AFA (£)</b> |
| <b>From</b>                                 | <b>To</b> |                     |                             |
| 14-Oct-18                                   | 31-Mar-19 | Year 1              | [REDACTED]                  |
| 01-Apr-19                                   | 31-Mar-20 | Year 2              | [REDACTED]                  |
| 01-Apr-20                                   | 31-Mar-21 | Year 3              | [REDACTED]                  |
| 01-Apr-21                                   | 31-Mar-22 | Year 4              | [REDACTED]                  |
| 01-Apr-22                                   | 31-Mar-23 | Year 5              | [REDACTED]                  |
| 01-Apr-23                                   | 31-Mar-24 | Year 6              | [REDACTED]                  |
| 01-Apr-24                                   | 31-Mar-25 | Year 7              | [REDACTED]                  |
| 01-Apr-25                                   | 31-Mar-26 | Year 8              | [REDACTED]                  |
| 01-Apr-26                                   | 31-Mar-27 | Year 9              | [REDACTED]                  |
| 01-Apr-27                                   | 31-Mar-28 | Year 10             | [REDACTED]                  |
| 01-Apr-28                                   | 31-Mar-29 | Year 11             | [REDACTED]                  |
| 01-Apr-29                                   | 31-Mar-30 | Year 12             | [REDACTED]                  |
| 01-Apr-30                                   | 31-Mar-31 | Year 13             | [REDACTED]                  |
| 01-Apr-31                                   | 31-Mar-32 | Year 14             | [REDACTED]                  |
| 01-Apr-32                                   | 31-Mar-33 | Year 15             | [REDACTED]                  |
| 01-Apr-33                                   | 15-Oct-33 | Year 16 (core)      | [REDACTED]                  |
| <b>Up to 26 Reporting Periods Extension</b> |           |                     |                             |
| 16-Oct-33                                   | 31-Mar-34 | Year 16 (extension) | [REDACTED]                  |
| 01-Apr-34                                   | 31-Mar-35 | Year 17 (extension) | [REDACTED]                  |

| Table 1   |           |                     |                      |
|-----------|-----------|---------------------|----------------------|
| Year      |           | ODP Year            | Component of AFA (£) |
| From      | To        |                     |                      |
| 01-Apr-35 | 13-Oct-35 | Year 18 (extension) | [REDACTED]           |

## 2 IAFA

2.1 The amounts for the purposes of the component of IAFA in paragraph 1.3 of Schedule 8.2 are set out in the table below:

| Table 2   |           |                |                       |
|-----------|-----------|----------------|-----------------------|
| Year      |           | ODP Year       | Component of IAFA (£) |
| From      | To        |                |                       |
| 14-Oct-18 | 31-Mar-19 | Year 1         | [REDACTED]            |
| 01-Apr-19 | 31-Mar-20 | Year 2         | [REDACTED]            |
| 01-Apr-20 | 31-Mar-21 | Year 3         | [REDACTED]            |
| 01-Apr-21 | 31-Mar-22 | Year 4         | [REDACTED]            |
| 01-Apr-22 | 31-Mar-23 | Year 5         | [REDACTED]            |
| 01-Apr-23 | 31-Mar-24 | Year 6         | [REDACTED]            |
| 01-Apr-24 | 31-Mar-25 | Year 7         | [REDACTED]            |
| 01-Apr-25 | 31-Mar-26 | Year 8         | [REDACTED]            |
| 01-Apr-26 | 31-Mar-27 | Year 9         | [REDACTED]            |
| 01-Apr-27 | 31-Mar-28 | Year 10        | [REDACTED]            |
| 01-Apr-28 | 31-Mar-29 | Year 11        | [REDACTED]            |
| 01-Apr-29 | 31-Mar-30 | Year 12        | [REDACTED]            |
| 01-Apr-30 | 31-Mar-31 | Year 13        | [REDACTED]            |
| 01-Apr-31 | 31-Mar-32 | Year 14        | [REDACTED]            |
| 01-Apr-32 | 31-Mar-33 | Year 15        | [REDACTED]            |
| 01-Apr-33 | 15-Oct-33 | Year 16 (core) | [REDACTED]            |



| <b>Table 2</b>                              |           |                     |                              |
|---|-----------|---------------------|------------------------------|
| <b>Year</b>                                 |           | <b>ODP Year</b>     | <b>Component of IAFA (£)</b> |
| <b>From</b>                                 | <b>To</b> |                     |                              |
| <b>Up to 26 Reporting Periods Extension</b> |           |                     |                              |
| 16-Oct-33                                   | 31-Mar-34 | Year 16 (extension) | [REDACTED]                   |
| 01-Apr-34                                   | 31-Mar-35 | Year 17 (extension) | [REDACTED]                   |
| 01-Apr-35                                   | 13-Oct-35 | Year 18 (extension) | [REDACTED]                   |

### **3 DFR**

3.1 The amounts for the purposes of the component of DFR in paragraph 1.4 of Schedule 8.2 are set out in the table below:

| <b>Table 3</b> |           |                 |                             |
|----------------|-----------|-----------------|-----------------------------|
| <b>Year</b>    |           | <b>ODP Year</b> | <b>Component of DFR (£)</b> |
| <b>From</b>    | <b>To</b> |                 |                             |
| 14-Oct-18      | 31-Mar-19 | Year 1          | [REDACTED]                  |
| 01-Apr-19      | 31-Mar-20 | Year 2          | [REDACTED]                  |
| 01-Apr-20      | 31-Mar-21 | Year 3          | [REDACTED]                  |
| 01-Apr-21      | 31-Mar-22 | Year 4          | [REDACTED]                  |
| 01-Apr-22      | 31-Mar-23 | Year 5          | [REDACTED]                  |
| 01-Apr-23      | 31-Mar-24 | Year 6          | [REDACTED]                  |
| 01-Apr-24      | 31-Mar-25 | Year 7          | [REDACTED]                  |
| 01-Apr-25      | 31-Mar-26 | Year 8          | [REDACTED]                  |
| 01-Apr-26      | 31-Mar-27 | Year 9          | [REDACTED]                  |
| 01-Apr-27      | 31-Mar-28 | Year 10         | [REDACTED]                  |
| 01-Apr-28      | 31-Mar-29 | Year 11         | [REDACTED]                  |
| 01-Apr-29      | 31-Mar-30 | Year 12         | [REDACTED]                  |
| 01-Apr-30      | 31-Mar-31 | Year 13         | [REDACTED]                  |
| 01-Apr-31      | 31-Mar-32 | Year 14         | [REDACTED]                  |

| <b>Table 3</b>                              |           |                     |                             |
|---|-----------|---------------------|-----------------------------|
| <b>Year</b>                                 |           | <b>ODP Year</b>     | <b>Component of DFR (£)</b> |
| <b>From</b>                                 | <b>To</b> |                     |                             |
| 01-Apr-32                                   | 31-Mar-33 | Year 15             | [REDACTED]                  |
| 01-Apr-33                                   | 15-Oct-33 | Year 16 (core)      | [REDACTED]                  |
| <b>Up to 26 Reporting Periods Extension</b> |           |                     |                             |
| 16-Oct-33                                   | 31-Mar-34 | Year 16 (extension) | [REDACTED]                  |
| 01-Apr-34                                   | 31-Mar-35 | Year 17 (extension) | [REDACTED]                  |
| 01-Apr-35                                   | 13-Oct-35 | Year 18 (extension) | [REDACTED]                  |

**Schedule 8.3 - Track Access Adjustments and Station Charge Adjustments**

**1 TRACK ACCESS ADJUSTMENTS**

1.1 The Track Access Adjustment to be made in respect of any Reporting Period shall be determined in accordance with the following formula:

|   |   |
|---|---|
| $TAA = (GCA - W) \times \frac{RPD}{FYD} + CVLTAA$ |   |
| <b>Where:</b>                                     |   |
| <b>TAA</b>  | means the Track Access Adjustment to be made in that Reporting Period;  |
| <b>CVLTAA</b>                                     | means following the CVL Asset Transfer, any access charges paid by OpCo to the Infrastructure Manager pursuant to the terms of any Track Access Agreement relating to CVL in the Reporting Period;  |
| <b>GCA</b>  | is the value of “ <b>GC</b> ” for the ODP Year in which the Reporting Period falls under Part 3A of Schedule 7 of the Track Access Agreement;   |
| <b>W</b>  | is the value of “ <b>Wt</b> ” for the ODP Year in which the Reporting Period falls under Part 2 of Schedule 7 of the Track Access Agreement;  |
| <b>RPD</b>  | means the number of days in that Reporting Period; and  |
| <b>FYD</b>  | means the number of days in the ODP Year in which that Reporting Period falls,  |
|   | except that, where a Reporting Period falls during two (2) ODP Years, TAA shall be determined as if the references to Reporting Period were to each of the two periods within such Reporting Period which fall wholly within one (1) of such ODP Years and the Track Access Adjustment to be made in that Reporting Period shall reflect the sum of TAA as determined for each such period. |

1.2 The ODP shall notify the Authority upon becoming aware that any Track Access Adjustment is to be made and shall supply such information as the Authority may require in relation thereto. The ODP shall ensure that the OpCo exercises its rights under the Track Access Agreement in such manner and take such other action as the Authority may

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reasonably require in connection with any related payment thereunder (including in relation to any agreement of the amount of any such payment and including submitting any relevant dispute to any relevant dispute resolution procedures). The ODP shall ensure that the OpCo shall not, without the consent of the Authority, agree or propose to agree a value for “**Wt**” or “**GC**” under Parts 2 or 3A of Schedule 7 of the Track Access Agreement.

The ODP shall provide such evidence of payment as the Authority may require (including any certificates) for the purpose of determining the value of W and GCA under paragraph 1.1.

- 1.3 If no value is ascertained for **W** or **GCA** prior to the date on which the Rail Services Payment for the relevant Reporting Period is determined, then a Track Access Adjustment shall only be determined to the extent such values can be ascertained at such time and, when such values are subsequently ascertained, adjustment shall be made to reflect the full Track Access Adjustment for such Reporting Period.
- 1.4 The values of **W** and **GCA** when used in the computation in paragraph 1.1 shall be taken to exclude any input Value Added Tax which is recoverable in respect of the payments they represent by the OpCo under sections 24 to 26 of the Value Added Tax Act 1994.
- 1.5 References in this paragraph 1 to “**Wt**” and “**GC**” and Parts 2 and 3A of Schedule 7 of the Track Access Agreement shall be deemed also to be references to such other provisions, and such other algebra under any such other provisions, of any Track Access Agreement as the Authority may reasonably consider have an equivalent effect, or are intended to fulfil the same function, as “**Wt**” or “**GC**” and Parts 2 or 3A of Schedule 7 of the Track Access Agreement to which the OpCo is a party on the Start Date.
- 1.6 To the extent that a Track Access Adjustment or Station Access Adjustment arises as a result of 'CVLTAA' or 'CVLSCA' pursuant to this Schedule 8.3 (Track Access Adjustments and Station Charge Adjustments), there shall be deemed to be a Qualifying Change, including for the sole purpose of determining the impact (if any) on and, where applicable, the adjustments to:
  - (a) the Profit Share Thresholds in Appendix 1 (Profit Share Threshold) of Schedule 8.2 (Profit Share Mechanism); and/or
  - (b) paragraphs 1 (AFA) or paragraph 2 (IAFA) of Appendix 2 (Components of AFA, IAFA and DFR) of Schedule 8.2 (Profit Share Mechanism),

provided that:

- (c) such impacts and adjustments arise as a direct result of the Track Access Adjustment or the Station Access Adjustment referred to above; and

- (d) the aggregate quantum of Rail Services Payments and Infrastructure Manager Services Payments pursuant to this Agreement shall not increase as a result of such Qualifying Change.

**2 STATION CHARGE ADJUSTMENT**

**2.1 NOT USED.**

2.2 The Station Charge Adjustment to be made in respect of any Reporting Period shall be the aggregate of the Individual Station Charge Adjustments as determined in accordance with the following formula for each Station and each other ODP Access Station:

|  |  |
|--|--|
| $ISCA = L \times \frac{RPD}{FYD} + CVLSCA$ |  |
| <b>where:</b>                              |  |
| <b>ISCA</b>                                | means the Individual Station Charge Adjustment for the relevant station for that Reporting Period;   |
| <b>L</b>                                   | is the value of “ <b>L</b> ” for the ODP Year in which the Reporting Period falls under:   |
|  | (a) if the relevant station is not an Independent Station, Condition F11.2 of the Station Access Conditions entitled “ <b>National Station Access Conditions 2013 (England and Wales) (incorporating amendments with effect from 1 April 2014)</b> ” relating to such station; or  |
|  | (b) if the relevant station is an Independent Station, Condition 42.3 of the Independent Station Access Conditions relating to that Independent Station,   |
|  | in each case, to the extent that value represents an amount payable to or by Network Rail or any other relevant Facility Owner by or to the OpCo on its own behalf under the relevant Access Agreement (excluding any amount payable to Network Rail by the OpCo in its capacity as Facility Owner of a station on behalf of a beneficiary which is party to an Access Agreement in respect of a Station); |
| <b>CVLSCA</b>                              | means following the CVL Asset Transfer, any access charges paid by OpCo to the Infrastructure Manager pursuant to the  |

|            |  |
|------------|--|
|            | terms of any Access Agreement relating to Stations on the CVL in that Reporting Period;  |
| <b>RPD</b> | means the number of days in that Reporting Period; and   |
| <b>FYD</b> | means the number of days in the ODP Year in which that Reporting Period falls except that, where a Reporting Period falls during two (2) ODP Years, the Station Charge Adjustment shall be determined as if the references to Reporting Period were to each of the two (2) periods within such Reporting Period which fall wholly within one of such ODP Years and the Station Charge Adjustment for such Reporting Period shall be the sum of the Station Charge Adjustment as determined for each such period. |

- 2.3 The ODP shall notify the Authority upon becoming aware that any Station Charge Adjustment is to be made and shall supply such information as the Authority may require in relation thereto. The ODP shall procure that the OpCo shall exercise such rights as it may have under any Access Agreement in such manner and take such other action as the Authority may reasonably require in connection with any related payment thereunder (including in relation to any agreement of the amount of any such payment and including submitting any relevant dispute to any relevant dispute resolution procedures). The ODP shall procure that the OpCo shall not, without the consent of the Authority, agree or propose to agree a value for “**Lt**” under any relevant Access Agreement.
- 2.4 The ODP shall provide such evidence of payment as the Authority may require (including any certificates) for the purpose of determining the **value of L** under paragraph 2.2.
- 2.5 If no value is ascertained for “**L**” prior to the date on which the Rail Services Payment for the relevant Reporting Period is determined, then a Station Charge Adjustment shall only be determined to the extent such values can be ascertained at such time and, when such values are subsequently ascertained, an adjustment shall be made to reflect the full Station Charge Adjustment for such Reporting Period.
- 2.6 The value of “**L**” when used in the computation in paragraph 2.2 shall be taken to exclude any input Value Added Tax which is recoverable in respect of the payments they represent by the OpCo under sections 24 to 26 of the Value Added Tax Act 1994.
- 2.7 For the purposes of this paragraph 2, “**Independent Station**” shall mean, at any time, any station of which Network Rail (or any other person other than a Train Operator) is the Facility Owner at that time.

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2.8 References in this paragraph 1.6(c) to “**Lt**”, Condition F11.2 of the Station Access Conditions entitled “**National Station Access Conditions 2013 (England and Wales) (incorporating amendments with effect from 1 April 2014)**” and Condition 42.3 of the Independent Station Access Conditions shall be deemed also to be references to such other provisions, and such other algebra under any such other provisions, of any relevant station access conditions as the Authority may reasonably consider have an equivalent effect, or are intended to fulfil the same function as, “**Lt**” and Condition F11.2 of the Station Access Conditions entitled “*National Station Access Conditions 2013 (England and Wales) (incorporating amendments with effect from 1 April 2014)*” and Condition 42.3 of the Independent Station Access Conditions which are in effect on the Start Date.

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## **Schedule 8.4 - Revenue Support Adjustment**

### **1 ELIGIBILITY FOR REVENUE SUPPORT ADJUSTMENTS**

- 1.1 No later than one (1) month after the Start Date, no later than six (6) Reporting Periods prior to the beginning of the third ODP Year and every ODP Year thereafter the ODP shall notify the Authority in writing with supporting evidence whether or not it elects that it shall be eligible to be paid Revenue Support Adjustments pursuant to this paragraph 1 in relation to the subsequent ODP Year. For the avoidance of doubt, the ODP shall not be entitled to any Revenue Support Adjustments during the first ODP Year. Such notification shall include full justification and reasons as to why the ODP is making such election.
- 1.2 If the ODP makes an election to be paid Revenue Support Adjustments in accordance with this Schedule 8.4, the Authority shall have the right to require that contractual incentive mitigations apply in relation to that ODP Year pursuant to paragraph 7 (Application of Contractual Incentive Mitigation), paragraph 8 (Marketing Plan), paragraph 9 (Minimum Marketing Spend Amount), and paragraph 10 (General Obligation of the ODP when the provisions of Schedule 8.4 apply) of this Schedule 8.4, and it shall notify the ODP of this at least two (2) Reporting Periods before the commencement of the relevant ODP Year. If no such election is made in relation to a relevant ODP Year the ODP shall have no right to be paid Revenue Support Adjustments in relation to such an ODP Year.
- 1.3 The provisions of paragraph 7 (Application of Contractual Incentive Mitigation), paragraph 8 (Marketing Plan), paragraph 9 (Minimum Spend Marketing Amount), and paragraph 10 (General Obligation of the ODP when the provisions of Schedule 8.4 apply) of this Schedule 8.4 shall be applicable if the ODP makes a relevant election and the Authority exercises its right to require the contractual incentive mechanisms to apply whether or not Revenue Support Adjustments are actually payable and, in this scenario, all direct and indirect costs arising as a result of the application of such mechanisms shall be borne by the ODP.

### **2 ENTITLEMENT TO REVENUE SUPPORT ADJUSTMENTS**

- 2.1 A Revenue Support Adjustment shall be made in accordance with paragraphs 3 and 4 in respect of any Reporting Period falling within an ODP Year in relation to which the ODP has elected, in accordance with paragraph 1, to be eligible to be paid Revenue Support Adjustments provided always that the Rail Services Management Accounts for that Reporting Period disclose that the cumulative year-to-date Revenue for the period commencing on the first day of the ODP Year within which that Reporting Period starts and ending on the final day of that Reporting Period is less than the Contractualised Revenue Line for that period.



2.2 If a Revenue Support Adjustment is made in respect of a Reporting Period then a Revenue Support Adjustment shall be made in respect of all subsequent Reporting Periods falling within the same ODP Year, notwithstanding that such Revenue Support Adjustment may be calculated to be zero (0) in accordance with paragraph 3.

**3 AMOUNT OF REVENUE SUPPORT ADJUSTMENTS**

3.1 Any Revenue Support Adjustment under this Schedule 8.4 in respect of a Reporting Period shall be paid in accordance with paragraph 4 and calculated in accordance with the following formula:

$$RSuA = RSuE - PRSuA$$

where:

- (a) RSuA is the Revenue Support Adjustment for that Reporting Period;
- (b) RSuE is the cumulative Revenue Support Adjustment entitlement for the ODP Year-to-date, determined by reference to the following formula:

$$RSuE = (RSA \text{ multiplied by } 80\%)$$

where:

RSA is the absolute amount by which the cumulative year to date Passenger Revenue (commencing on the first day of the ODP Year within which that Reporting Period starts and ending on the final day of that Reporting Period), as reported in the Rail Services Management Accounts, is less than the Contractualised Revenue Line for the same period, being calculated in accordance with the following formula:

$$RSA = (CRL \times RPI \times (PYD/FYD)) - PR$$

where:

|            |   |
|------------|---|
| <b>PR</b>  | means the actual Passenger Revenue (commencing on the first day of the ODP Year within which that Reporting Period starts and ending on the final day of that Reporting Period), as reported in the Rail Services Management Accounts.  |
| <b>CRL</b> | is the amount prescribed for these purposes in the table set out in paragraph 1 of Appendix 1 (Contractualised Revenue Line) to this Schedule 8.4 in respect of the relevant ODP Year provided that if the Authority exercises its right to extend the ODP Grant Agreement pursuant to clause 5.2 (Additional Reporting Periods), CRL for the ODP Year commencing 1 April 2033 shall be the |

|            |  |
|------------|--|
|            | aggregate of the amounts specified in the table set out in paragraph 1 of Appendix 1 (Contractualised Revenue Line) to this Schedule 8.4 for the periods referred to as Year 16 (core) and Year 16 (extension);  |
| <b>RPI</b> | has the meaning given to it in Appendix 1 (Annual Rail Services Payments) to Schedule 8.1 (Rail Services Payments);  |
| <b>PYD</b> | means the number of days in the period from the start of that ODP Year to the end of that Reporting Period;  |
| <b>FYD</b> | means the number of days in that ODP Year being three hundred and sixty five (365), or if February 29 falls during that ODP Year, three hundred and sixty six (366) days for every ODP Year other than in respect of:  |
|            | <b>(A)</b> the ODP Year commencing on the 14 October 2018, in which case FYD shall be the number of days during the period from 14 October 2018 to 31 March 2019 (inclusive);  |
|            | <b>(B)</b> the ODP Year commencing on 1 April 2033 if the Authority does not exercise its right to extend the ODP Grant Agreement pursuant to clause 5.2 ( <i>Duration of the ODP Grant Agreement</i> ), in which case FYD shall be the number of days during the period from 1 April 2033 to 15 October 2033 (inclusive); |
|            | <b>(C)</b> the ODP Year commencing on 1 April 2033 if the Authority exercises its right to extend the ODP Grant Agreement pursuant to clause 5.2 ( <i>Duration of the ODP Grant Agreement</i> ), in which case FYD shall be the number of days between 1 April 2033 and 31 March 2034 (inclusive);                         |
|            | <b>(D)</b> the ODP Year commencing on 1 April 2035 if the Authority exercises its right to extend the ODP Grant Agreement pursuant to clause 5.2 ( <i>Duration of the ODP Grant Agreement</i> ), in which case FYD shall be the number of days between 1 April 2035 and 13 October 2035 (inclusive);                       |

notwithstanding that where the formula for RSA calculates a value less than zero then RSA shall equal zero;

- 
- (c) PRSuA = the sum of the Revenue Support Adjustments (if any) made in respect of each previous Reporting Period (if any) in the same ODP Year as such Reporting Period.

3.2 If RSuA is:

- (a) a positive number, RSuA will be a positive number for the purposes of Schedule 8.1 (Rail Services Payments); or
- (b) a negative number, RSuA will be a negative number for the purpose of Schedule 8.1 (Rail Services Payments),

and shall be payable on the date specified in paragraph 4.

#### **4 PAYMENT**

4.1 Each Revenue Support Adjustment in respect of any Reporting Period shall be payable by the ODP or the Authority (as the case may be) on the next Payment Date or in the case of any Revenue Support Adjustment falling due in respect of the final ODP Year and which has not been made during the Rail Services Term, the date determined in accordance with paragraph 5 of Schedule 8.4 (Revenue Support Adjustment).

#### **5 FINAL ODP YEAR PAYMENT**

5.1 Any Revenue Support Adjustment and/or Revenue Support Reconciliation Amount which:

- (a) is to be made in respect of the final ODP Year; and
- (b) has not been made during the Rail Services Term,

shall be determined in accordance with paragraphs 3 and 6 respectively, but shall be paid within thirty (30) days of the Authority giving written notice to the ODP of the amount of such Revenue Support Adjustment and/or Revenue Support Reconciliation Amount.

#### **6 REVENUE SUPPORT RECONCILIATION AMOUNT**

6.1 Where any Revenue Support Adjustment has been made in respect of an ODP Year pursuant to paragraph 4, the Authority shall, following receipt by it of the Annual Rail Services Management Accounts in respect of that ODP Year, calculate the “**Revenue Support Reconciliation Amount**” in respect of that ODP Year in accordance with the following formula:

$$\text{RSuRA} = \text{RSuA}(\text{FS}) - \text{PRSuA}$$

where:

- (a) RSuRA is the Revenue Support Reconciliation Amount for that ODP Year;

- (b) RSuA(FS) is the Revenue Support Adjustment for that ODP Year determined in accordance with the following formula:

$$RSuA(FS) = (A \text{ multiplied by } 80\%)$$

where:

A is the absolute amount by which Passenger Revenue for that ODP Year as reported in the Annual Rail Services Management Accounts is less than the Contractualised Revenue Line for the relevant ODP Year, calculated in accordance with the following formula:

$$A = (CRL \times RPI \times (FYD_A / FYD)) - PA$$

where:

|                        |   |            |  |            |   |
|------------------------|---|------------|--|------------|---|
| <b>PA</b>              | Is the actual amount of Passenger Revenue for that ODP Year as reported in the Annual Rail Services Management Accounts.  |            |  |            |   |
| <b>CRL</b>             | is the amount prescribed for these purposes in the table set out in paragraph 1 of Appendix 1 (Contractualised Revenue Line) to this Schedule 8.4 in respect of the relevant ODP Year provided that if the Authority exercises its right to extend the ODP Grant Agreement pursuant to clause 5.2 (Additional Reporting Periods), CRL for the ODP Year commencing 1 April 2033 shall be the aggregate of the amounts specified in the table set out in paragraph 1 of Appendix 1 (Contractualised Revenue Line) to this Schedule 8.4 for the periods referred to as Year 16 (core) and Year 16 (extension);   |            |  |            |   |
| <b>RPI</b>             | has the meaning given to it in Appendix 1 (Annual Rail Services Payments) to Schedule 8.1 (Rail Services Payments);   |            |  |            |   |
| <b>FYD<sub>A</sub></b> | means the number of days in that ODP Year;  |            |  |            |   |
| <b>FYD</b>             | means the number of days in that ODP Year being three hundred and sixty five (365), or if February 29 falls during that ODP Year, three hundred and sixty six (366) days for every ODP Year other than in respect of: <table border="1" data-bbox="528 1733 1375 2004"> <tr> <td><b>(A)</b></td> <td>the ODP Year commencing on the 14 October 2018, in which case FYD shall be the number of days during the period from 14 October 2018 to 31 March 2019 (inclusive);</td> </tr> <tr> <td><b>(B)</b></td> <td>the ODP Year commencing on 1 April 2033 if the Authority does not exercise its right to extend the ODP Grant Agreement pursuant to clause 5.2 (<i>Duration of the ODP Grant Agreement</i>),</td> </tr> </table> | <b>(A)</b> | the ODP Year commencing on the 14 October 2018, in which case FYD shall be the number of days during the period from 14 October 2018 to 31 March 2019 (inclusive); | <b>(B)</b> | the ODP Year commencing on 1 April 2033 if the Authority does not exercise its right to extend the ODP Grant Agreement pursuant to clause 5.2 ( <i>Duration of the ODP Grant Agreement</i> ), |
| <b>(A)</b>             | the ODP Year commencing on the 14 October 2018, in which case FYD shall be the number of days during the period from 14 October 2018 to 31 March 2019 (inclusive);  |            |  |            |   |
| <b>(B)</b>             | the ODP Year commencing on 1 April 2033 if the Authority does not exercise its right to extend the ODP Grant Agreement pursuant to clause 5.2 ( <i>Duration of the ODP Grant Agreement</i> ),   |            |  |            |   |

|  |     |   |
|--|-----|---|
|  |     | in which case FYD shall be the number of days during the period from 1 April 2033 to 15 October 2033 (inclusive);   |
|  | (C) | the ODP Year commencing on 1 April 2033 if the Authority exercises its right to extend the ODP Grant Agreement pursuant to clause 5.2 ( <i>Duration of the ODP Grant Agreement</i> ), in which case FYD shall be the number of days between 1 April 2033 and 31 March 2034 (inclusive);   |
|  | (d) | the ODP Year commencing on 1 April 2035 if the Authority exercises its right to extend the ODP Grant Agreement pursuant to clause 5.2 ( <i>Duration of the ODP Grant Agreement</i> ), in which case FYD shall be the number of days between 1 April 2035 and 13 October 2035 (inclusive); |

notwithstanding that where the formula for A calculates a value less than zero then RSA shall equal zero;

- (c) PRSuA is the sum of the Revenue Support Adjustment (if any) determined pursuant to paragraph 3 in respect of each Reporting Period in that ODP Year.

6.2 If RSuRA is:

- (a) is a positive number, RSuRA will be a positive number for the purposes of Schedule 8.1 (Rail Services Payments); or
- (b) a negative number, RSuRA will be a negative number for the purpose of Schedule 8.1 (Rail Services Payments), and shall be payable within thirty (30) days of the Authority giving written notice to the ODP of such Revenue Support Reconciliation Amount.

## 7 APPLICATION OF CONTRACTUAL INCENTIVE MITIGATION

7.1 The provisions of paragraph 7 (Application of Contractual Incentive Mitigation), paragraph 8 (Marketing Plan), paragraph 9 (Minimum Spend Marketing Amount), and paragraph 10 (General Obligation of the ODP when the provisions of Schedule 8.4 apply) shall apply if the ODP elects prior to the beginning of the second ODP Year or any subsequent ODP Year to be eligible to be paid Revenue Support Adjustments pursuant to paragraph 1 and the Authority exercises its consequent right to require that contractual incentive mitigations shall apply in relation to the relevant ODP Year.

7.2 At all times when this Schedule 8.4 applies in accordance with the provisions of this paragraph 7 the ODP shall, in addition to complying with the other provisions of this Schedule 8.4, provide a written submission setting out its proposed actions to minimise its requirement to receive Revenue Support Adjustments and use all reasonable

endeavours to maximise revenue and minimise or mitigate the impacts of any factors leading to revenue being reduced or increasing less quickly than the ODP had forecast.

## 8 MARKETING PLAN

- 8.1 In relation to each ODP Year the ODP shall ensure that the OpCo shall spend at least the Minimum Marketing Spend Amount on marketing. The Marketing and Communications Plan for each ODP Year shall contain detailed spending commitments in relation to identified Marketing with supporting analysis showing the intended effect of such marketing by reference to passenger numbers, revenue and profitability both during and after the ODP Year to which it relates. The ODP shall provide such further information and analysis as the Authority may reasonably require in relation to the Marketing and Communications Plan and meet with the Authority to discuss such plan if required by the Authority. The Authority shall be permitted to require reasonable amendments to be made the Marketing and Communications Plan and shall approve the plan in accordance with paragraph 10 of Schedule 1.4.
- 8.2 At the end of each ODP Year, the ODP shall deliver a report to the Authority describing the Marketing that was carried out as funded by the Minimum Marketing Spend Amount by reference to the provisions of the Marketing and Communications Plan and its reasonable assessment of the effectiveness of such activities.
- 8.3 Minimum Marketing Spend Amount for each ODP Year will be calculated in accordance with paragraph 9 below.

## 9 MINIMUM MARKETING SPEND AMOUNT

|   |  |
|---|--|
| <b>MMSA x RPI x (FYD<sub>A</sub>/FYD)</b> |  |
| <b>where:</b>                             |  |
| <b>MMSA</b>                               | is the amount prescribed for these purposes in the table set out in paragraph 1 of Appendix 2 ( <i>Minimum Marketing Spend Amount</i> ) to this Schedule 8.4 in respect of the relevant ODP Year provided that if the Authority exercises its right to extend the ODP Grant Agreement pursuant to clause 5.2 (Additional Reporting Periods), MMSA for the ODP Year commencing 1 April 2033 shall be the aggregate of the amounts specified in the table set out in paragraph 1 of Appendix 2 ( <i>Minimum Marketing Spend Amount</i> ) to this Schedule 8.4 for the periods referred to as Year 16 (core) and Year 16 (extension); |
| <b>RPI</b>                                | has the meaning given to it in Appendix 1 ( <i>Annual Rail Services Payments</i> ) of Schedule 8.1 ( <i>Rail Services Payments</i> );  |

|             |   |
|-------------|---|
| <b>FYDA</b> | means the number of days in that ODP Year;  |
| <b>FYD</b>  | means the number of days in that ODP Year being three hundred and sixty five (365), or if February 29 falls during that ODP Year, three hundred and sixty six (366) days for every ODP Year other than in respect of:   |
| <b>(A)</b>  | the ODP Year commencing on the 14 October 2018, in which case FYD shall be the number of days during the period from 14 October 2018 to 31 March 2019 (inclusive);  |
| <b>(B)</b>  | the ODP Year commencing on 1 April 2033 if the Authority does not exercise its right to extend the ODP Grant Agreement pursuant to clause 5.2 ( <i>Duration of the ODP Grant Agreement</i> ), in which case FYD shall be the number of days during the period from 1 April 2033 to 15 October 2033 (inclusive); |
| <b>(C)</b>  | the ODP Year commencing on 1 April 2033 if the Authority exercises its right to extend the ODP Grant Agreement pursuant to clause 5.2 ( <i>Duration of the ODP Grant Agreement</i> ), in which case FYD shall be the number of days between 1 April 2033 and 31 March 2034 (inclusive);                         |
| <b>(d)</b>  | the ODP Year commencing on 1 April 2035 if the Authority exercises its right to extend the ODP Grant Agreement pursuant to clause 5.2 ( <i>Duration of the ODP Grant Agreement</i> ), in which case FYD shall be the number of days between 1 April 2035 and 13 October 2035 (inclusive);                       |

**10 GENERAL OBLIGATION OF THE ODP WHEN THE PROVISIONS OF SCHEDULE 8.4 APPLY**

10.1 The ODP shall proactively consider and implement actions to meet its obligations pursuant to paragraphs 7, 8 and 9 provided that where the consent of the Authority is required to any action pursuant to the terms of the ODP Grant Agreement, the ODP shall seek its consent as soon as reasonably practicable and shall only pursue such action once consent has been provided.

10.2 The Authority shall have the right to propose to the ODP measures that the ODP could take to maximise revenue and minimise or mitigate the impacts of any factors leading to revenue being reduced or increasing less quickly than the ODP had forecast including (but not limited to) any such measures relating to:

- 
- (a) the levels of Fares (having the meaning given to paragraph (a) of that definition);
  - (b) Station Services; and
  - (c) Ancillary Services,
- (being an “**Authority Revenue Proposal**”).

10.3 The ODP shall give reasonable consideration to any Authority Revenue Proposal and shall either implement such Authority Revenue Proposal or shall explain why in its reasonable opinion (with supporting evidence) such measures would not be appropriate.

10.4 Without prejudice to any of the Authority’s rights as set out in Schedule 5 (Fares and Smart Ticketing) or elsewhere in this Agreement, the ODP shall procure that the OpCo shall not decrease any Prices for any Fares (having the meaning given to paragraph (a) of that definition) without the prior written consent of the Authority provided always that it shall be unreasonable for the Authority to withhold consent where the ODP can evidence to the satisfaction of the Authority that such decrease would have a positive impact on Passenger Revenue.

## **11 BESPOKE REVENUE INITIATIVE PROPOSAL**

11.1 The ODP shall be permitted to make a proposal (“**Bespoke Revenue Initiative Proposal**”) to the Authority that revenue derived from a specified initiative of the ODP shall be subject to a specified division of revenue arising from its implementation during periods that Revenue Support Adjustments are payable or where it is reasonably likely that Revenue Support Adjustments shall become payable in the next twenty four (24) months.

11.2 Any Bespoke Revenue Initiative Proposal shall:

- (a) identify what the proposed initiative is and the capital and operational costs that are likely to be incurred delivering it;
- (b) provide an estimate of the value that the initiative is likely to deliver for the Authority after the end of the ODP Grant Agreement Term and
- (c) explain the proposed revenue share between the ODP and the Authority when the ODP is receiving Revenue Support and how the revenue derived from the initiative can be accurately identified and apportioned for the purposes of the ODP’s proposed revenue allocation.

11.3 The Authority may also require the ODP in any Bespoke Revenue Initiative Proposal to:

- (a) include a full business case including a cost benefit analysis by reference to criteria specified by the Authority; and



- 
- (b) include proposed drafting to be included into the ODP Grant Agreement to deliver the Bespoke Revenue Initiative Proposal.

11.4 The ODP shall meet with the Authority to discuss the Bespoke Revenue Initiative Proposal and provide such additional information as it shall reasonably require. The Authority shall be permitted to propose alterations to the Bespoke Revenue Initiative Proposal and the ODP Grant Agreement drafting proposed by the ODP. The Authority shall have an unfettered discretion to accept or reject any Bespoke Revenue Initiative Proposal. If the Authority accepts it the ODP Grant Agreement shall be amended on terms agreed between the Parties for the purposes on implementing it following the process set out in Schedule 9 (Changes and Variations).

## **12 FAILURE TO PROVIDE ANNUAL RAIL SERVICES MANAGEMENT ACCOUNTS**

12.1 If the ODP fails to provide the Annual Rail Services Management Accounts for the final ODP Year within four (4) Reporting Periods of the expiry of the final ODP Year pursuant to paragraph 9.4(c) of Schedule 11.2 (Management Information), the Authority shall be entitled (but not obliged) to determine any of:

- (a) any Revenue Support Adjustment in accordance with paragraph 3 of this Schedule 8.4; and
- (b) any Revenue Support Reconciliation Amount in accordance with paragraph 7 of this Schedule 8.4;

notwithstanding references to amounts reported in the Annual Rail Services Management Accounts, by reference to any relevant information available to the Authority at the time of such determination, including any information contained in the latest cumulative, year-to-date Rail Services Management Accounts.

## **13 LAST TWELVE (12) OR THIRTEEN (13) MONTHS PROVISIONS**

13.1 If in relation to any ODP Year the ODP has made the election referred to in paragraph 1 to be eligible to receive Revenue Support Adjustments, the provisions of Schedule 15.2 (Last Twelve (12) or Thirteen (13) Months of Rail Services Term and Other Conduct of Business Provisions) shall apply during such ODP Year notwithstanding that the last twelve (12) or thirteen (13) months of the Rail Services Term may not have commenced at such time.

**Appendix 1 to Schedule 8.4 - Contractualised Revenue Line**

**1 CONTRACTUALISED REVENUE LINE**

The prescribed amounts for the relevant ODP Year and for the purposes of the definition of Contractualised Revenue Line as set out in the table below:

| <b>Table 1</b>                              |           |                     |   |
|---|-----------|---------------------|---|
| <b>Year</b>                                 |           | <b>ODP Year</b>     | <b>Contractualised Revenue Line (£)</b> |
| <b>From</b>                                 | <b>To</b> |                     |   |
| 14-Oct-18                                   | 31-Mar-19 | Year 1              | [REDACTED]                              |
| 01-Apr-19                                   | 31-Mar-20 | Year 2              | [REDACTED]                              |
| 01-Apr-20                                   | 31-Mar-21 | Year 3              | [REDACTED]                              |
| 01-Apr-21                                   | 31-Mar-22 | Year 4              | [REDACTED]                              |
| 01-Apr-22                                   | 31-Mar-23 | Year 5              | [REDACTED]                              |
| 01-Apr-23                                   | 31-Mar-24 | Year 6              | [REDACTED]                              |
| 01-Apr-24                                   | 31-Mar-25 | Year 7              | [REDACTED]                              |
| 01-Apr-25                                   | 31-Mar-26 | Year 8              | [REDACTED]                              |
| 01-Apr-26                                   | 31-Mar-27 | Year 9              | [REDACTED]                              |
| 01-Apr-27                                   | 31-Mar-28 | Year 10             | [REDACTED]                              |
| 01-Apr-28                                   | 31-Mar-29 | Year 11             | [REDACTED]                              |
| 01-Apr-29                                   | 31-Mar-30 | Year 12             | [REDACTED]                              |
| 01-Apr-30                                   | 31-Mar-31 | Year 13             | [REDACTED]                              |
| 01-Apr-31                                   | 31-Mar-32 | Year 14             | [REDACTED]                              |
| 01-Apr-32                                   | 31-Mar-33 | Year 15             | [REDACTED]                              |
| 01-Apr-33                                   | 15-Oct-33 | Year 16 (core)      | [REDACTED]                              |
| <b>Up to 26 Reporting Periods Extension</b> |           |                     |   |
| 16-Oct-33                                   | 31-Mar-34 | Year 16 (extension) | [REDACTED]                              |
| 01-Apr-34                                   | 31-Mar-35 | Year 17 (extension) | [REDACTED]                              |
| 01-Apr-35                                   | 13-Oct-35 | Year 18 (extension) | [REDACTED]                              |

**Appendix 2 to Schedule 8.4 - Minimum Marketing Spend Amount**

**1 MINIMUM MARKETING SPEND AMOUNT**

The prescribed amounts for the relevant ODP Year and for the purposes of the definition of Minimum Marketing Spend Amount as set out in the table below:

| <b>Table 1</b>                              |           |                     |   |
|---|-----------|---------------------|---|
| <b>Year</b>                                 |           | <b>ODP Year</b>     | <b>Minimum Marketing Spend Amount (£)</b> |
| <b>From</b>                                 | <b>To</b> |                     |   |
| 14-Oct-18                                   | 31-Mar-19 | Year 1              | [REDACTED]                                |
| 01-Apr-19                                   | 31-Mar-20 | Year 2              | [REDACTED]                                |
| 01-Apr-20                                   | 31-Mar-21 | Year 3              | [REDACTED]                                |
| 01-Apr-21                                   | 31-Mar-22 | Year 4              | [REDACTED]                                |
| 01-Apr-22                                   | 31-Mar-23 | Year 5              | [REDACTED]                                |
| 01-Apr-23                                   | 31-Mar-24 | Year 6              | [REDACTED]                                |
| 01-Apr-24                                   | 31-Mar-25 | Year 7              | [REDACTED]                                |
| 01-Apr-25                                   | 31-Mar-26 | Year 8              | [REDACTED]                                |
| 01-Apr-26                                   | 31-Mar-27 | Year 9              | [REDACTED]                                |
| 01-Apr-27                                   | 31-Mar-28 | Year 10             | [REDACTED]                                |
| 01-Apr-28                                   | 31-Mar-29 | Year 11             | [REDACTED]                                |
| 01-Apr-29                                   | 31-Mar-30 | Year 12             | [REDACTED]                                |
| 01-Apr-30                                   | 31-Mar-31 | Year 13             | [REDACTED]                                |
| 01-Apr-31                                   | 31-Mar-32 | Year 14             | [REDACTED]                                |
| 01-Apr-32                                   | 31-Mar-33 | Year 15             | [REDACTED]                                |
| 01-Apr-33                                   | 15-Oct-33 | Year 16 (core)      | [REDACTED]                                |
| <b>Up to 26 Reporting Periods Extension</b> |           |                     |   |
| 16-Oct-33                                   | 31-Mar-34 | Year 16 (extension) | [REDACTED]                                |
| 01-Apr-34                                   | 31-Mar-35 | Year 17 (extension) | [REDACTED]                                |
| 01-Apr-35                                   | 13-Oct-35 | Year 18 (extension) | [REDACTED]                                |

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**Schedule 8.5 - Infrastructure Manager Services Payments**

**1 INFRASTRUCTURE MANAGER SERVICES PAYMENTS**

1.1 The Authority will pay to the ODP the Infrastructure Manager Services Payment for each relevant Reporting Period commencing from the CVL Asset Transfer Date.

1.2 The Infrastructure Manager Services Payment shall be an amount equal to:

$$\mathbf{TPOMP = PFixC + PFirmC + PEmerC + EXCR - OPP - IMI}$$

where:

**TPOMP** = The Infrastructure Manager Services Payment;

**PFixC** = The Fixed Charges for the corresponding Reporting Period;

**PFirmC** = The Firm Charges for the corresponding Reporting Period;

**PEmerC** = The Emerging Charges for the corresponding Reporting Period;

**EXCR** = Excluded Risk Charges for the corresponding Reporting Period;

**OPP** = AOPP/13 (or any relevant number of Reporting Periods for any part ODP Year)

**AOPP** = Any financial underspend of the ODP for the previous ODP Year in delivering its duties under Schedule 3A (Infrastructure Manager Services) of this Agreement. That is, any cost savings achieved by the ODP in delivering the Infrastructure Manager Services for a cost less than the agreed costs set out in this Schedule 8.5; and

**IMI** = Any income received by InfraCo in the performance of its role as the Infrastructure Manager, the provision of Infrastructure Manager Services, or income arising from the CVL Assets from the ODP or third parties (including OpCo, InfraCo or any Affiliate of ODP, OpCo or InfraCo (as applicable)) in the previous Reporting Period, provided that this shall not include any element of the Infrastructure Manager Service Payment paid to the ODP pursuant to this Schedule 8.5 that is subsequently paid by the ODP to InfraCo in respect of Infrastructure Manager Services provided pursuant to any subcontract agreed and entered into in accordance with the terms of this Agreement.

1.3 The Authority shall notify the ODP of a final Reporting Period income adjustment in respect of OPP and IMI twenty one (21) days after the end of the ODP Grant Agreement Term adjustment shall be payable by the ODP seven (7) days after such notification.

1.4 After the end of each ODP Year, following receipt of the Annual Management Accounts in accordance with Schedule 11 (ODP Performance Meetings and Management Information) the Authority shall calculate the difference between the amount determined

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from the Annual Management Accounts and the total of the IMI income adjustments relating to that ODP Year; and

- (a) where the amount calculated from the Annual Management Accounts is greater than the total of the periodic IMI adjustments relating to that ODP Year the ODP shall pay the the difference to the Authority; and
- (b) where the amount calculated from the Annual Management Accounts is less than the total of the periodic IMI adjustments relating to that ODP Year, then the Authority will pay the difference to the ODP.

## 2 FIXED CHARGES

2.1 The Fixed Charges for the corresponding Reporting Period is calculated as follows:

$$PFixC = \left( \frac{RPD}{FYD} \times AFixC \right) + RA$$

Where:

**RPD** = the number of days in that Reporting Period;

**FYD** = the number of days in the ODP Year in which that Reporting Period occurs being three hundred and sixty five (365), or if February 29 falls during that ODP Year, three hundred and sixty six (366) days for every ODP Year other than in respect of any Reporting Period:

- (a) Which commences during the ODP Year commencing on the Start Date, in which case FYD shall be the number of days during the period from 14 October 2018 to 31 March 2019 (inclusive);
- (b) Which commences between 1 April 2033 and 15 October 2033 (inclusive), in which case FYD shall be the number of days between such dates (inclusive);
- (c) Which commences between 16 October 2033 and 31 March 2034 (inclusive), in which case FYD shall be the number of days between such dates (inclusive); and
- (d) Which commences between 1 April 2035 and 13 October 2035 (inclusive), in which case FYD shall be the number of days between such dates (inclusive).

$$AFixC = (AAOMF(Y_n) + AAKMF(Y_n) + AWSRIF(Y_n) + AOverC(Y_n) + AP(Y_n) + AAS(Y_n)) * RPI$$

where, for each Year (n), which equates to the actual year of the Agreement:

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**AAOMF(Y<sub>n</sub>)** = Annual Asset Operational Management Fee for the respective ODP Year as set out in the Table A1 of Appendix 1;

**AAKMF(Y<sub>n</sub>)** = Annual Asset Knowledge Management Fee for the respective ODP Year as set out in the Table A2 of Appendix 1;

**AWSRIF(Y<sub>n</sub>)** = Annual Weather & Season Related Intervention Services (excluding Extreme Weather Events) Fee for the respective ODP Year as set out in the Table A3 of Appendix 1 to this Schedule 8.5;

**AOverC(Y<sub>n</sub>)** = The fixed Annual Infrastructure Manager Services Overheads for the respective ODP Year set out in Table A4 of Appendix 1 to this Schedule 8.5;

**AP(Y<sub>n</sub>)** = The fixed Annual Infrastructure Manager Services Profit for the respective ODP Year set out in Table A5 of Appendix 1 to this Schedule 8.5;

**AAS(Y<sub>n</sub>)** = Annual Amenities and Services Fee for the respective ODP Year as set out in the Table A6 of Appendix 1 to this Schedule 8.5;

**RA** = any entitlement to adjust any Fixed Charge following the Authority not approving a Planned Renewal pursuant to Appendix 5 (Renewals Process) of Schedule 3A.3; and

**RPI** = The quotient of the Retail Prices Index for the January which immediately precedes the commencement of the relevant ODP Year divided by the Retail Prices Index for January 2017.

- 2.2 At the relevant points set out in Schedule 3A (Infrastructure Manager Services) charges identified as Firm Charges within this Schedule 8.5 will be re-categorised as Fixed Charges. Where and at such point such Firm Charges are identified as Fixed Charges, the item will be included as an additional item within the calculation in paragraph 2.1 of this Schedule and the corresponding charge will be removed from the calculation in paragraph 3.1

### 3 FIRM CHARGES

- 3.1 The Firm Charges for the corresponding Reporting Period is calculated as follows:

$$PFirmC = \left( \frac{RPD}{FYD} \times AFirmC \right) + DISCOF + RA$$

Where:

**RPD** = the number of days in that Reporting Period.

**FYD** = the number of days in the ODP Year in which that Reporting Period occurs being three hundred and sixty five (365), or if February 29 falls during that ODP Year, three

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hundred and sixty six (366) days for every ODP Year other than in respect of any Reporting Period:

- (a) Which commences during the ODP Year commencing on the Start Date, in which case FYD shall be the number of days during the period from 14 October 2018 to 31 March 2019 (inclusive);
- (b) Which commences between 1 April 2033 and 15 October 2033 (inclusive), in which case FYD shall be the number of days between such dates (inclusive);
- (c) Which commences between 16 October 2033 and 31 March 2034 (inclusive), in which case FYD shall be the number of days between such dates (inclusive); and
- (d) Which commences between 1 April 2035 and 13 October 2035 (inclusive), in which case FYD shall be the number of days between such dates (inclusive).

$$\mathbf{AFirmC} = (\mathbf{AFSF}(Y_n) + \mathbf{AFTF}(Y_n) + \mathbf{AFOLEF}(Y_n) + \mathbf{AFPF}(Y_n) + \mathbf{AFLCF}(Y_n) + \mathbf{AFOAF}(Y_n)) * \mathbf{RPI}$$

**AFSF(Y<sub>n</sub>)** = The Annual Firm Signalling and Control Systems and Passenger Information Systems Fee for the respective ODP Year as set out in Table B1 of Appendix 2;

**AFTF(Y<sub>n</sub>)** = The Annual Firm Track Fee for the respective ODP Year as set out in Table B2 of Appendix 2;

**AFOLEF(Y<sub>n</sub>)** = The Annual Firm Overhead Line Equipment Fee for the respective ODP Year as set out in Table B3 of Appendix 2;

**AFPF(Y<sub>n</sub>)** = The Annual Firm Power Distribution and Electricity and Power Fee for the respective ODP Year as set out in Table B4 of Appendix 2;

**AFLCF(Y<sub>n</sub>)** = The Annual Firm Level Crossings Fee for the respective ODP Year as set out in Table B5 of Appendix 2;

**AFOAF(Y<sub>n</sub>)** = The Annual Firm Telecoms Fee for the respective ODP Year as set out in Table B6 of Appendix 2;

**RA** = any entitlement to adjust any Fixed Charge following the Authority not approving a Planned Renewal pursuant to Appendix 5 (Renewals Process) of Schedule 3A.3;

**RPI** = is the quotient of the Retail Prices Index for the January which immediately precedes the commencement of the relevant ODP Year divided by the Retail Prices Index for January 2017; and

**DISCOF** = for Firm Charges, any entitlement to adjust the Firm Charge for a Material Discovery in accordance with Schedule 3A (Infrastructure Manager Services).

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3.2 In accordance with the process set out in Schedule 3A (Infrastructure Manager Services) charges identified as Emerging Charges shall be re-categorised as Firm Charges. Where such Emerging Charges are converted into Firm Charges in accordance with Schedule 3A, the relevant item will be included as an additional item within the calculation in paragraph 3.1 of this Schedule 8.5 and removed from the calculation in paragraph 4.1.

#### 4 EMERGING CHARGES

4.1 The Emerging Charges for the corresponding Reporting Period is calculated as follows:

$$PEmerC = \left( \frac{RPD}{FYD} \times AEmerC \right) + DISCOE + RA$$

Where:

**RPD** = the number of days in that Reporting Period

**FYD** = the number of days in the ODP Year in which that Reporting Period occurs being three hundred and sixty five (356), or if February 29 falls during that ODP Year, three hundred and sixty six (366) days for every ODP Year other than in respect of any Reporting Period:

- (a) Which commences during the ODP Year commencing on the Start Date, in which case FYD shall be the number of days during the period from 14 October 2018 to 31 March 2019 (inclusive);
- (b) Which commences between 1 April 2033 and 15 October 2033 (inclusive), in which case FYD shall be the number of days between such dates (inclusive);
- (c) Which commences between 16 October 2033 and 31 March 2034 (inclusive), in which case FYD shall be the number of days between such dates (inclusive); and
- (d) Which commences between 1 April 2035 and 13 October 2035 (inclusive), in which case FYD shall be the number of days between such dates (inclusive).

**AEmerC** = (AFEF(Y<sub>n</sub>) + AFStrF(Y<sub>n</sub>) + AFBPF(Y<sub>n</sub>) + AFOTF(Y<sub>n</sub>) + AFOAF(Y<sub>n</sub>))\*RPI

**AFEF(Y<sub>n</sub>)** = The Annual Budget Earthworks Fee for the respective ODP Year as set out in Table C1 of Appendix 3;

**AFStrF(Y<sub>n</sub>)** = The Annual Budget Structures (including Tunnels) Fee for the respective ODP Year as set out in Table C2 of Appendix 3;

**AFBPF(Y<sub>n</sub>)** = The Annual Budget Property and Buildings (including Stations) Fee for the respective ODP Year as set out in Table C3 of Appendix 3;



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**AFOTF( $Y_n$ )** = The Annual Budget Off Track and Drainage Fee for the respective ODP Year as set out in Table C4 of Appendix 3;

**AFOAF( $Y_n$ )** = The Annual Budget Other Asset Fee as set out in Table C5 of Appendix 3;

**DISCOE** = For Emerging Charges, any entitlement to adjust the Emerging Charges in accordance with Schedule 3A (Infrastructure Manager Services); and

**RA** = any entitlement to adjust any Fixed Charge following the Authority not approving a Planned Renewal pursuant to Appendix 5 (Renewals Process) of Schedule 3A.3.

## **5 EXCLUDED RISK CHARGES**

- 5.1 The charges for Excluded Risks within the Reporting Period shall be the costs of the provision of activities related to such Excluded Risks that have been incurred within the Reporting Period in excess of [REDACTED] such costs being the responsibility of the ODP in accordance with Schedule 3A.

## **6 RENEWALS**

- 6.1 Renewals may be progressed as ODP Infrastructure Works according to the provisions of Schedule 3B (Infrastructure Works and Infrastructure Services).

## **7 PAYMENT OF INFRASTRUCTURE MANAGER SERVICES PAYMENT**

- 7.1 The Authority shall notify the ODP, no less than seven (7) days prior to the end of the Reporting Period of the Infrastructure Manager Services Payments.
- 7.2 Each such notification shall set out in reasonable detail how the Infrastructure Manager Services Payment has been calculated.
- 7.3 The Payment Date for a Reporting Period shall be the last Weekday of that Reporting Period.
- 7.4 Each Infrastructure Manager Services Payment shall be payable by the ODP or, as the case may be, the Authority in the amount notified by the Authority in accordance with paragraph 2.1 on the Payment Date of the Reporting Period to which it relates.
- 7.5 Each Infrastructure Manager Services Payment shall be made:
- (a) by automatic electronic funds transfer in pounds sterling to such bank account in the United Kingdom as the payee of such payment may have previously specified to the payer in writing; and
  - (b) so that cleared funds are received in that account on or before the due date for payment.

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## **8 INTEREST**

8.1 If either Party fails to pay any amount to the other Party on its due date, it shall in addition pay interest on such amount at the Interest Rate, calculated on a daily basis, from the due date for payment to the date on which payment is made.

8.2 If the amount of any Infrastructure Manager Services Payment is agreed or determined to be incorrect and:

(a) either Party has made a payment to the other Party which is greater than it would have made if the amount of the Infrastructure Manager Services Payment had been correct, then the recipient shall repay the excess within three (3) Weekdays of the agreement or determination; or

(b) either Party has made a payment to the other Party which is less than it would have made if the amount of the Infrastructure Manager Services Payment had been correct, then the payer shall pay the amount of any shortfall to the payee within three (3) Weekdays of the agreement or determination,

together, in each case, with interest on the amount payable at the Interest Rate, calculated on a daily basis from the date on which the Infrastructure Manager Services Payment was paid until the date on which such excess amount or shortfall is paid.

## **9 DISPUTES UNDER SCHEDULE 8.5**

If either Party disputes the amount of an Infrastructure Manager Services Payment, the dispute shall, unless the Parties otherwise agree, be resolved in accordance with the provisions of clause 17 (*Governing Law and Jurisdiction*) of the ODP Grant Agreement. Any such dispute shall not affect the obligation of either Party to pay the Infrastructure Manager Services Payment notified in accordance with this Schedule 8.5.

## **10 INDUSTRIAL ACTION**

The Authority, in its discretion, may at any time decide to reimburse or ameliorate net losses of the ODP arising from Industrial Action (however caused and of whatever nature) in circumstances where the ODP has demonstrated to the satisfaction of the Authority that it has taken all reasonable steps to avoid the Industrial Action and that, Industrial Action having nevertheless occurred, the ODP has taken all reasonable steps to mitigate its effects.

## **11 NO DOUBLE RECOVERY**

The ODP shall not be entitled to recover (by way of a Change or otherwise) more than once in respect of the same loss suffered by it.

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## **12 FORCE MAJEURE AND PAYMENTS**

Following the occurrence of a Force Majeure Event, the payment of the Infrastructure Manager Services Payment shall continue unaffected.

**Appendix 1 to Schedule 8.5 - Fixed Charge Tables**

| <b>Table A1 (Annual Asset Operational Management Fee)</b> |                 |                 |                      |
|---|-----------------|-----------------|----------------------|
| <b>Year</b>   | <b>From</b>     | <b>To</b>       | <b>Fixed Fee (£)</b> |
| 1   | 14 October 2018 | 31 March 2019   | [REDACTED]           |
| 2   | 1 April 2019    | 31 March 2020   | [REDACTED]           |
| 3   | 1 April 2020    | 31 March 2021   | [REDACTED]           |
| 4   | 1 April 2021    | 31 March 2022   | [REDACTED]           |
| 5   | 1 April 2022    | 31 March 2023   | [REDACTED]           |
| 6   | 1 April 2023    | 31 March 2024   | [REDACTED]           |
| 7   | 1 April 2024    | 31 March 2025   | [REDACTED]           |
| 8   | 1 April 2025    | 31 March 2026   | [REDACTED]           |
| 9   | 1 April 2026    | 31 March 2027   | [REDACTED]           |
| 10  | 1 April 2027    | 31 March 2028   | [REDACTED]           |
| 11  | 1 April 2028    | 31 March 2029   | [REDACTED]           |
| 12  | 1 April 2029    | 31 March 2030   | [REDACTED]           |
| 13  | 1 April 2030    | 31 March 2031   | [REDACTED]           |
| 14  | 1 April 2031    | 31 March 2032   | [REDACTED]           |
| 15  | 1 April 2032    | 31 March 2033   | [REDACTED]           |
| 16 (core)   | 1 April 2033    | 15 October 2033 | [REDACTED]           |
| <b>Up to 26 Reporting Periods Extension</b>               |                 |                 |                      |
| Year 16<br>(extension)                                    | 16-Oct-33       | 31-Mar-34       | [REDACTED]           |
| Year 17<br>(extension)                                    | 01-Apr-34       | 31-Mar-35       | [REDACTED]           |
| Year 18<br>(extension)                                    | 01-Apr-35       | 13-Oct-35       | [REDACTED]           |

| <b>Table A2 (Annual Asset Knowledge Management Fee)</b> |                 |                 |                      |
|---|-----------------|-----------------|----------------------|
| <b>Year</b>   | <b>From</b>     | <b>To</b>       | <b>Fixed Fee (£)</b> |
| 1   | 14 October 2018 | 31 March 2019   | [REDACTED]           |
| 2   | 1 April 2019    | 31 March 2020   | [REDACTED]           |
| 3   | 1 April 2020    | 31 March 2021   | [REDACTED]           |
| 4   | 1 April 2021    | 31 March 2022   | [REDACTED]           |
| 5   | 1 April 2022    | 31 March 2023   | [REDACTED]           |
| 6   | 1 April 2023    | 31 March 2024   | [REDACTED]           |
| 7   | 1 April 2024    | 31 March 2025   | [REDACTED]           |
| 8   | 1 April 2025    | 31 March 2026   | [REDACTED]           |
| 9   | 1 April 2026    | 31 March 2027   | [REDACTED]           |
| 10  | 1 April 2027    | 31 March 2028   | [REDACTED]           |
| 11  | 1 April 2028    | 31 March 2029   | [REDACTED]           |
| 12  | 1 April 2029    | 31 March 2030   | [REDACTED]           |
| 13  | 1 April 2030    | 31 March 2031   | [REDACTED]           |
| 14  | 1 April 2031    | 31 March 2032   | [REDACTED]           |
| 15  | 1 April 2032    | 31 March 2033   | [REDACTED]           |
| 16 (core)   | 1 April 2033    | 15 October 2033 | [REDACTED]           |
| <b>Up to 26 Reporting Periods Extension</b>             |                 |                 |                      |
| Year 16<br>(extension)                                  | 16-Oct-33       | 31-Mar-34       | [REDACTED]           |
| Year 17<br>(extension)                                  | 01-Apr-34       | 31-Mar-35       | [REDACTED]           |
| Year 18<br>(extension)                                  | 01-Apr-35       | 13-Oct-35       | [REDACTED]           |

**Table A3 (Annual Weather & Season Related Interventions (excluding Extreme Weather Events) Fee)**

| <b>Year</b>                                 | <b>From</b>     | <b>To</b>       | <b>Fixed Fee (£)</b> |
|---|-----------------|-----------------|----------------------|
| 1   | 14 October 2018 | 31 March 2019   | [REDACTED]           |
| 2   | 1 April 2019    | 31 March 2020   | [REDACTED]           |
| 3   | 1 April 2020    | 31 March 2021   | [REDACTED]           |
| 4   | 1 April 2021    | 31 March 2022   | [REDACTED]           |
| 5   | 1 April 2022    | 31 March 2023   | [REDACTED]           |
| 6   | 1 April 2023    | 31 March 2024   | [REDACTED]           |
| 7   | 1 April 2024    | 31 March 2025   | [REDACTED]           |
| 8   | 1 April 2025    | 31 March 2026   | [REDACTED]           |
| 9   | 1 April 2026    | 31 March 2027   | [REDACTED]           |
| 10  | 1 April 2027    | 31 March 2028   | [REDACTED]           |
| 11  | 1 April 2028    | 31 March 2029   | [REDACTED]           |
| 12  | 1 April 2029    | 31 March 2030   | [REDACTED]           |
| 13  | 1 April 2030    | 31 March 2031   | [REDACTED]           |
| 14  | 1 April 2031    | 31 March 2032   | [REDACTED]           |
| 15  | 1 April 2032    | 31 March 2033   | [REDACTED]           |
| 16 (core)                                   | 1 April 2033    | 15 October 2033 | [REDACTED]           |
| <b>Up to 26 Reporting Periods Extension</b> |                 |                 |                      |
| Year 16<br>(extension)                      | 16-Oct-33       | 31-Mar-34       | [REDACTED]           |
| Year 17<br>(extension)                      | 01-Apr-34       | 31-Mar-35       | [REDACTED]           |
| Year 18<br>(extension)                      | 01-Apr-35       | 13-Oct-35       | [REDACTED]           |

| <b>Table A4 (Fixed Annual Infrastructure Manager Services Overheads)</b> |                 |                 |                            |
|--|-----------------|-----------------|----------------------------|
| <b>Year</b>  | <b>From</b>     | <b>To</b>       | <b>Fixed Overheads (£)</b> |
| 1  | 14 October 2018 | 31 March 2019   | [REDACTED]                 |
| 2  | 1 April 2019    | 31 March 2020   | [REDACTED]                 |
| 3  | 1 April 2020    | 31 March 2021   | [REDACTED]                 |
| 4  | 1 April 2021    | 31 March 2022   | [REDACTED]                 |
| 5  | 1 April 2022    | 31 March 2023   | [REDACTED]                 |
| 6  | 1 April 2023    | 31 March 2024   | [REDACTED]                 |
| 7  | 1 April 2024    | 31 March 2025   | [REDACTED]                 |
| 8  | 1 April 2025    | 31 March 2026   | [REDACTED]                 |
| 9  | 1 April 2026    | 31 March 2027   | [REDACTED]                 |
| 10   | 1 April 2027    | 31 March 2028   | [REDACTED]                 |
| 11   | 1 April 2028    | 31 March 2029   | [REDACTED]                 |
| 12   | 1 April 2029    | 31 March 2030   | [REDACTED]                 |
| 13   | 1 April 2030    | 31 March 2031   | [REDACTED]                 |
| 14   | 1 April 2031    | 31 March 2032   | [REDACTED]                 |
| 15   | 1 April 2032    | 31 March 2033   | [REDACTED]                 |
| 16 (core)  | 1 April 2033    | 15 October 2033 | [REDACTED]                 |
| <b>Up to 26 Reporting Periods Extension</b>                              |                 |                 |                            |
| Year 16<br>(extension)   | 16-Oct-33       | 31-Mar-34       | [REDACTED]                 |
| Year 17<br>(extension)   | 01-Apr-34       | 31-Mar-35       | [REDACTED]                 |
| Year 18<br>(extension)   | 01-Apr-35       | 13-Oct-35       | [REDACTED]                 |

| <b>Table A5 (Fixed Infrastructure Manager Services Annual Profit)</b> |                 |                 |                         |
|---|-----------------|-----------------|-------------------------|
| <b>Year</b>   | <b>From</b>     | <b>To</b>       | <b>Fixed Profit (£)</b> |
| 1   | 14 October 2018 | 31 March 2019   | [REDACTED]              |
| 2   | 1 April 2019    | 31 March 2020   | [REDACTED]              |
| 3   | 1 April 2020    | 31 March 2021   | [REDACTED]              |
| 4   | 1 April 2021    | 31 March 2022   | [REDACTED]              |
| 5   | 1 April 2022    | 31 March 2023   | [REDACTED]              |
| 6   | 1 April 2023    | 31 March 2024   | [REDACTED]              |
| 7   | 1 April 2024    | 31 March 2025   | [REDACTED]              |
| 8   | 1 April 2025    | 31 March 2026   | [REDACTED]              |
| 9   | 1 April 2026    | 31 March 2027   | [REDACTED]              |
| 10  | 1 April 2027    | 31 March 2028   | [REDACTED]              |
| 11  | 1 April 2028    | 31 March 2029   | [REDACTED]              |
| 12  | 1 April 2029    | 31 March 2030   | [REDACTED]              |
| 13  | 1 April 2030    | 31 March 2031   | [REDACTED]              |
| 14  | 1 April 2031    | 31 March 2032   | [REDACTED]              |
| 15  | 1 April 2032    | 31 March 2033   | [REDACTED]              |
| 16 (core)   | 1 April 2033    | 15 October 2033 | [REDACTED]              |
| <b>Up to 26 Reporting Periods Extension</b>                           |                 |                 |                         |
| Year 16<br>(extension)  | 16-Oct-33       | 31-Mar-34       | [REDACTED]              |
| Year 17<br>(extension)  | 01-Apr-34       | 31-Mar-35       | [REDACTED]              |
| Year 18<br>(extension)  | 01-Apr-35       | 13-Oct-35       | [REDACTED]              |



| <b>Table A6 (Fixed Annual Amenities &amp; Services Charge)</b> |                 |                 |                      |
|--|-----------------|-----------------|----------------------|
| <b>Year</b>  | <b>From</b>     | <b>To</b>       | <b>Fixed Fee (£)</b> |
| 1  | 14 October 2018 | 31 March 2019   | [REDACTED]           |
| 2  | 1 April 2019    | 31 March 2020   | [REDACTED]           |
| 3  | 1 April 2020    | 31 March 2021   | [REDACTED]           |
| 4  | 1 April 2021    | 31 March 2022   | [REDACTED]           |
| 5  | 1 April 2022    | 31 March 2023   | [REDACTED]           |
| 6  | 1 April 2023    | 31 March 2024   | [REDACTED]           |
| 7  | 1 April 2024    | 31 March 2025   | [REDACTED]           |
| 8  | 1 April 2025    | 31 March 2026   | [REDACTED]           |
| 9  | 1 April 2026    | 31 March 2027   | [REDACTED]           |
| 10   | 1 April 2027    | 31 March 2028   | [REDACTED]           |
| 11   | 1 April 2028    | 31 March 2029   | [REDACTED]           |
| 12   | 1 April 2029    | 31 March 2030   | [REDACTED]           |
| 13   | 1 April 2030    | 31 March 2031   | [REDACTED]           |
| 14   | 1 April 2031    | 31 March 2032   | [REDACTED]           |
| 15   | 1 April 2032    | 31 March 2033   | [REDACTED]           |
| 16 (core)  | 1 April 2033    | 15 October 2033 | [REDACTED]           |
| <b>Up to 26 Reporting Periods Extension</b>                    |                 |                 |                      |
| Year 16<br>(extension)   | 16-Oct-33       | 31-Mar-34       | [REDACTED]           |
| Year 17<br>(extension)   | 01-Apr-34       | 31-Mar-35       | [REDACTED]           |
| Year 18<br>(extension)   | 01-Apr-35       | 13-Oct-35       | [REDACTED]           |

**Appendix 2 to Schedule 8.5 - Firm Charge Tables**

| <b>Table B1 (Annual Firm Signalling and control Systems and Passenger Information Systems Fee)</b> |                 |                 |                     |
|--|-----------------|-----------------|---------------------|
| <b>Year</b>  | <b>From</b>     | <b>To</b>       | <b>Firm Fee (£)</b> |
| 1  | 14 October 2018 | 31 March 2019   | [REDACTED]          |
| 2  | 1 April 2019    | 31 March 2020   | [REDACTED]          |
| 3  | 1 April 2020    | 31 March 2021   | [REDACTED]          |
| 4  | 1 April 2021    | 31 March 2022   | [REDACTED]          |
| 5  | 1 April 2022    | 31 March 2023   | [REDACTED]          |
| 6  | 1 April 2023    | 31 March 2024   | [REDACTED]          |
| 7  | 1 April 2024    | 31 March 2025   | [REDACTED]          |
| 8  | 1 April 2025    | 31 March 2026   | [REDACTED]          |
| 9  | 1 April 2026    | 31 March 2027   | [REDACTED]          |
| 10   | 1 April 2027    | 31 March 2028   | [REDACTED]          |
| 11   | 1 April 2028    | 31 March 2029   | [REDACTED]          |
| 12   | 1 April 2029    | 31 March 2030   | [REDACTED]          |
| 13   | 1 April 2030    | 31 March 2031   | [REDACTED]          |
| 14   | 1 April 2031    | 31 March 2032   | [REDACTED]          |
| 15   | 1 April 2032    | 31 March 2033   | [REDACTED]          |
| 16 (core)  | 1 April 2033    | 15 October 2033 | [REDACTED]          |
| <b>Up to 26 Reporting Periods Extension</b>  |                 |                 |                     |
| Year 16<br>(extension)   | 16-Oct-33       | 31-Mar-34       | [REDACTED]          |
| Year 17<br>(extension)   | 01-Apr-34       | 31-Mar-35       | [REDACTED]          |

|                        |           |           |            |
|------------------------|-----------|-----------|------------|
| Year 18<br>(extension) | 01-Apr-35 | 13-Oct-35 | [REDACTED] |
|------------------------|-----------|-----------|------------|

| <b>Table B2 (Annual Firm Track Fee)</b>     |                 |                 |                     |
|---|-----------------|-----------------|---------------------|
| <b>Year</b>                                 | <b>From</b>     | <b>To</b>       | <b>Firm Fee (£)</b> |
| 1   | 14 October 2018 | 31 March 2019   | [REDACTED]          |
| 2   | 1 April 2019    | 31 March 2020   | [REDACTED]          |
| 3   | 1 April 2020    | 31 March 2021   | [REDACTED]          |
| 4   | 1 April 2021    | 31 March 2022   | [REDACTED]          |
| 5   | 1 April 2022    | 31 March 2023   | [REDACTED]          |
| 6   | 1 April 2023    | 31 March 2024   | [REDACTED]          |
| 7   | 1 April 2024    | 31 March 2025   | [REDACTED]          |
| 8   | 1 April 2025    | 31 March 2026   | [REDACTED]          |
| 9   | 1 April 2026    | 31 March 2027   | [REDACTED]          |
| 10  | 1 April 2027    | 31 March 2028   | [REDACTED]          |
| 11  | 1 April 2028    | 31 March 2029   | [REDACTED]          |
| 12  | 1 April 2029    | 31 March 2030   | [REDACTED]          |
| 13  | 1 April 2030    | 31 March 2031   | [REDACTED]          |
| 14  | 1 April 2031    | 31 March 2032   | [REDACTED]          |
| 15  | 1 April 2032    | 31 March 2033   | [REDACTED]          |
| 16 (core)                                   | 1 April 2033    | 15 October 2033 | [REDACTED]          |
| <b>Up to 26 Reporting Periods Extension</b> |                 |                 |                     |
| Year 16<br>(extension)                      | 16-Oct-33       | 31-Mar-34       | [REDACTED]          |
| Year 17<br>(extension)                      | 01-Apr-34       | 31-Mar-35       | [REDACTED]          |

|                        |           |           |            |
|------------------------|-----------|-----------|------------|
| Year 18<br>(extension) | 01-Apr-35 | 13-Oct-35 | [REDACTED] |
|------------------------|-----------|-----------|------------|

| <b>Table B3 (Annual Firm Overhead Line Equipment Fee)</b> |                 |                 |                     |
|---|-----------------|-----------------|---------------------|
| <b>Year</b>   | <b>From</b>     | <b>To</b>       | <b>Firm Fee (£)</b> |
| 1   | 14 October 2018 | 31 March 2019   | [REDACTED]          |
| 2   | 1 April 2019    | 31 March 2020   | [REDACTED]          |
| 3   | 1 April 2020    | 31 March 2021   | [REDACTED]          |
| 4   | 1 April 2021    | 31 March 2022   | [REDACTED]          |
| 5   | 1 April 2022    | 31 March 2023   | [REDACTED]          |
| 6   | 1 April 2023    | 31 March 2024   | [REDACTED]          |
| 7   | 1 April 2024    | 31 March 2025   | [REDACTED]          |
| 8   | 1 April 2025    | 31 March 2026   | [REDACTED]          |
| 9   | 1 April 2026    | 31 March 2027   | [REDACTED]          |
| 10  | 1 April 2027    | 31 March 2028   | [REDACTED]          |
| 11  | 1 April 2028    | 31 March 2029   | [REDACTED]          |
| 12  | 1 April 2029    | 31 March 2030   | [REDACTED]          |
| 13  | 1 April 2030    | 31 March 2031   | [REDACTED]          |
| 14  | 1 April 2031    | 31 March 2032   | [REDACTED]          |
| 15  | 1 April 2032    | 31 March 2033   | [REDACTED]          |
| 16 (core)   | 1 April 2033    | 15 October 2033 | [REDACTED]          |
| <b>Up to 26 Reporting Periods Extension</b>               |                 |                 |                     |
| Year 16<br>(extension)                                    | 16-Oct-33       | 31-Mar-34       | [REDACTED]          |
| Year 17<br>(extension)                                    | 01-Apr-34       | 31-Mar-35       | [REDACTED]          |

|                        |           |           |            |
|------------------------|-----------|-----------|------------|
| Year 18<br>(extension) | 01-Apr-35 | 13-Oct-35 | [REDACTED] |
|------------------------|-----------|-----------|------------|

| <b>Table B4 (Annual Firm Power Distribution and Electricity and Power Fee)</b> |                 |                 |                     |
|--|-----------------|-----------------|---------------------|
| <b>Year</b>  | <b>From</b>     | <b>To</b>       | <b>Firm Fee (£)</b> |
| 1  | 14 October 2018 | 31 March 2019   | [REDACTED]          |
| 2  | 1 April 2019    | 31 March 2020   | [REDACTED]          |
| 3  | 1 April 2020    | 31 March 2021   | [REDACTED]          |
| 4  | 1 April 2021    | 31 March 2022   | [REDACTED]          |
| 5  | 1 April 2022    | 31 March 2023   | [REDACTED]          |
| 6  | 1 April 2023    | 31 March 2024   | [REDACTED]          |
| 7  | 1 April 2024    | 31 March 2025   | [REDACTED]          |
| 8  | 1 April 2025    | 31 March 2026   | [REDACTED]          |
| 9  | 1 April 2026    | 31 March 2027   | [REDACTED]          |
| 10   | 1 April 2027    | 31 March 2028   | [REDACTED]          |
| 11   | 1 April 2028    | 31 March 2029   | [REDACTED]          |
| 12   | 1 April 2029    | 31 March 2030   | [REDACTED]          |
| 13   | 1 April 2030    | 31 March 2031   | [REDACTED]          |
| 14   | 1 April 2031    | 31 March 2032   | [REDACTED]          |
| 15   | 1 April 2032    | 31 March 2033   | [REDACTED]          |
| 16 (core)  | 1 April 2033    | 15 October 2033 | [REDACTED]          |
| <b>Up to 26 Reporting Periods Extension</b>                                    |                 |                 |                     |
| Year 16<br>(extension)   | 16-Oct-33       | 31-Mar-34       | [REDACTED]          |
| Year 17<br>(extension)   | 01-Apr-34       | 31-Mar-35       | [REDACTED]          |

|                        |           |           |            |
|------------------------|-----------|-----------|------------|
| Year 18<br>(extension) | 01-Apr-35 | 13-Oct-35 | [REDACTED] |
|------------------------|-----------|-----------|------------|

| <b>Table B5 (Annual Firm Level Crossings Fee)</b> |                 |                 |                     |
|---|-----------------|-----------------|---------------------|
| <b>Year</b>                                       | <b>From</b>     | <b>To</b>       | <b>Firm Fee (£)</b> |
| 1   | 14 October 2018 | 31 March 2019   | [REDACTED]          |
| 2   | 1 April 2019    | 31 March 2020   | [REDACTED]          |
| 3   | 1 April 2020    | 31 March 2021   | [REDACTED]          |
| 4   | 1 April 2021    | 31 March 2022   | [REDACTED]          |
| 5   | 1 April 2022    | 31 March 2023   | [REDACTED]          |
| 6   | 1 April 2023    | 31 March 2024   | [REDACTED]          |
| 7   | 1 April 2024    | 31 March 2025   | [REDACTED]          |
| 8   | 1 April 2025    | 31 March 2026   | [REDACTED]          |
| 9   | 1 April 2026    | 31 March 2027   | [REDACTED]          |
| 10  | 1 April 2027    | 31 March 2028   | [REDACTED]          |
| 11  | 1 April 2028    | 31 March 2029   | [REDACTED]          |
| 12  | 1 April 2029    | 31 March 2030   | [REDACTED]          |
| 13  | 1 April 2030    | 31 March 2031   | [REDACTED]          |
| 14  | 1 April 2031    | 31 March 2032   | [REDACTED]          |
| 15  | 1 April 2032    | 31 March 2033   | [REDACTED]          |
| 16 (core)   | 1 April 2033    | 15 October 2033 | [REDACTED]          |
| <b>Up to 26 Reporting Periods Extension</b>       |                 |                 |                     |
| Year 16<br>(extension)                            | 16-Oct-33       | 31-Mar-34       | [REDACTED]          |
| Year 17<br>(extension)                            | 01-Apr-34       | 31-Mar-35       | [REDACTED]          |

|                        |           |           |            |
|------------------------|-----------|-----------|------------|
| Year 18<br>(extension) | 01-Apr-35 | 13-Oct-35 | [REDACTED] |
|------------------------|-----------|-----------|------------|

| <b>Table B6 (Annual Firm Telecoms Fee)</b>  |                 |                 |                     |
|---|-----------------|-----------------|---------------------|
| <b>Year</b>                                 | <b>From</b>     | <b>To</b>       | <b>Firm Fee (£)</b> |
| 1   | 14 October 2018 | 31 March 2019   | [REDACTED]          |
| 2   | 1 April 2019    | 31 March 2020   | [REDACTED]          |
| 3   | 1 April 2020    | 31 March 2021   | [REDACTED]          |
| 4   | 1 April 2021    | 31 March 2022   | [REDACTED]          |
| 5   | 1 April 2022    | 31 March 2023   | [REDACTED]          |
| 6   | 1 April 2023    | 31 March 2024   | [REDACTED]          |
| 7   | 1 April 2024    | 31 March 2025   | [REDACTED]          |
| 8   | 1 April 2025    | 31 March 2026   | [REDACTED]          |
| 9   | 1 April 2026    | 31 March 2027   | [REDACTED]          |
| 10  | 1 April 2027    | 31 March 2028   | [REDACTED]          |
| 11  | 1 April 2028    | 31 March 2029   | [REDACTED]          |
| 12  | 1 April 2029    | 31 March 2030   | [REDACTED]          |
| 13  | 1 April 2030    | 31 March 2031   | [REDACTED]          |
| 14  | 1 April 2031    | 31 March 2032   | [REDACTED]          |
| 15  | 1 April 2032    | 31 March 2033   | [REDACTED]          |
| 16 (core)                                   | 1 April 2033    | 15 October 2033 | [REDACTED]          |
| <b>Up to 26 Reporting Periods Extension</b> |                 |                 |                     |
| Year 16<br>(extension)                      | 16-Oct-33       | 31-Mar-34       | [REDACTED]          |
| Year 17<br>(extension)                      | 01-Apr-34       | 31-Mar-35       | [REDACTED]          |

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|                        |           |           |            |
|------------------------|-----------|-----------|------------|
| Year 18<br>(extension) | 01-Apr-35 | 13-Oct-35 | [REDACTED] |
|------------------------|-----------|-----------|------------|



**Appendix 3 to Schedule 8.5 - Emerging Charges Tables**

| <b>Table C1 (Annual Budget Earthworks Fee)</b> |                 |                 |                       |
|--|-----------------|-----------------|-----------------------|
| <b>Year</b>                                    | <b>From</b>     | <b>To</b>       | <b>Budget Fee (£)</b> |
| 1  | 14 October 2018 | 31 March 2019   | [REDACTED]            |
| 2  | 1 April 2019    | 31 March 2020   | [REDACTED]            |
| 3  | 1 April 2020    | 31 March 2021   | [REDACTED]            |
| 4  | 1 April 2021    | 31 March 2022   | [REDACTED]            |
| 5  | 1 April 2022    | 31 March 2023   | [REDACTED]            |
| 6  | 1 April 2023    | 31 March 2024   | [REDACTED]            |
| 7  | 1 April 2024    | 31 March 2025   | [REDACTED]            |
| 8  | 1 April 2025    | 31 March 2026   | [REDACTED]            |
| 9  | 1 April 2026    | 31 March 2027   | [REDACTED]            |
| 10   | 1 April 2027    | 31 March 2028   | [REDACTED]            |
| 11   | 1 April 2028    | 31 March 2029   | [REDACTED]            |
| 12   | 1 April 2029    | 31 March 2030   | [REDACTED]            |
| 13   | 1 April 2030    | 31 March 2031   | [REDACTED]            |
| 14   | 1 April 2031    | 31 March 2032   | [REDACTED]            |
| 15   | 1 April 2032    | 31 March 2033   | [REDACTED]            |
| 16 (core)                                      | 1 April 2033    | 15 October 2033 | [REDACTED]            |
| <b>Up to 26 Reporting Periods Extension</b>    |                 |                 |                       |
| Year 16<br>(extension)                         | 16-Oct-33       | 31-Mar-34       | [REDACTED]            |
| Year 17<br>(extension)                         | 01-Apr-34       | 31-Mar-35       | [REDACTED]            |
| Year 18<br>(extension)                         | 01-Apr-35       | 13-Oct-35       | [REDACTED]            |

| <b>Table C2 (Annual Budget Structures (including Tunnels) Fee)</b> |                 |                 |                       |
|--|-----------------|-----------------|-----------------------|
| <b>Year</b>  | <b>From</b>     | <b>To</b>       | <b>Budget Fee (£)</b> |
| 1  | 14 October 2018 | 31 March 2019   | [REDACTED]            |
| 2  | 1 April 2019    | 31 March 2020   | [REDACTED]            |
| 3  | 1 April 2020    | 31 March 2021   | [REDACTED]            |
| 4  | 1 April 2021    | 31 March 2022   | [REDACTED]            |
| 5  | 1 April 2022    | 31 March 2023   | [REDACTED]            |
| 6  | 1 April 2023    | 31 March 2024   | [REDACTED]            |
| 7  | 1 April 2024    | 31 March 2025   | [REDACTED]            |
| 8  | 1 April 2025    | 31 March 2026   | [REDACTED]            |
| 9  | 1 April 2026    | 31 March 2027   | [REDACTED]            |
| 10   | 1 April 2027    | 31 March 2028   | [REDACTED]            |
| 11   | 1 April 2028    | 31 March 2029   | [REDACTED]            |
| 12   | 1 April 2029    | 31 March 2030   | [REDACTED]            |
| 13   | 1 April 2030    | 31 March 2031   | [REDACTED]            |
| 14   | 1 April 2031    | 31 March 2032   | [REDACTED]            |
| 15   | 1 April 2032    | 31 March 2033   | [REDACTED]            |
| 16 (core)  | 1 April 2033    | 15 October 2033 | [REDACTED]            |
| <b>Up to 26 Reporting Periods Extension</b>                        |                 |                 |                       |
| Year 16<br>(extension)   | 16-Oct-33       | 31-Mar-34       | [REDACTED]            |
| Year 17<br>(extension)   | 01-Apr-34       | 31-Mar-35       | [REDACTED]            |
| Year 18<br>(extension)   | 01-Apr-35       | 13-Oct-35       | [REDACTED]            |

| <b>Table C3 (Annual Budget Property Buildings (including Stations) Fee)</b> |                 |                 |                       |
|---|-----------------|-----------------|-----------------------|
| <b>Year</b>   | <b>From</b>     | <b>To</b>       | <b>Budget Fee (£)</b> |
| 1   | 14 October 2018 | 31 March 2019   | [REDACTED]            |
| 2   | 1 April 2019    | 31 March 2020   | [REDACTED]            |
| 3   | 1 April 2020    | 31 March 2021   | [REDACTED]            |
| 4   | 1 April 2021    | 31 March 2022   | [REDACTED]            |
| 5   | 1 April 2022    | 31 March 2023   | [REDACTED]            |
| 6   | 1 April 2023    | 31 March 2024   | [REDACTED]            |
| 7   | 1 April 2024    | 31 March 2025   | [REDACTED]            |
| 8   | 1 April 2025    | 31 March 2026   | [REDACTED]            |
| 9   | 1 April 2026    | 31 March 2027   | [REDACTED]            |
| 10  | 1 April 2027    | 31 March 2028   | [REDACTED]            |
| 11  | 1 April 2028    | 31 March 2029   | [REDACTED]            |
| 12  | 1 April 2029    | 31 March 2030   | [REDACTED]            |
| 13  | 1 April 2030    | 31 March 2031   | [REDACTED]            |
| 14  | 1 April 2031    | 31 March 2032   | [REDACTED]            |
| 15  | 1 April 2032    | 31 March 2033   | [REDACTED]            |
| 16 (core)   | 1 April 2033    | 15 October 2033 | [REDACTED]            |
| <b>Up to 26 Reporting Periods Extension</b>                                 |                 |                 |                       |
| Year 16<br>(extension)  | 16-Oct-33       | 31-Mar-34       | [REDACTED]            |
| Year 17<br>(extension)  | 01-Apr-34       | 31-Mar-35       | [REDACTED]            |
| Year 18<br>(extension)  | 01-Apr-35       | 13-Oct-35       | [REDACTED]            |

| <b>Table C4 (Annual Budget Off Track and Drainage Fee)</b> |                 |                 |                       |
|--|-----------------|-----------------|-----------------------|
| <b>Year</b>  | <b>From</b>     | <b>To</b>       | <b>Budget Fee (£)</b> |
| 1  | 14 October 2018 | 31 March 2019   | [REDACTED]            |
| 2  | 1 April 2019    | 31 March 2020   | [REDACTED]            |
| 3  | 1 April 2020    | 31 March 2021   | [REDACTED]            |
| 4  | 1 April 2021    | 31 March 2022   | [REDACTED]            |
| 5  | 1 April 2022    | 31 March 2023   | [REDACTED]            |
| 6  | 1 April 2023    | 31 March 2024   | [REDACTED]            |
| 7  | 1 April 2024    | 31 March 2025   | [REDACTED]            |
| 8  | 1 April 2025    | 31 March 2026   | [REDACTED]            |
| 9  | 1 April 2026    | 31 March 2027   | [REDACTED]            |
| 10   | 1 April 2027    | 31 March 2028   | [REDACTED]            |
| 11   | 1 April 2028    | 31 March 2029   | [REDACTED]            |
| 12   | 1 April 2029    | 31 March 2030   | [REDACTED]            |
| 13   | 1 April 2030    | 31 March 2031   | [REDACTED]            |
| 14   | 1 April 2031    | 31 March 2032   | [REDACTED]            |
| 15   | 1 April 2032    | 31 March 2033   | [REDACTED]            |
| 16 (core)  | 1 April 2033    | 15 October 2033 | [REDACTED]            |
| <b>Up to 26 Reporting Periods Extension</b>                |                 |                 |                       |
| Year 16<br>(extension)                                     | 16-Oct-33       | 31-Mar-34       | [REDACTED]            |
| Year 17<br>(extension)                                     | 01-Apr-34       | 31-Mar-35       | [REDACTED]            |
| Year 18<br>(extension)                                     | 01-Apr-35       | 13-Oct-35       | [REDACTED]            |

| <b>Table C5 (Annual Budget Other Asset Fee)</b> |                 |                 |                       |
|---|-----------------|-----------------|-----------------------|
| <b>Year</b>                                     | <b>From</b>     | <b>To</b>       | <b>Budget Fee (£)</b> |
| 1   | 14 October 2018 | 31 March 2019   | [REDACTED]            |
| 2   | 1 April 2019    | 31 March 2020   | [REDACTED]            |
| 3   | 1 April 2020    | 31 March 2021   | [REDACTED]            |
| 4   | 1 April 2021    | 31 March 2022   | [REDACTED]            |
| 5   | 1 April 2022    | 31 March 2023   | [REDACTED]            |
| 6   | 1 April 2023    | 31 March 2024   | [REDACTED]            |
| 7   | 1 April 2024    | 31 March 2025   | [REDACTED]            |
| 8   | 1 April 2025    | 31 March 2026   | [REDACTED]            |
| 9   | 1 April 2026    | 31 March 2027   | [REDACTED]            |
| 10  | 1 April 2027    | 31 March 2028   | [REDACTED]            |
| 11  | 1 April 2028    | 31 March 2029   | [REDACTED]            |
| 12  | 1 April 2029    | 31 March 2030   | [REDACTED]            |
| 13  | 1 April 2030    | 31 March 2031   | [REDACTED]            |
| 14  | 1 April 2031    | 31 March 2032   | [REDACTED]            |
| 15  | 1 April 2032    | 31 March 2033   | [REDACTED]            |
| 16 (core)                                       | 1 April 2033    | 15 October 2033 | [REDACTED]            |
| <b>Up to 26 Reporting Periods Extension</b>     |                 |                 |                       |
| Year 16<br>(extension)                          | 16-Oct-33       | 31-Mar-34       | [REDACTED]            |
| Year 17<br>(extension)                          | 01-Apr-34       | 31-Mar-35       | [REDACTED]            |
| Year 18<br>(extension)                          | 01-Apr-35       | 13-Oct-35       | [REDACTED]            |

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**Schedule 8.6 – Grant Funding Payments**

For the purposes of this Schedule 8.6 only, the following words and expressions shall have the following meanings:

- Assessment Date** means:
- (a) in relation to the first assessment date, the fifteenth (15th) day of the month in which the ODP commences the works to construct the Taff's Well Depot; and
  - (b) in relation to all subsequent assessment dates, the fifteenth (15th) day of each month until completion of the works to construct the Taff's Well Depot,
- provided that if any such date is not a Weekday, then the Assessment Date shall occur on the following Weekday.
- Grant Funding Payment** means the payments to be made by the Authority to the ODP in accordance with this Schedule 8.6.
- Taff's Well Depot** means the depot to be designed and constructed by the ODP in accordance with the Taff's Well Depot Scope.
- Taff's Well Depot Maximum Amount** means [REDACTED] (excluding VAT), adjusted for:
- (a) any change instructed to the Taff's Well Depot Scope by the Authority pursuant to paragraph 1.3; and
  - (b) any change to the Taff's Well Depot Scope to comply with the terms of any planning permission or other required consent.
- Taff's Well Depot Scope** means the scope set out in Appendix 1 to this Schedule 8.6, as may be varied by the Authority pursuant to this Schedule 8.6.

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## **1 GRANT FUNDING PAYMENTS**

- 1.1 The ODP shall design and construct the Taff's Well Depot in accordance with the Taff's Well Depot Scope.
- 1.2 The Authority shall pay the ODP for the design and construction of Taff's Well Depot by means of monthly Grant Funding Payments to be paid by the Authority to the ODP in accordance with this Schedule 8.6.
- 1.3 The Authority shall be entitled to instruct a change to the Taff's Well Depot Scope by providing fourteen (14) days' written notice to the ODP, and any such change shall be deemed to be a Qualifying Change.

## **2 PAYMENT OF GRANT FUNDING PAYMENTS**

- 2.1 The ODP shall assess the amount due from the Authority in accordance with this Schedule 8.6 and submit an application for payment to the Authority for any amount considered to be due in accordance with this Schedule 8.6 on each Assessment Date.
- 2.2 Subject to paragraph 2.3, the ODP shall be entitled to include in each application for payment submitted pursuant to paragraph 2.1:
  - (a) an amount which reflects the value of works done in the month during which the application for payment is issued in connection with the design and construction of the Taff's Well Depot; and
  - (b) an amount which represents the ODP's reasonable forecast of value of works to be undertaken in connection with the design and construction of the Taff's Well Depot for the remainder of the month during which the application for payment is issued.
- 2.3 The ODP shall include in any application for payment submitted pursuant to paragraph 2.2 a reconciliation amount to reflect any difference between the amount forecast in paragraph 2.2(b) and the work undertaken by or on behalf of the ODP in the remainder of the month.
- 2.4 Applications for payment submitted by the ODP pursuant to paragraph 2.2 shall include:
  - (a) a description of the work undertaken or forecast to be undertaken;
  - (b) reasonable documentary evidence to substantiate the amounts claimed;
  - (c) the amount due for payment, taking into account any reconciliation amount referred to in paragraph 2.3;
  - (d) any amounts in connection with any changes to the Taff's Well Depot Scope instructed by the Authority pursuant to paragraph 1.3;

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- (e) any interest pursuant to paragraph 3 below; and
- (f) a valid VAT invoice for the amount considered to be due from the Authority.
- 2.5 The due date for payment of any amount referred to in an application for payment provided pursuant to paragraph 2.2 is seven (7) days after the receipt of such application for payment (the "**Due Date**").
- 2.6 If the Authority disputes the amount contained in an application for payment, the Parties shall discuss to attempt to resolve such dispute, failing which paragraph 4 below shall apply. Following resolution of any such dispute, the Authority shall pay any further amount which is agreed or determined to be payable (if any) within seven (7) days of such agreement or determination, together with interest thereon at the Interest Rate from the date on which payment was due to the date of payment.
- 2.7 A dispute as to any amount payable under this Schedule 8.6 shall not relieve the Authority of its obligation to pay any undisputed amount pursuant to this Schedule 8.6.
- 2.8 Not later than five (5) days after the Due Date, the Authority shall issue a notice (a "**Payment Notice**") to the ODP stating the amount of payment made or proposed to be made, which shall be calculated in accordance with the provisions of this Schedule 8.6.
- 2.9 The amount stated in the Payment Notice shall be payable on or before the date that is twenty one (21) days after the Due Date (the "**Final Date for Payment**").
- 2.10 The Authority shall pay the amount stated in a Payment Notice on or before the Final Date for Payment.
- 2.11 Each Grant Funding Payment shall be made by the Authority:
- (a) by automatic electronic funds transfer in pounds sterling to such bank account in the United Kingdom as the ODP may have previously specified to the Authority in writing; and
  - (b) so that cleared funds are received in that account on or before the Due Date.
- 2.12 The ODP shall not be entitled to be paid more pursuant to this Schedule 8.6 than the Taff's Well Depot Maximum Amount.

### **3 INTEREST**

- 3.1 If the Authority fails to pay any amount to the ODP on its Due Date, it shall in addition pay simple interest on such amount at the Interest Rate, calculated on a daily basis, from the Due Date to the date on which payment is made, which shall constitute a substantial remedy for the purposes of section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998.



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3.2 Any interest payable pursuant to this Schedule 8.6 shall be included in the first application for payment provided by the ODP to the Authority after the late payment is made.

**4 DISPUTES UNDER SCHEDULE 8.6**

4.1 If a dispute arises in relation to any Grant Funding Payment, including any dispute as to:

- (a) the amount of any Grant Funding Payment; or
- (b) any other dispute as to whether a Grant Funding Payment is due,

then the dispute shall, unless the Parties otherwise agree, be resolved in accordance with the provisions of clause 17 (*Governing Law and Jurisdiction*) of this Agreement. Any such dispute shall not affect the obligation of the Authority to pay a Grant Funding Payment claimed in accordance with this Schedule 8.6.

**5 NO DOUBLE RECOVERY**

5.1 The ODP shall not be entitled to payment more than once in respect of any works carried out in relation to works carried out in accordance with this schedule.

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[REDACTED]

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**Schedule 9**

Changes and Variations

|               |  |
|---------------|--|
| Schedule 9.1  | Financial and Other Consequences of Change                                 |
| Schedule 9.2  | Identity of the Final Tender Financial Model                               |
| Schedule 9.3  | Variations to the ODP Grant Agreement and Incentivising Beneficial Changes |
| Schedule 9.4: | Authority Risk Assumptions   |

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**Schedule 9.1 – Financial and Other Consequences of Change**

**1 PURPOSE AND APPLICATION OF SCHEDULE**

1.1 This Schedule 9.1 sets out:

- (a) the circumstances in which the occurrence of a Change will result in an adjustment to the Rail Services Payments and/or the Benchmarks and/or the Annual Benchmarks and wherever in Schedule 9 reference is made to “**adjustment to Rail Services Payments**” such reference shall be construed to include (unless the context otherwise requires) the restatement of the values of FPST, SPST, TPST and FthPST as specified in respect of each ODP Year in paragraphs 1, 2, 3 and 4 (respectively) of Appendix 1 (Profit Share Thresholds) to Schedule 8.2 (Profit Share Mechanism) and shall include the restatement of the Contractualised Revenue Line (“**Profit Share Components**”);
- (b) the circumstances in which the occurrence of a Change will result in an adjustment to the Infrastructure Manager Services Payments in Schedule 8.5 (Infrastructure Manager Services Payments); and
- (c) the process by which adjustments to the Rail Services Payment and/or the Benchmarks and/or the Annual Benchmarks and/or Infrastructure Manager Services Payments will be determined and effected.

1.2 Schedule 9.2 (Identity of the Final Tender Financial Model) contains provisions dealing with the provision of the Final Tender Financial Model which are relevant to the operation of this Schedule 9.1.

1.3 Subject to paragraph 1.4, the Parties acknowledge and agree that any:

- (a) Variations (as defined in Schedule 3B (Infrastructure Services and ODP Infrastructure Works)); and/or
- (b) Authority approved design changes under Schedule 3B (Infrastructure Services and ODP Infrastructure Works),

shall be dealt with exclusively in accordance with Appendix 19 (Change Mechanism) or paragraph 8A of Appendix 1 of Part B of Appendix 5 of Schedule 3B (Infrastructure Services and Infrastructure Works) (as applicable) of this Agreement provided always that where any:

- (c) Variations (as defined in Schedule 3B (Infrastructure Services and ODP Infrastructure Works)); and/or
- (d) Authority approved design changes under Schedule 3B (Infrastructure Services and ODP Infrastructure Works) and/or

- 
- (e) compensation events pursuant Clause 60 of Appendix 5 of Schedule 3B (Infrastructure Services and ODP Infrastructure Works),

which are forecast to have a net aggregate impact on the Rail Services Payments or Infrastructure Manager Services Payments in excess of the relevant Threshold Amount such Variations, Authority approved design changes and/or compensation events (as applicable) shall be deemed to be a Qualifying Change and the impact of such Variations, Authority approved design changes and/or compensation events (as applicable) on the Rail Services Payment and/or Infrastructure Manager Services Payment shall be dealt with in accordance with this Schedule 9 (Changes and Variation).

1.4 Where:

- (a) any Qualifying Change is deemed to arise pursuant to paragraph 1.3; and
- (b) and such Qualifying Change resulted directly or indirectly from an error or omission in either the Concept Design or the tendered design for CVL Rail Services,

the Rail Service Excess Impact Amount and/or the Infrastructure Manager Services Payment Excess Impact Amount shall (unless the Authority in its sole discretion determines otherwise) be the responsibility of the ODP and the Authority shall not compensate the ODP for any such excess amounts through any adjustments to the Rail Services Payment and/or Infrastructure Manager Services Payment or otherwise.

1.5 For the purposes of paragraph 1.4:

- (a) the “**Rail Service Excess Impact Amount**” is [REDACTED]; and
- (b) the “**Infrastructure Manager Services Payment Excess Impact Amount**” is [REDACTED],

the Parties acknowledge and agree that ODP’s total liability is [REDACTED] in respect of all relevant Qualifying Changes.

1.6 The Parties acknowledge and agree that, for the purposes of agreeing adjustments to the Rail Services Payment and/or the Benchmarks and/or the Annual Benchmarks and/or the Infrastructure Manager Services Payment following the occurrence of a Change, a Rail Services In-Life Reporting Template (developed in accordance with paragraph 1.7(a)) and an Infrastructure Manager In-Life Reporting Template (developed in accordance with paragraph 1.7(b)) shall be used to assist in agreeing or determining any required adjustment to Rail Services Payments and/or Infrastructure Manager Services Payments in accordance with this Schedule 9 (Changes and Variations).

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- 1.7 Within six (6) months of the date of this Agreement, the ODP shall provide a:
- (a) draft Rail Services In-Life Reporting Template to the Authority for review, such template shall comprise, as a minimum, the following information:
- (i) the Management Accounts (consisting of a balance sheet, profit and loss account and cash flow statement);
  - (ii) staffing resource costs (including breakdown of staffing grades and salaries) and other staff costs;
  - (iii) rolling stock charges (including breakdown by vehicle type, number and lease rate);
  - (iv) station and infrastructure access charges;
  - (v) performance payments;
  - (vi) capex amounts;
  - (vii) passenger revenue forecast and other revenue forecasts;
  - (viii) Schedule 12 Financial Ratios calculation;
  - (ix) Benchmarks and/or Annual Benchmarks;
  - (x) Annual Rail Services Payment Components;
  - (xi) Profit Share Components;
  - (xii) other key operational information including but not limited to Passenger Services, Cancellations, Short Formations, Minutes Delay, CaSL and PPM, Train Mileage and, Passenger Time Lost Delay; and
  - (xiii) Crowding forecast; and
- (b) draft Infrastructure Manager In-Life Reporting Template to the Authority for review, such template shall comprise, as a minimum, the following information:
- (i) the Management Accounts for Infrastructure Manager Services;
  - (ii) income by category;
  - (iii) operations costs by function;
  - (iv) Asset Management costs by CVL Asset Class;
  - (v) general management costs by function;

- 
- (vi) other costs;
  - (vii) efficiency data; and
  - (viii) other performance metrics.

1.8 Following receipt of the draft Rail Service In-Life Reporting Template and the Infrastructure Manager In-Life Reporting Template the Authority shall as soon as reasonably practicable either:

- (a) approve the format and content of the draft Rail Service In-Life Reporting Template and/or the Infrastructure Manager In-Life Reporting Template; or
- (b) (acting reasonably) require amendments to the content or format of the draft Rail Service In-Life Reporting Template and/or Infrastructure Manager In-Life Reporting Template which the ODP shall effect and, following which, the draft Rail Services In-Life Reporting Template and Infrastructure Manager In-Life Reporting Template shall be approved or determined by the Authority.

1.9 Notwithstanding the ODP's obligation to provide management information in Schedule 11 (ODP Performance Meetings and Management Information), for the purposes of assessing any required adjustments to the Rail Services Payment and/or Infrastructure Manager Services Payment in the event of a Change the ODP shall provide the Authority with an updated Rail Services In-Life Reporting Template and Infrastructure Manager In-Life Reporting Template to the Authority at least once in every three (3) Reporting Periods.

1.10 This Schedule 9.1 shall apply in relation to a Change where:

- (a) there are good reasons for considering that Change will be a Qualifying Change or, with other Changes, part of an Aggregated Qualifying Change; and
- (b) the required notice(s) has/have been given in accordance with paragraph 1.11 (or the Parties have agreed that this Schedule 9.1 will apply and there should be an adjustment to the Rail Services Payment and/or a review of the Benchmarks and/or the Annual Benchmarks and/or Infrastructure Manager Services Payment even though the required notices have not been given).

1.11 The notice requirements are that:

- (a) subject to paragraph 1.11(b), a Party must have notified the other that it considers that the Change will be a Qualifying Change and/or a review of the Benchmarks and/or the Annual Benchmarks in respect of that Change:

- 
- (i) within 3 (three) months of the notification or agreement of that Change if it is a Variation pursuant to paragraph 1.1 of Schedule 9.3 (Variations to the ODP Grant Agreement and Incentivising Beneficial Changes) or any other type of Change; and
  - (b) in the case of an Aggregated Qualifying Change, a Party must have notified the other:
    - (i) after an individual Change occurs, within the time limits stated in paragraphs 1.11(a)(i), that it reserves the right to count that Change towards an Aggregated Qualifying Change; and
    - (ii) within three (3) months of the occurrence of the last Change which that Party considers will trigger a Qualifying Change, that the Party requires an adjustment to the Rail Services Payment and/or a review of the Benchmarks and/or the Annual Benchmarks and/or Infrastructure Manager Services Payments in respect of the Changes comprised in that Aggregated Qualifying Change. The notice must identify each of the Changes included in the Aggregated Qualifying Change.

1.12 References in the remainder of this Schedule 9.1 and in Schedule 9.2 (Identity of the Final Tender Financial Model) to a “**Change**” are to a Change in respect of which the requirements in paragraph 1.10 have been satisfied.

## **2 TIMESCALES**

- 2.1 Where this Schedule 9.1 applies, any resulting restatement of the Annual Rail Services Payments Components and the Profit Share Components, the Benchmarks and/or the Annual Benchmarks (as applicable) shall be made in accordance with this Schedule 9.1:
- (a) where it is reasonably practicable to do so, at least three (3) Reporting Periods prior to the Change; or
  - (b) where the timescale in paragraph 2.1(a) is not reasonably practicable, as soon as reasonably practicable after that.

## **3 HOW ANY ADJUSTMENTS TO RAIL SERVICES PAYMENT AND INFRASTRUCTURE MANAGER SERVICES PAYMENTS WILL BE ESTABLISHED**

- 3.1 The adjustments, if any, to the Rail Services Payment or Infrastructure Manager Services Payments to be made in respect of any Change shall be established in accordance with Appendix 2 (Agreement or Determination of Adjusted Rail Services Payments and Infrastructure Manager Services Payments) to this Schedule 9.1.



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#### **4 CHANGES TO BENCHMARKS AND/OR ANNUAL BENCHMARKS**

- 4.1 This paragraph 4 shall apply if either Party has given notice to the other that it considers that a Change has or will have, in that Party's reasonable opinion, a material effect on the risk of the ODP failing to satisfy the requirements of any Benchmark and/or Annual Benchmark (whether in terms of increasing or reducing that risk).
- 4.2 Any notice referred to in paragraph 4.1 shall be given as soon as reasonably practicable and in any event before the Parties have agreed or the Authority has reasonably determined the Change.
- 4.3 Where this paragraph 4 applies, the relevant Benchmarks and/or Annual Benchmarks shall be revised to the extent that such revision is reasonably considered to be necessary to hold constant the risk of the ODP failing to satisfy the requirements of that Benchmark and/or Annual Benchmarks. The Parties shall agree or the Authority shall reasonably determine any such revision(s).
- 4.4 For the purposes of any revision to the Benchmarks and/or Annual Benchmarks under this paragraph 4, regard may be had to any other information to the extent they are relevant to the consideration of whether a revision is reasonably considered to be appropriate to take account of the Change.

#### **5 RESTATEMENT OF ANNUAL RAIL SERVICES PAYMENT COMPONENTS AND/OR BENCHMARKS AND/OR ANNUAL BENCHMARKS AND/OR PROFIT SHARE COMPONENTS**

- 5.1 When the adjusted Rail Services Payments have been agreed by the Parties or determined by the Authority in accordance with Appendix 2 (Agreement or Determination of Adjusted Rail Services Payments and Infrastructure Manager Services Payments) to this Schedule 9.1 then:

- (a) if:
- (i) the adjusted Rail Services Payments are such that the Change:
    - (A) meets the criteria for a Qualifying Change; or
    - (B) with other Changes meets the criteria for an Aggregated Qualifying Change,

the Annual Rail Services Payment Components and the Profit Share Components shall be restated; and

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(b) if any changes to the Benchmarks and/or Annual Benchmarks have been agreed or determined in accordance with paragraph 4, the Benchmarks and/or Annual Benchmarks shall be restated to give effect to those changes.

5.2 The restatement of the Annual Rail Services Payment Components and the Profit Share Components shall have effect on and from the date on which the adjusted Rail Services Payment is agreed or determined in accordance with this Schedule 9.

5.3 If and to the extent that the application of the agreed or determined adjusted Rail Services Payments in respect of the then current or any earlier ODP Year would result in any change to the amount of any payments already made between the Authority and the ODP then a reconciliation payment shall be paid by the ODP or the Authority (as the case may be). The payment shall be made on the first Payment Date which falls more than seven (7) days after agreement or determination of the amount of the reconciliation payment required (or if there is no such Payment Date, within fourteen (14) days after such agreement or determination).

## **6 INFORMATION**

The ODP shall promptly, having regard to the other timescales anticipated in this Schedule 9.1, provide to the Authority such information as the Authority may request for the purpose of enabling the Authority to exercise its rights and comply with its obligations pursuant to this Schedule 9.1.

## **7 [REDACTED]**

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**Appendix 1 to Schedule 9.1**

**1 DEFINITION OF THRESHOLD AMOUNT**

**“Threshold Amount”** means:

- (a) in respect of adjustments to the Rail Services Payments, [REDACTED] subject to indexation as follows:

|                  |   |
|------------------|---|
| [REDACTED] x RPI |   |
| Where:           |   |
| <b>RPI</b>       | has the meaning given to it in Appendix 1 (Annual Rail Services Payment) of Schedule 8.1 (Rail Services Payment). |

- (b) in respect of adjustments to the Infrastructure Manager Service Payments, [REDACTED] subject to indexation as follows:

|                  |   |
|------------------|---|
| [REDACTED] x RPI |   |
| Where:           |   |
| <b>RPI</b>       | has the meaning given to it in Appendix 1 (Annual Rail Services Payment) of Schedule 8.1 (Rail Services Payment). |

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**Appendix 2 to Schedule 9.1**

**1 AGREEMENT OR DETERMINATION OF ADJUSTED RAIL SERVICES PAYMENTS AND INFRASTRUCTURE MANAGER SERVICES PAYMENTS**

1.1 The adjustments, if any, to the Rail Services Payments and/or Infrastructure Manager Services Payments to be made in respect of any Change shall be established by the ODP providing to the Authority an assessment of the Change and the proposed resulting adjustment to the Rail Services Payments and/or Infrastructure Manager Services Payments (“**Qualifying Change Proposal**”) such proposal shall comprise:

(a) a proposed adjustment to the Rail Services Payment and/or Infrastructure Manager Services Payment required to take account of the Change;

(i) on the basis of the general adjustments and/or assumptions referred to in paragraph 2 (General Adjustments/Assumptions);

(ii) on the basis of the assumptions in the Record of Assumptions as added to and/or amended (if at all) in accordance with paragraph 3 (Assumptions in the Record of Assumptions) provided that if there is any inconsistency between the assumptions in the Record of Assumptions and any other of the requirements of this paragraph 1, those other requirements shall prevail, unless the Authority (acting reasonably) otherwise elects;

(iii) on the basis of the updated Rail Services In-Life Reporting Template and/or the updated Infrastructure Manager In-Life Reporting Template;

(iv) so as to provide for profit in accordance with paragraph 5 (Revised Profit);

(v) so as to give effect to the provisions of paragraph 6 (Indexation) in relation to indexation; and

(vi) so as to give effect to the provisions of paragraph 8 to Appendix 2 of Schedule 9.1 in relation to the PTL Performance Sum;

(b) all supporting information and assumptions upon which the proposed adjustment to the Rail Services Payment and/or Infrastructure Manager Services Payment has been made with reference (where applicable) to:

(i) the Rail Services In-Life Reporting Template;

(ii) the Infrastructure Manager In-Life Reporting Template;

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- (iii) evidence that the Qualifying Change Proposal uses as its basis a level of risk allocation between the Parties which is equivalent to the level of risk allocation assumed between the Parties under this Agreement prior to the relevant Change;
  - (iv) the contents of any Operational Model;
  - (v) any relevant element of the Final Tender Financial Model, Record of Assumptions and Service Improvement Plan; or
  - (vi) any other information necessary to support or evidence the Qualifying Change Proposal.
- (c) The Authority may require the ODP to assess whether the Change that is the subject of the Qualifying Change Proposal has any impact, and, if so, the extent of that impact, on the following:
- (i) Principal Infrastructure Services including the design for the CVL Transformation;
  - (ii) ODP Infrastructure Works; and / or
  - (iii) Additional Infrastructure Services,
- including any capital expenditure that is required or no longer required as a result of the Change, provided always that any required consequential Variation (as defined in Schedule 3) shall be dealt with in accordance with Appendix 19 of Schedule 3B subject to paragraph 1.3 of this Schedule 9.
- (d) Where required by the Authority in paragraph 1.1 c) of this Appendix 2 to Schedule 9.1, the ODP shall analyse within the Qualifying Change Proposal a full range of opportunities across the ODP Services to effect the Change. The ODP shall recommend the option that delivers the best value to the Authority in aggregate considering the impact on all aspects of ODP Services and the affordability by the Authority of such Change.
- 1.2 As soon as reasonable after the receipt of the ODP's Qualifying Change Proposal, the Parties shall agree or the Authority shall reasonably determine the Qualifying Change Proposal provided always that it shall not be reasonable for the Authority to make a determination that is contrary to the principles for adjusting the Rail Services Payments or Infrastructure Manager Services Payment as set out in this Schedule 9.
- 1.3 Any determination by the Authority pursuant to paragraph 1.2 shall be final and binding on the Parties, except in the case of manifest error by the Authority or the Authority not acting reasonably in making a determination pursuant to paragraph 1.2 of this Appendix 2 to Paragraph 9.2 whereby the ODP shall have the right to dispute the Authority's

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determination in accordance with the dispute resolution procedure set out in clause 11 of this Agreement.

## **2 GENERAL ADJUSTMENTS/ASSUMPTIONS**

2.1 Adjustments to the Rail Services Payments and/or Infrastructure Manager Services Payments are to be agreed between the Parties or reasonably determined by the Authority on the basis that:

- (a) any increase in costs relating to a Change; and/or
- (b) any reduction in revenues relating to a Change,

that is attributable to any activities, actions or omissions of the ODP which are not permitted under, or would otherwise constitute a contravention of, the terms of the ODP Grant Agreement, is to be disregarded.

2.2 Adjustments to the Rail Services Payments and/or Infrastructure Manager Services Payments are also to be agreed between the Parties or reasonably determined by the Authority on the basis that:

- (a) the ODP will use all reasonable endeavours to:
  - (i) reduce any costs that may arise or income that may be foregone; and
  - (ii) increase any revenue that may arise and avoid any cost that may be avoided,

as a consequence of a Change; and

- (b) any requirement for borrowing in respect of Capital Expenditure by the ODP is dealt with in accordance with paragraph 3 of Schedule 9.3 (Variations to the ODP Grant Agreement and Incentivising Beneficial Changes).

2.3 Where and as directed to do so by the Authority (acting reasonably) the ODP shall undertake one or more competitive tendering exercises for the purposes of ascertaining the likely level of any costs relating to a Change.

## **3 ASSUMPTIONS IN THE RECORD OF ASSUMPTIONS**

3.1 The Parties shall (unless to do so would be contrary to paragraph 2) agree or the Authority shall reasonably determine adjustments to the Rail Services Payments and/or Infrastructure Manager Services Payments that are in accordance with the assumptions that are contained in the Record of Assumptions, as added to or modified pursuant to paragraph 3.2 or paragraph 3.3.

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3.2 Where the Authority reasonably considers that the assumptions contained in the Record of Assumptions are ambiguous or that additional assumptions are required in relation to circumstances not dealt with by the assumptions in the Record of Assumptions, the Parties shall agree or the Authority shall reasonably determine the assumptions or additional assumptions to be utilised for this purpose.

3.3 Where the Authority reasonably considers that:

- (a) a Change is likely to result in an increase in either or both of the costs of the ODP and the revenues of the ODP; and
- (b) an assumption relevant to the Change contained in the Record of Assumptions does not accord with what would be achievable by, or experienced by, an economic and efficient ODP,

then the Parties shall agree or the Authority shall reasonably determine a modification to the assumption so that, as modified, it does accord with what would be achievable by, or experienced by, an economic and efficient ODP.

#### **4 TRACTION ELECTRICITY CHARGES**

4.1 This paragraph 4 applies only in relation to Charge Variations.

4.2 In agreeing or determining adjustments to the Rail Services Payments, no adjustment shall be made in respect of a Charge Variation to the extent that Charge Variation relates, directly or indirectly and however it may be effected, to the Traction Electricity Charge payable by the ODP pursuant to any Track Access Agreement with Network Rail. For this purpose (and subject to clause 1.1(k) of this Agreement), the Traction Electricity Charge is the component of the Track Charges (as defined in the Track Access Agreement) identified as such in any Track Access Agreement or any similar arrangement under which the ODP pays for traction current consumed by rolling stock vehicles operated by or on behalf of the ODP.

#### **5 REVISED PROFIT**

5.1

- (a) Where a Change is forecast to result in an increase to the ODP's revenue plus Annual Rail Services Payment Components in a ODP Year, the Parties shall agree or the Authority shall reasonably determine adjustments in relation to profit that provide for an increase in the amount of profit in any ODP Year such that the increase in the amount of profit is equal to 5.11% of the forecast increase in revenue plus the resulting change in Annual Rail Services Payment Components for that ODP Year; and/or

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(b) Where a Change is forecast to result in a reduction in the ODP's revenue plus Annual Rail Services Payment Components in a ODP Year, the Parties shall agree or the Authority shall reasonably determine adjustments in relation to profit that provide for a decrease in the amount of profit in any ODP Year equal to the lower of:

- (i) the percentage of revenue plus Annual Rail Services Payment Components specified in paragraph 5.1(a); or
- (ii) the average profit margin in the current Business Plan for the remaining Rail Services Term,

of the forecast reduction in revenue plus Annual Rail Services Payment Components for that ODP Year.

5.2 In agreeing or determining adjustments for the purposes of any Protected Proposal, the Parties or the Authority shall effect such change (if any) to the amount attributable to profit as they agree or the Authority reasonably determines:

- (a) fairly rewards the ODP for proposing the Protected Proposal; and
- (b) reasonably incentivises the ODP to propose further Protected Proposals,

by sharing with the ODP a reasonable amount of the additional profit that is expected to arise from implementing the Protected Proposal.

5.3 Schedule 14.7 (Incentivising Long Term Investment) sets out the Authority's guidance on how it approaches incentivising long term investment. Nothing in Schedule 14.7 (Incentivising Long Term Investment) is intended to limit or be limited by, the provisions of paragraph 2.2 of Schedule 14.4 (Designation of ODP Assets).

## **6 INDEXATION**

In agreeing or determining adjustments to the Rail Services Payments and/or Infrastructure Manager Services Payments, the Parties shall apply the following principles in connection with indexation. For each relevant item of data in the Rail Service In-Life Reporting Template and/or Infrastructure Manager In-Life Reporting Template in respect of which an adjustment to the Rail Services Payment and/or Infrastructure Manager Services Payment is agreed or determined to be required:

- 6.1 the Parties shall agree or the Authority shall reasonably determine, having regard to the particular facts of the Change, the base date at which that item is priced; and
- 6.2 that item shall be deflated by reference to the original base date and index (if any) relevant to that item in the Rail Service In-Life Reporting Template and/or Infrastructure Manager In-Life Reporting Template.



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**7 ROUTE EFFICIENCY BENEFIT SHARE/REBS MECHANISM**

7.1 No adjustments to the Rail Services Payment shall be made to reflect:

- (a) any amount payable by or to the ODP in respect of Route Efficiency Benefit Share or REBS; or
- (b) any change in the basis on which Route Efficiency Benefit Share or REBS is calculated or is to be paid (including any change which may require amounts in respect of Route Efficiency Benefit Share to be payable by as well as payable to the ODP).

**8 ARSP ADJUSTMENT AND PERFORMANCE SUM**

8.1 In agreeing or determining the Rail Services Payments, no adjustment shall be made to the ARSP to reflect any change in the amount of the Performance Sum payable either by the Authority or the ODP and arising from the exercise by the Authority of its rights pursuant to paragraph 1.7 of Schedule 7.1 (Performance Benchmarks).

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**Schedule 9.2 – Identity of the Final Tender Financial Model**

**1 ODP'S OBLIGATIONS**

- 1.1 The ODP shall deliver two (2) copies of each of the Final Tender Financial Model and the Record of Assumptions (each such copy in electronic format on non-rewritable password protected CD-ROM or other appropriate electronic medium) together with hard format copies of the output template of the Final Tender Financial Model in the format set out in the document in the agreed terms marked **FTFM** to the Authority in the agreed form.

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**Schedule 9.3 - Variations to the ODP Grant Agreement and Incentivising Beneficial Changes**

**1 VARIATIONS**

1.1 The terms of the ODP Grant Agreement may be varied as follows but not otherwise:

(a) by the Authority (as contemplated where relevant in the Invitation to Submit Final Tender) in relation to:

- (i) any aspect of the ODP Services (including the Authority carrying out the delivery of advertising on trains and in Stations and management of Station car parks); and/or
- (ii) any provision of the ODP Grant Agreement other than those provisions specified in paragraph 1.2,

by service of a notice on the ODP referring to this paragraph 1.1(a) and setting out the variation to the terms of the ODP Grant Agreement; and

(b) in relation to any other provision of the ODP Grant Agreement, by agreement in writing between the Parties to that effect,

(each a "**Variation**").

1.2 Without prejudice to the Authority's rights under paragraph 1.1(a), the terms of each of:

- (a) clauses 5 (Duration of the ODP Grant Agreement), 7 (Assignment), 10 (Cumulative Rights and Remedies), 11 (Dispute Resolution), 12 (Notices), 13 (Set-Off) and 14 (Miscellaneous Provisions) of this Agreement;
- (b) Schedules 8 (Payments), 9 (Changes and Variations), 10 (Remedies, Events of Default and Termination Events), 12 (Financial Covenants and Bonds) and 14 (Preservation of Assets) of this Agreement; and
- (c) the definitions set out at clause 3 (Definitions) of this Agreement insofar as such affect the respective rights and obligations of the Authority and the ODP pursuant to the provisions referred to at (a) and (b) above,

shall not be varied at any time other than in accordance with the terms of the ODP Grant Agreement or with the agreement of the Parties.

1.3 The Authority shall, to the extent reasonably practicable, allow the ODP a reasonable opportunity to make representations to the Authority concerning any Variation to be made in accordance with paragraph 1.1(a), prior to making any such Variation.

1.4 The Authority may:

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- (a) issue, revise and withdraw from time to time procedures that it requires to be followed for the purposes of orderly consideration of Variations. This will include for the purpose of establishing in relation to any Change whether it is a Qualifying Change; and
- (b) require the ODP to provide any information that the Authority reasonably requires for this purpose (including in relation to prospective change to profit, costs and revenue as a consequence of proceeding with the Variation).
- 1.5 Procedures issued pursuant to paragraph 1.4 may provide for any number of Changes to be grouped together as a single Change for the purposes of agreeing or determining adjustments to the Rail Services Payments or Infrastructure Manager Services Payments.
- 1.6 Procedures issued pursuant to paragraph 1.4 shall have contractual effect between the Parties in accordance with their terms.
- 1.7 The ODP may notify the Authority of any proposal for a Variation by notice setting out the proposed method of implementing such Variation including:
- (a) the timescale for doing so;
- (b) the effect (if any) on the timing of the performance of its other obligations under the ODP Grant Agreement;
- (c) the impact of effecting the proposed Variation on the provision of the ODP Services and the ODP's proposals as to how to minimise such impact; and
- (d) the financial consequences of implementing the Variation proposed by the ODP in terms of any adjustments to the Rail Services Payments and/or Infrastructure Manager Services Payments the ODP considers the Variation would require.

## **2 PROTECTED PROPOSALS**

- 2.1 Where the ODP proposes a Variation in sufficient detail for it to be apparent that its implementation is likely to result in an increase in the overall profitability of the ODP through costs saving measures (a "**Protected Proposal**"), the Authority may not proceed with the Protected Proposal or seek to implement the substance of it by proposing a Variation of its own without complying with the provisions of paragraph 2 (General Adjustments/Assumptions), and paragraph 5 (Revised Profit) of Appendix 2 (Agreement or Determination of Adjusted Rail Services Payments) to Schedule 9.1 (Financial and Other Consequences of Change).
- 2.2 The ODP and the Authority acknowledge that the ODP may during the Rail Services Term identify actions that could be taken by the ODP to achieve savings and improved financial performance and that such actions may if implemented give rise to a Change under the

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terms of this ODP Grant Agreement which, if it is a Qualifying Change, will give a financial benefit to the Authority. It is further acknowledged that it is appropriate for the ODP to seek to identify such actions for the purposes of improving the cost effective delivery of railway passenger services.

2.3 To incentivise the ODP to seek to identify such actions it is agreed that the ODP may approach the Authority with a proposal to take an action that would constitute a Change on the basis that if such a Change occurred and was a Qualifying Change in agreeing or determining an adjustment to the Rail Services Payment and/or the Infrastructure Manager Services Payment the Parties or the Authority would effect such change (if any) to the amount attributable to profit as they agree or the Authority reasonably determines:

- (a) fairly rewards the ODP for proposing the Change; and
- (b) reasonably incentivises the ODP to propose further Changes that achieve savings and/or improved financial performance by sharing with the ODP a reasonable amount of the additional profit that is expected to arise from implementing the relevant Change.

2.4 The Authority shall have an unfettered discretion as to whether or not to agree such a proposal but if it does so agree and a Qualifying Change in consequence occurs then in agreeing or determining the adjusted Rail Services Payment and/or Infrastructure Manager Services Payments the provisions referred to in paragraph 2.3 above shall apply.

### **3 CAPITAL EXPENDITURE**

#### **3.1 Capital Expenditure Threshold**

The ODP shall notify the Authority promptly if it reasonably expects that a Change to which paragraph 1 or 2 relates would require it to incur, singly or in aggregate with other Changes from time to time, Capital Expenditure in excess of [REDACTED] of its annual Turnover as disclosed by its latest available Annual Audited Accounts and, when so notified, the Authority shall either:

- (a) withdraw (or direct the ODP to withdraw) the Change;
- (b) undertake to meet the excess through additional funding as and when such Capital Expenditure is incurred; or
- (c) direct the ODP to use all reasonable endeavours to borrow or otherwise raise the money required to fund any Change on commercial terms and at rates which are consistent with market conditions at the time, unless borrowing or otherwise raising such money would result in the ODP failing to comply with the financial covenants contained in Schedule 12 (Financial Covenants and Bonds).

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### 3.2 ODP to Seek Finance

If the Authority elects to require the ODP to use all reasonable endeavours as described in paragraph 3.1(c) then the ODP shall:

- (a) seek finance from a representative range of lending institutions and other financial institutions including those which at that time provide finance to the ODP, the Guarantor and the Parent;
- (b) if it is unable to raise funding, provide the Authority with all information the Authority may reasonably require in relation to the efforts made by the ODP and the reasons for a failure to raise additional finance;
- (c) so far as it is able (having used all reasonable efforts to do so), the ODP shall provide to the Authority letters from lenders and financiers it has approached for finance stating their reasons for refusing to provide it and if the Authority so requires, arrange and attend meetings with them for the Authority to discuss those reasons; and
- (d) if funding is not available, or is not available on terms that the Authority considers to be commercial terms or at rates which are consistent with market conditions at that time the Authority may:
  - (i) withdraw the Change; or
  - (ii) undertake to fund the Capital Expenditure as and when such Capital Expenditure is incurred.

### 3.3 Treatment of Borrowings in Adjustments to the Rail Services Payment and Infrastructure Manager Services Payments

In calculating the adjustment to the Rail Services Payment and/or Infrastructure Manager Services Payments for the purposes of any Change referred to in this paragraph 3, the ODP shall account for the Capital Expenditure in accordance with GAAP, taking into account the basis on which such Capital Expenditure has been financed.

### 3.4 Meaning of Capital Expenditure

The expression “**Capital Expenditure**” when used in this Schedule 9.3 refers to the nature of the expenditure incurred by the ODP and, accordingly, does not include expenditure incurred under operating leases.

## 4 ODP REVENUE PROPOSALS

- 4.1 By no later than 1 April 2024 and on each anniversary thereafter, the ODP shall provide to the Authority proposals which, if implemented, would likely result in an increase in

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passenger revenue) and/or any other revenue of the ODP (for example in respect of Stations, car parks, catering etc), such proposals shall set out:

- (a) the commencement date for each proposal;
- (b) the impact of each proposal on passenger growth and/or any other revenue of the ODP until the end of the ODP Grant Agreement Term;
- (c) the impact of each proposal on costs (including, where applicable, operational expenditure and capital expenditure) and profits (to be set out in the form of a P&L3) of the ODP, until the end of the ODP Grant Agreement Term, in sufficient detail to allow the Authority to calculate any resulting adjustment to Rail Service Payments, Infrastructure Manager Services Payment and/or any other financial benefit to the Authority and the ODP;
- (d) any proposed adjustments to the Profit Share Thresholds including but not limited to, AFA, IAFA and DFR, to incentivise and fairly reward the ODP in respect of increasing passenger revenue and/or any other revenue of the ODP; and
- (e) the incremental margin based on the bid margin included in ITSFT Bid Submission expected in that ODP Year, as set out in the in-life reporting model, only to change from ITSFT Bid Submission assumptions by agreement of the Parties.

(together being the “**ODP Revenue Proposals**”)

4.2 Following receipt of the ODP Revenue Proposals the Authority shall have unfettered discretion as to whether or not to implement any or all of the ODP Revenue Proposals, provided always that any such implementation shall be dealt with in accordance with Schedule 9 (Changes and Variations) of this Agreement.

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**Schedule 10**

**Remedies, Events of Default and Termination Events**

|                |  |
|----------------|--|
| Schedule 10.1: | Procedure for remedying a Contravention of the ODP Grant Agreement |
| Schedule 10.2: | Events of Default and Termination Events                           |
| Schedule 10.3: | Force Majeure and Business Continuity                              |
| Schedule 10.4: | Liability  |



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## **Schedule 10.1 - Procedure for remedying a Contravention of the ODP Grant Agreement**

### **1 CONTRAVENTIONS OF THE ODP GRANT AGREEMENT**

- 1.1 The ODP shall notify the Authority, so far as possible before it may occur and in any event as soon as reasonably practicable thereafter, of any contravention by the ODP of any provision of the ODP Grant Agreement. This includes where the ODP is under an obligation to use all reasonable endeavours to achieve a particular result by a particular time, where such result is not achieved by such time (although, notwithstanding the obligation to notify and to produce a Remedial Plan, such failure to achieve shall be considered a contravention only if and to the extent the ODP has failed to use all reasonable endeavours).
- 1.2 The ODP shall deliver to the Authority, or procure the delivery to the Authority of, such information, records or documents as the Authority may request within such period as the Authority may reasonably require for the purpose of determining the existence, likelihood, nature or scope of any contravention of, an Event of Default or Termination Event under, the ODP Grant Agreement.

### **2 REMEDIES FOR CONTRAVENTIONS OF THE ODP GRANT AGREEMENT**

If the Authority is satisfied that the ODP is contravening or is likely to contravene any term of the ODP Grant Agreement, the Authority may serve a notice on the ODP requiring it to propose such steps as the ODP considers appropriate for the purpose of securing or facilitating compliance with the term in question (a "**Remedial Plan Notice**").

### **3 REMEDIAL PLAN NOTICES**

- 3.1 Each Remedial Plan Notice shall specify the following:
- (a) the term or terms of the ODP Grant Agreement that the ODP is contravening or is likely to contravene (each a "**Relevant Term**"); and
  - (b) the time period ("**Remedial Plan Period**") within which the Authority requires the ODP to provide an appropriate plan for the purpose of facilitating or securing compliance with such Relevant Term (a "**Remedial Plan**"). Where not specified within the Remedial Plan Notice or where a Remedial Plan is submitted by the ODP in advance of any Remedial Plan Notice, the Remedial Plan Period shall be seven (7) Weekdays.

### **4 REMEDIAL PLANS**

- 4.1 If the Authority issues a Remedial Plan Notice or a Warning Notice, or where the ODP is aware that it is contravening or is likely to contravene any provision of the ODP Grant Agreement and where such contravention or likelihood of contravention is reasonably

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considered by the ODP to be material, the ODP shall submit a Remedial Plan to the Authority within the Remedial Plan Period for agreement with the Authority.

4.2 The Authority shall not withhold its approval of a Remedial Plan unreasonably and shall notify the ODP if it accepts or rejects the Remedial Plan within five (5) Weekdays of receipt of the Remedial Plan from the ODP or such other period as the Parties may agree. If the Authority does not approve the Remedial Plan it shall inform the ODP of its reasons and the ODP shall take such reasons into account in the preparation of an amended Remedial Plan, which shall be resubmitted to the Authority within five (5) Weekdays of the rejection of the first Remedial Plan by the Authority.

4.3 Each Remedial Plan shall set out:

- (a) the Relevant Term which has caused such Remedial Plan to be required;
- (b) an explanation of the reasons for the contravention or likely contravention of the Relevant Term;
- (c) the steps proposed for the purposes of securing or facilitating compliance with the Relevant Term; and
- (d) the time period within which the ODP proposes to implement those steps.

## **5 REMEDIAL AGREEMENTS**

5.1 If the Authority is satisfied that the matters within such Remedial Plan referred to in paragraphs 4.3(c) and (d) are appropriate (with or without further modification as the Parties may agree) the Authority may require the ODP to enter into a supplemental agreement (the "**Remedial Agreement**") with the Authority to implement those matters.

5.2 It is a term of the ODP Grant Agreement that the ODP (at its own cost) complies with each Remedial Agreement in accordance with its terms.

5.3 Without prejudice to the other rights or remedies of the Authority under this ODP Grant Agreement, in the event of a material failure by the ODP to comply with the Remedial Agreement the Authority may issue a Warning Notice to the ODP concerning such failure.

## **6 EFFECT OF FORCE MAJEURE EVENT ON A REMEDIAL AGREEMENT**

6.1 Without prejudice to the operation of paragraph 2.1 of Schedule 10.2 (Events of Default and Termination Events), the following provisions shall apply in relation to Force Majeure Events affecting the ODP's performance of their obligations pursuant to a Remedial Agreement:

- (a) the ODP shall give written notice to the Authority promptly after the ODP becomes aware (and in any event within twenty four (24) hours after becoming aware) of the occurrence

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or likely occurrence of a Force Majeure Event which will or is likely to affect the ODP's ability to comply with a Remedial Agreement within the period specified therein;

- (b) each notice submitted in accordance with paragraph 6.1(a) shall state the extent or likely extent of the relevant Force Majeure Event and in the case of a Force Majeure Event which has not occurred at such time, the reasons why the ODP considers it likely to occur;
- (c) the ODP shall use, and shall continue to use, all reasonable endeavours to avoid or reduce the effect or likely effect of any Force Majeure Event on its ability to comply with any Remedial Agreement; and
- (d) subject to the ODP having complied with its obligations under paragraphs 6.1(a) to 6.1(c) (inclusive) the ODP shall be entitled to a reasonable extension of the remedial period applicable to a Remedial Agreement in order to take account of the effect of a Force Majeure Event which has occurred on the ODP's ability to comply with that Remedial Agreement.

## **7 MONITORING BY THE AUTHORITY**

- 7.1 Following the occurrence of a contravention of the ODP Grant Agreement, the Authority may at its option (but shall not be obliged to) commence or increase the level and/or frequency of monitoring (whether by inspection, audit or otherwise) of the ODP's performance of any relevant obligations until such time as the ODP demonstrates, to the Authority's reasonable satisfaction, that it is capable of performing and will perform such obligations as required by the ODP Grant Agreement.
- 7.2 The ODP shall co-operate fully with the Authority in relation to the monitoring referred to in paragraph 7.1.
- 7.3 The results of such monitoring will be reviewed at each ODP Performance Meeting held pursuant to Schedule 11.1 (ODP Performance Meetings).
- 7.4 The ODP shall compensate the Authority for all reasonable costs incurred by the Authority in carrying out such monitoring.

## **8 WARNING NOTICES**

- 8.1 Without prejudice to the other rights or remedies of the Authority:
  - (a) If the ODP contravenes, to an extent, which is reasonably considered by the Authority to be material, any one or more of its obligations under this ODP Grant Agreement;
  - (b) if the ODP has failed to provide a Remedial Plan following the issue of a Remedial Plan Notice within the Remedial Plan Period;

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- (c) if the ODP has materially failed to comply with any Remedial Agreement;
  - (d) on the occurrence of an Event of Default;
  - (e) where the Authority is entitled to issue a Warning Notice in accordance with Schedule 7 (Performance Benchmarks); or
  - (f) if at any time the ODP has failed to Achieve any Rail Services Milestone by its associated Planned Rail Services Milestone Delivery Date,

then the Authority may, but is not obliged to, give a written notice to the ODP setting out the matter or matters giving rise to such notice (a "**Warning Notice**"). Any such notice shall state on its face that it is a Warning Notice and the ODP shall be required to submit a Remedial Plan in accordance with paragraph 4 (Remedial Plans) of this Schedule 10.

- 8.2 The Authority may at its sole discretion withdraw a Warning Notice where the ODP has complied with the relevant Remedial Plan or, where relevant, Remedial Agreement or, where no such Remedial Plan or Remedial Agreement has been agreed, where the Authority is satisfied that the ODP has demonstrated that the contravention is no longer subsisting and the ODP is performing (or capable of performing) its obligations under the ODP Grant Agreement. In the event of a Warning Notice being withdrawn such Warning Notice shall be disregarded from the date of such withdrawal and shall not count towards the number of Warning Notices issued for the purposes of paragraph Schedule 10.2 Paragraph 1.16 (Issue of Warning Notices).

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## Schedule 10.2 - Events of Default and Termination Events

### 1 DEFINITION OF EVENTS OF DEFAULT

Each of the following is an "Event of Default":

#### 1.1 Insolvency

- (a) **Administration:** Any step being taken by any person with a view to the appointment of an administrator to the ODP, the Parent, any Bond Provider or the Guarantor;
- (b) **Insolvency:** Any of the ODP, the Parent, any Bond Provider or the Guarantor stopping or suspending or threatening to stop or suspend payment of all or, in the reasonable opinion of the Authority, a material part of (or of a particular type of) its debts, or being unable to pay its debts, or being deemed unable to pay its debts under Section 123(1) or (2) of the Insolvency Act 1986 except that in the interpretation of this paragraph the words "it is proved to the satisfaction of the court that" in sub-section (1)(e) and sub-section (2) of Section 123 shall be deemed to be deleted;
- (c) **Arrangements with Creditors:** The directors of the ODP, the Parent, any Bond Provider or the Guarantor making any proposal under Section 1 of the Insolvency Act 1986, or any of the ODP, the Parent, any Bond Provider or the Guarantor proposing or making any agreement for the deferral, rescheduling or other readjustment (or proposing or making a general assignment or an arrangement or composition with or for the benefit of creditors) of all or, in the reasonable opinion of the Authority, a material part of (or of a particular type of) its debts, or a moratorium being agreed or declared in respect of or affecting all or, in the reasonable opinion of the Authority, a material part of (or of a particular type of) its debts;
- (d) **Security Enforceable:** Any expropriation, attachment, sequestration, execution or other enforcement action or other similar process affecting any property of the ODP or the whole or a substantial part of the assets or undertaking of the ODP, the Parent, any Bond Provider or the Guarantor, including the appointment of a receiver, administrative receiver, manager or similar person to enforce that security;
- (e) **Stopping Business/Winding-Up:** Any step being taken by the ODP, the Parent, any Bond Provider or Guarantor with a view to its winding-up or any person presenting a winding-up petition or any of the ODP, the Parent, any Bond Provider or Guarantor ceasing or threatening to cease to carry on all or, in the reasonable opinion of the Authority, a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the Authority before that step is taken;

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- (f) **Railway Administration Order:** A railway administration order being made in relation to the ODP under Sections 60 to 62 of the Act; and
- (g) **Analogous Events:** Any event occurring which, under the Law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed in this paragraph 1.1,

subject, in the case of any relevant event occurring in relation to a Bond Provider where no such other Event of Default has occurred and is unremedied or continuing at such time, to a period of twenty (20) Weekdays having elapsed in order to allow the ODP to replace the relevant Bond Provider.

## 1.2 **Non-payment**

The ODP failing to pay to the Authority any amount due under the ODP Grant Agreement within twenty eight (28) days of the due date for such payment.

## 1.3 **Change of Control**

A Change of Control other than in accordance with the prior consent of the Authority pursuant to clause 8 (Change of Control and Facilitation Fee).

## 1.4 **Revocation of Licence**

Revocation of any Licence required to be held by the ODP in order to comply with its obligations under the ODP Grant Agreement.

## 1.5 **Safety Certificate and Safety Authorisation**

The Safety Certificate and/or Safety Authorisation of the ODP being withdrawn or terminated.

## 1.6 **Passenger Service Performance**

Except in respect of any Reporting Period falling within the Initial Reporting Stage or in respect of any Reporting Period falling within the Extended Initial Reporting Stage for the Short Formations Benchmark only, the ODP's performance in relation to any Benchmark is **equal to or worse than** the Critical Service Level for that Benchmark for:

- (a) any three (3) consecutive Reporting Periods;
- (b) any four (4) Reporting Periods within a period of thirteen (13) consecutive Reporting Periods; or
- (c) any five (5) Reporting Periods within a period of twenty six (26) consecutive Reporting Periods.

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**1.7 Non-compliance with Remedial Agreements and Orders under the Act**

- (a) Non-compliance by the ODP with a Remedial Agreement, where such non-compliance is reasonably considered by the Authority to be material.
- (b) Non-compliance by the ODP with:
  - (i) a provisional order;
  - (ii) a final order;
  - (iii) a penalty; or
  - (iv) any other order made relating to contravention of either a relevant condition or requirement (as defined in Section 55 of the Act) or another order,  
  
in each case made by the Authority under the Act.
- (c) Non-compliance by the ODP with any enforcement notice issued to it by the Authority pursuant to Section 120 of the Act.

**1.8 Financial Ratios**

Breach by the OpCo of either or both of the Financial Ratios in respect of Rail Services specified in paragraph 2 of Schedule 12 (Financial Covenants and Bonds).

**1.9 Breach of Law**

- (a) It becoming unlawful for the ODP to provide all or, in the reasonable opinion of the Authority, a material part of the Passenger Services or to operate all or, in the reasonable opinion of the Authority, a material number of the Stations or Depots (except to the extent not required under the ODP Grant Agreement);
- (b) The ODP or any of the directors or senior managers of the ODP being convicted of manslaughter, fraud or any other indictable criminal offence in each case relating directly to the provision and operation of the ODP Services; or
- (c) The ODP being, in the reasonable opinion of the Authority, in material non-compliance with a prohibition or enforcement order (or the equivalent thereof) issued by the ORR pursuant to its safety functions. If the ODP makes an appeal against such prohibition or enforcement order (or such equivalent thereof) in accordance with its terms, no Event of Default shall have occurred under this paragraph 1.9(c) until such appeal has been determined to be unsuccessful.

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### 1.10 **Contravention of Other Obligations**

The occurrence of the following:

- (a) the ODP contravening to an extent which is reasonably considered by the Authority to be material any one or more of its obligations under the ODP Grant Agreement (other than such non-performance or non-compliance as may constitute an Event of Default under the provisions of this Schedule 10.2 other than this paragraph 1.10);
- (b) the service by the Authority on the ODP of a written notice specifying:
  - (i) such contravention; and
  - (ii) to the extent the contravention is capable of being remedied, the reasonable period within which the ODP is required to so remedy; and
- (c) the ODP:
  - (i) contravening such obligation or obligations again to an extent which is reasonably considered by the Authority to be material; or
  - (ii) permitting the contravention to continue; or
  - (iii) if the contravention is capable of remedy, failing to remedy such contravention within such period as the Authority has specified in the notice served pursuant to paragraph 1.10(b)(ii).

### 1.11 **Non-membership of Inter-Operator Schemes**

The ODP ceasing to be a member of, or ceasing to participate in or to be party to, any of the Inter-Operator Schemes, or having its membership or participation therein suspended.

### 1.12 **Bonds**

- (a) Any Performance Bond or Season Ticket Bond ceasing to be a legal, valid and binding obligation on the relevant Bond Provider (other than in accordance with its terms) or it otherwise becoming unlawful or impossible for such Bond Provider to perform its obligations thereunder;
- (b) A failure by the ODP to procure the provision to the Authority of a Performance Bond (or Performance Bonds provided pursuant to paragraph 4.3 of Schedule 12 (Financial Covenants and Bonds)) which individually or in aggregate fulfil the requirements of Schedule 12 (Financial Covenants and Bonds); or
- (c) A failure by the ODP to procure the provision to the Authority of a Season Ticket Bond which fulfils the requirements of Schedule 12 (Financial Covenants and Bonds).



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### 1.13 **Key Contracts**

Termination of any Key Contract, or the failure by the ODP to take all reasonable steps to enter into an appropriate replacement contract prior to the scheduled expiry date of any Key Contract, except where requested by the Authority or to the extent that the ODP has demonstrated to the reasonable satisfaction of the Authority that for the duration of the ODP Grant Agreement Term:

- (a) it is no longer necessary for it to be party to such Key Contract; or
- (b) it has made adequate alternative arrangements in order to be able to continue to provide and operate the ODP Services.

### 1.14 **Funding Deed**

A failure by the ODP or the Guarantor to comply with their respective obligations under the Funding Deed.

### 1.15 **Rolling Stock Leases**

A failure by the ODP to enter into a new Rolling Stock Lease in accordance with paragraph 2.3(a) of Schedule 1.6 (The Rolling Stock) in respect of the Unspecified Additional Rolling Stock.

### 1.16 **Issue of Warning Notices**

- (a) three (3) Warning Notices are issued by the Authority in any thirteen (13) Reporting Periods; or
- (b) two (2) Warning Notices are issued by the Authority in any three (3) consecutive Reporting Periods.

### 1.17 **Infrastructure Manager**

Failure to maintain the policies, processes, agreements and consents for regulatory approval or safety certification with ORR following the CVL Asset Transfer, or to develop further policies and processes or enter into any such further agreements or consents that ORR may require for regulatory approval or safety certification from time to time.

### 1.18 **Rail Services Milestone Achievement**

Where a Rail Services Delay Payment Cap for any Rail Services Milestone has been reached as set out in Schedule 18 (Rail Services Milestones and Implementation Plan).

### 1.19 **Possessions Payment Cap**

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Where a Possessions Payment Cap is reached or exceeded as set out in paragraph 7.2 of Schedule 7.5.

## **2 DEFINITION OF TERMINATION EVENTS**

Each of the following is a "**Termination Event**":

- 2.1 any Force Majeure Event continues with the effect of preventing the ODP from delivering, wholly or mainly, the Passenger Services for more than six (6) consecutive months; or
- 2.2 the warranty given by the ODP pursuant to paragraph 6.1 (Tax Compliance) of Schedule 12 (Financial Covenants and Bonds) is materially untrue; or
- 2.3 the ODP commits a material breach of its obligation to notify the Authority of any Occasion of Tax Non-Compliance in respect of any Affected Party (as defined in paragraph 6.3 of Schedule 12 (Financial Covenants and Bonds)) as required by paragraph 6.2(a) of Schedule 12 (Financial Covenants and Bonds); or
- 2.4 the ODP fails to provide details of proposed mitigating factors as required by paragraph 6.2(b) of Schedule 12 (Financial Covenants and Bonds) which in the reasonable opinion of the Authority, are acceptable.
- 2.5 the Authority serves a Competition Event Notice on the ODP pursuant to clause 15.5 (Competition).

## **3 CONSEQUENCES OF EVENTS OF DEFAULT**

The occurrence of an Event of Default shall constitute a contravention of the ODP Grant Agreement by the ODP. On the occurrence of an Event of Default, the provisions of Schedule 10.1 (Procedure for remedying a Contravention of the ODP Grant Agreement) shall apply.

## **4 NOTIFICATION OF EVENT OF DEFAULT**

The ODP shall notify the Authority as soon as reasonably practicable on, and in any event within twenty four (24) hours of, it becoming aware of the occurrence of an Event of Default or an event which is likely to result in the occurrence of an Event of Default. The ODP shall take such action or steps as the Authority may require to remedy any Event of Default or potential Event of Default.

## **5 TERMINATION NOTICES**

- 5.1 On and at any time after the occurrence of:
  - (a) (subject to paragraphs 5.3 and 5.4) an Event of Default which:
    - (i) is unremedied or continuing; and

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- (ii) the Authority considers to be material; or
  - (b) a Termination Event specified in paragraph 2.1 of this Schedule 10.2 which is unremedied or continuing; or
  - (c) a Termination Event specified in paragraphs 2.2, 2.3, 2.4 or 2.5 of this Schedule 10.2, the Authority may at its sole discretion serve a Termination Notice on the ODP or, where the Termination Event or Event of Default relates to the CVL Services, the Authority may at its sole discretion serve a Partial Termination Notice on the ODP:
  - (d) a Termination Notice, which shall terminate the ODP Grant Agreement with such termination taking effect from the date specified in any such Termination Notice;
  - (e) a Partial Termination Notice, which shall terminate the requirements of the ODP to perform any or all of the CVL Services, such termination of the relevant services taking effect from the date specified in any such Partial Termination Notice.

5.2 In the event that the ODP's requirement to perform any or all of the CVL Services set out in 5.1(e) are terminated then the Parties agree that:

- (a) the Rail Services Payments shall be adjusted to exclude the payments identified in the In-Life Reporting Template in respect of the relevant terminated CVL Services;
- (b) all other relevant payments to the ODP shall be adjusted to reflect the relevant terminated CVL Services;
- (c) the terms of this Agreement and/or terms of any Package Order entered into with the ODP in relation to Infrastructure Services and ODP Infrastructure Works shall be varied to remove the obligations on the ODP to perform the terminated CVL Services;
- (d)
  - (i) where Rail Services on the Core Valley Lines shall continue to form part of the CVL Services, the Authority may require that the CVL Asset Lease is terminated and the Authority shall then grant a lease of each relevant:
    - (A) station previously forming part of the CVL Asset Lease on terms broadly similar to the Station Lease for the Stations serving the Wales and Cross-Border Lines (together with such amendments as shall be reasonably required by either party thereto); and
    - (B) any depot previously forming part of the CVL Asset Lease on terms broadly similar to the Depot Lease for the Depots serving the Wales and Cross-Border Lines (together with such

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amendments as shall be reasonably required by either party thereto),

together with all necessary rights of access to operate the Rail Services on the Core Valley Lines; or

(ii) where Infrastructure Manager Services on the Core Valley Lines shall continue to form part of the CVL Services, the Authority may require that the CVL Asset Lease shall at the Authority's discretion either:

(A) remain in place and the ODP shall grant an underlease to the Authority or any Train Operator performing services equivalent to the Rail Services on the Core Valley Lines of each relevant:

1) station forming part of the CVL Asset Lease on terms broadly similar to the Station Lease for the Stations serving the Wales and Cross-Border Lines (to the extent that such lease will be consistent with the terms of the CVL Asset Lease and together with such amendments as shall be reasonably required by either party thereto);  
or

2) any depot forming part of the CVL Asset Lease on terms broadly similar to the Depot Lease for the Depots serving the Wales and Cross-Border Lines (to the extent that such lease will be consistent with the terms of the CVL Asset Lease and together with such amendments as shall be reasonably required by either party thereto),

together with all necessary rights of access to operate services equivalent to the Rail Services on the Core Valley Lines; or

(B) be terminated and the Authority shall grant the ODP a maintenance agreement to enable the ODP to continue to perform the Infrastructure Manager Services on the Core Valley Lines;

(iii) notwithstanding sub-clauses (i) and (ii) of this paragraph 5.2(d) of this Schedule 10.2, in the event that there is a full or partial termination of the CVL Services, if requested by the Authority in the alternative to the procedures contained in sub-clauses (i) and (ii), the provisions of Schedule 15.4 paragraphs 4.5(a) and (b) shall apply to the CVL Asset Lease;

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- (e) the Authority shall be entitled to call upon the Performance Bond in accordance with terms of the Performance Bond; and
  - (f) the OPD shall have no entitlement to any additional payment for the continued provision of ODP Services not terminated pursuant to the Partial Termination Notice as a result of such Partial Termination and the ODP shall not receive any compensation for the CVL Services to be terminated as specified in the Partial Termination Notice.

5.3 The Authority may not serve a Termination Notice or Partial Termination Notice in respect of an Event of Default in relation to which a Remedial Plan Notice has been issued until the Remedial Plan Period has expired.

5.4 The Authority may not serve a Termination Notice or Partial Termination Notice in respect of an Event of Default for which the ODP is implementing a Remedial Agreement in accordance with its terms.

## **6 TERMINATION FOR CONVENIENCE**

6.1 From the fifth anniversary of the the Start Date, the Authority may, in its sole discretion, serve a Termination For Convenience Notice on the ODP.

6.2 A Termination For Convenience Notice shall terminate the whole (and not part) of the ODP Grant Agreement with such termination taking effect on the date specified in any such Termination For Convenience Notice, provided always that such date shall be no less than six (6) months from the date the Termination For Convenience Notice is served in accordance with paragraph 6.1.

6.3 Subject to 6.4, in the event that the ODP Grant Agreement is terminated pursuant to a Termination For Convenience Notice the Authority shall compensate the ODP for:

- (a) any Breakage Costs;
- (b) any losses, costs, liabilities or expenses directly suffered or incurred by the ODP as a result of such termination and as notified to the Authority by the ODP as soon as reasonably practicable;
- (c) the estimated future loss of profits of the ODP, the OpCo and the InfraCo from the date of such termination until the Expiry Date as reasonably determined by the Authority taking into account and having due regard to:
  - (i) the Final Tender Financial Model;
  - (ii) the assumptions in the Record of Assumptions;
  - (iii) the profit and loss forecast in the current Business Plan;

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- (iv) the Rail Services In-Life Reporting Template and Infrastructure Manager In-Life Reporting Template; and
  - (v) the latest Management Accounts,

provided always that such estimated future loss of profit shall be capped at the lower of the NPV (calculated in line with the methodology set out in the Final Tender Financial Model) of the bid Profit/Loss before Taxation included in the Final Tender Financial Model (net of any Profit Share Adjustment) and the NPV of the Profit/Loss before Taxation forecast in the current Business Plan and reflective of actual performance.

being the “**Termination For Convenience Compensation Amount**”.

6.4 The ODP’s entitlement to the Termination For Convenience Compensation Amount shall be subject at all times to the ODP:

- (a) using all reasonable endeavours to mitigate any losses, costs, liabilities or expenses incurred by it as a result of the Authority serving a Termination For Convenience Notice;
- (b) not being entitled to recover more than once in respect of the same loss suffered by it;
- (c) providing such supporting evidence and other information as the Authority may reasonably require in respect of any compensation claimed; and
- (d) ensuring that any claim for any Termination For Convenience Compensation Amount is provided to the Authority no later than twelve (12) months after the date of termination.

6.5 If the Authority issues a Termination For Convenience Notice, at least six (6) months in advance of the TFC Termination Date the Authority shall (at its sole discretion) either:

- (a) notify the ODP in writing that it requires the Protected Rolling Stock Leases to be novated to the Successor Operator on the TFC Termination Date; or
- (b) subject to paragraph 6.6, pay the TFC Protected Rolling Stock Fixed Payment to the ODP or Opco or, if the ODP so requests, into an escrow account in the name of the ODP or Opco, details of which have been provided to the Authority within thirty (30) days of the TFC Termination Date, such sum to be paid by the ODP to the relevant RS Lessor to discharge the ODP’s liability for rental payments arising under the Protected Rolling Stock Lease in respect of the TFC Protected Period.

6.6 Where the RS Lessor leases the Protected Rolling Stock to the Successor Operator or any other train operator at any time during the TFC Protected Period, the Authority may, during the Claw Back Period, claw back the TFC Protected Rolling Stock Fixed Payment

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to the extent that the RS Lessor has received payment for the use of the Protected Rolling Stock from such Successor Operator or other train operator during the TFC Protected Period.

6.7 Where the Authority notifies the ODP in writing that it requires the Protected Rolling Stock Leases to be novated to the Successor Operator pursuant to paragraph 6.5(a):

- (a) the ODP shall enter and shall procure that the relevant RS Lessor enters into a deed of novation in respect of the Protected Rolling Stock Leases in such form as is agreed by the Authority (acting reasonably) (the “**Agreed Form Deed of Novation**”) with effect from the TFC Termination Date; and
- (b) the Authority shall procure that the Successor Operator enters into the Agreed Form Deed of Novation with effect from the TFC Termination Date.

6.8 Where the Protected Rolling Stock Leases are novated to the Successor Operator as referred to in paragraph 6.5(a) or the Authority pays the TFC Protected Rolling Stock Fixed Payment to the ODP pursuant to paragraph 6.5(b), the ODP shall not be entitled to recover any losses, costs, liabilities or expenses in respect of the Protected Rolling Stock Leases as part of the Termination For Convenience Compensation Amount pursuant to paragraph 6.3.

## **7 PAYMENT FOR TERMINATION FOR CONVENIENCE COMPENSATION AMOUNT**

7.1 The ODP shall, as soon as reasonably practicable, notify the Authority in writing in respect of any Termination For Convenience Compensation Amounts with sufficient supporting evidence and other information as reasonably requested by the Authority.

7.2 Upon the Authority's receipt of the ODP's notification of any Termination For Convenience Compensation Amounts pursuant to paragraph 7.1, the Authority shall pay to the ODP any Termination For Convenience Compensation Amounts due and payable as soon as reasonably practicable but in any event no later than two (2) months following such date, provided always that in respect of any estimated future loss of profits claimed by the ODP in accordance with paragraph 6.3(c) no sum shall be due and payable by the Authority to the ODP prior to the date of termination of this ODP Grant Agreement.

## **8 BREAKAGE COSTS**

8.1 From the date of this ODP Grant Agreement until six (6) months after such date, the Parties shall, acting reasonably and in good faith, co-operate with each other to agree:

- (a) the contracts or categories of contracts entered into, or to be entered into, between the ODP and any third party which, if required to be terminated following a Termination For Convenience Notice, CVL Asset Notice or Infrastructure Manager Notice may result in the ODP suffering losses, costs, liabilities or expenses under the terms of such contracts;

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- (b) the principles by which the ODP's losses, costs, liabilities or expenses under the contracts or categories of contract to be agreed in accordance with paragraph 8.1(a), shall be calculated;
  - (c) the mitigation measures to be taken by the ODP to limit the Breakage Costs payable by the Authority in the event of a termination following a Termination For Convenience Notice or a removal of an ODP Service, following a CVL Asset Notice or an Infrastructure Manager Notice,

being the "**Breakage Costs Principles**"

8.2 From twelve (12) months prior to the fifth anniversary of the Start Date, the ODP shall provide to the Authority any information reasonably requested by the Authority to allow the Authority to reasonably calculate the actual Breakage Costs that may be payable by the Authority in the event of it issuing a Termination For Convenience Notice.

## **9 CONSEQUENCES OF TERMINATION OR EXPIRY**

9.1 Upon termination of the ODP Grant Agreement (whether through default or effluxion of time or otherwise) the obligations of the Parties shall cease except for:

- (a) any obligations arising as a result of any antecedent contravention of the ODP Grant Agreement;
- (b) any obligations which are expressed to continue in accordance with the terms of the ODP Grant Agreement; and
- (c) any other obligations which give effect to such termination or to the consequences of such termination or which otherwise apply (expressly or impliedly) on or after such termination.

9.2 Nothing in this paragraph 6.1 shall prevent the Authority from bringing an action against the ODP in connection with the termination of the ODP Grant Agreement prior to the expiry of the ODP Grant Agreement Term.



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**Appendix 1 to Schedule 10.2 – Agreed Form of Deed of Novation**

**DEED OF NOVATION OF AN [OPERATING  
LEASE AGREEMENT]**

**relating to [SPECIFY ROLLING STOCK]**

**between**

**[ROSCO] (1)**

and

**[OUTGOING OPERATOR] (2)**

and

**[INCOMING OPERATOR] (3)**

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**THIS DEED** is dated [DATE]

## **PARTIES**

- (1) **[ROSCO]** incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**[ROSCO]**);
- (2) **[OUTGOING OPERATOR]** incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Outgoing Operator**); and
- (3) **[INCOMING OPERATOR]** incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Incoming Operator**).

## **BACKGROUND**

- (A) [ROSCO] and the Outgoing Operator are party to an agreement in relation to [DESCRIBE OPERATING LEASE AGREEMENT] dated [●] (**[Operating Lease Agreement]**).
- (B) The Outgoing Operator provides passenger rail services under an agreement made between The Welsh Ministers (**Authority**) and the Outgoing Operator dated [●] (**ODP Grant Agreement**).
- (B) As required under the ODP Grant Agreement and due to [DESCRIBE REASON FOR TRANSFER], the Outgoing Operator has agreed to transfer its rights and obligations under the [Operating Lease Agreement] to the Incoming Operator.
- (C) [ROSCO] has agreed to release the Outgoing Operator from liability for any failure by the Outgoing Operator to perform its obligations under the [Operating Lease Agreement] before the Effective Date, on the basis that the Incoming Operator is to assume liability for those failures in the Outgoing Operator's place.
- (D) The parties have therefore agreed to novate the Outgoing Operator's rights, obligations and liabilities under the [Operating Lease Agreement] to the Incoming Operator on the terms of this deed with effect on and from the Effective Date.

## **AGREED TERMS**

### **1 DEFINITIONS AND INTERPRETATION**

- 1.1 In this Deed, the following definitions shall apply:

**Effective Date** means [the date of this deed] or [STATE DATE].

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## **2 CONDITIONS PRECEDENT**

- 2.1 The provisions of clauses 3, 4 and 5 are subject to the issue by or on behalf of The Welsh Ministers of a certificate in relation to the commencement of the operation of passenger rail services by the Incoming Operator pursuant to [CONTRACT] made between The Welsh Ministers and the Incoming Operator dated [●].

## **3 NOVATION**

- 3.1 The Outgoing Operator transfers all its rights and obligations under the [Operating Lease Agreement] to the Incoming Operator on the Effective Date.
- 3.2 The Incoming Operator shall enjoy all the rights and benefits of the Outgoing Operator under the [Operating Lease Agreement], whether such rights and benefits arose before the Effective Date or arise after the Effective Date. With effect on and from the Effective Date, the Incoming Operator agrees to perform all of its obligations under the [Operating Lease Agreement] and be bound by its terms in every way as if it were the original party to the [Operating Lease Agreement] in place of the Outgoing Operator.
- 3.3 [ROSCO] agrees to perform all of its obligations under the [Operating Lease Agreement] and be bound by its terms in every way as if the Incoming Operator were the original party to it in place of the Outgoing Operator.
- 3.4 All references to the Outgoing Operator in the [Operating Lease Agreement] shall be read and construed as references to the Incoming Operator.

## **4 RELEASE OF OBLIGATIONS AND LIABILITIES**

- 4.1 With effect on and from the Effective Date, [ROSCO] and the Outgoing Operator release each other from all future obligations to the other under the [Operating Lease Agreement].
- 4.2 Nothing in this deed shall affect or prejudice any claim or demand that the Outgoing Operator or the Incoming Operator may have against each other in connection with the [Operating Lease Agreement] with respect to matters occurring before the Effective Date.
- 4.3 With effect on and from the Effective Date, each of [ROSCO] and the Outgoing Operator releases and discharges the other from all claims and demands under or in connection with the [Operating Lease Agreement], including without limitation claims for negligence or in contract, whether arising before, on or after the Effective Date, and in each case whether known or unknown to the releasing party.
- 4.4 With effect on and from the Effective Date, each of [ROSCO] and the Incoming Operator shall have the right to enforce the [Operating Lease Agreement] and pursue any claims and demands under the [Operating Lease Agreement] against the other with respect to matters arising before, on or after the Effective Date as though the Incoming Operator

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were the original party to the [Operating Lease Agreement] instead of the Outgoing Operator.

**5 GOVERNING LAW**

This deed and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

**6 JURISDICTION**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this deed or its subject matter or formation.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

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Executed as a deed by **[NAME OF ROSCO]**  
acting by ..... , a director, in  
the presence of:

.....  
Director

.....  
Signature of Witness

Name .....

Address .....

.....

.....

Occupation .....

Executed as a deed by **[NAME OF OUTGOING  
OPERATOR]** acting by ..... ,  
a director, in the presence of:

.....  
Director

.....  
Signature of Witness

Name .....

Address .....

.....

.....

Occupation .....

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Executed as a deed by **[NAME OF INCOMING OPERATOR]** acting by .....,  
a director, in the presence of:

.....  
Director

.....  
Signature of Witness

Name .....

Address .....

.....

.....

Occupation .....

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### **Schedule 10.3 - Force Majeure and Business Continuity**

#### **1 DEFINITION OF FORCE MAJEURE EVENTS**

1.1 The following events shall constitute "**Force Majeure Events**", subject to the conditions specified in paragraph 2 being satisfied:

(a) the ODP or any of its agents or subcontractors is prevented or restricted by Network Rail (including by virtue of the implementation of any Contingency Plan) from gaining access to any section or part of track (including any track running into, through or out of a station). For the purposes of this paragraph 1:

(i) references to a party being prevented or restricted from gaining access to any section or part of track shall mean that such party is not permitted to operate any trains on the relevant section or part of track, or is only permitted to operate a reduced number of trains from that which it was scheduled to operate;

(ii) the period of such prevention or restriction shall be deemed to commence with effect from the first occasion on which the ODP is prevented or restricted from operating a train on such section or part of track;

(iii) references in paragraphs 1.1(a)(i) and 1.1(a)(ii) to the operation of trains include scheduled empty rolling stock vehicle movements; and

(iv) "**Contingency Plan**" means a contingency plan (as defined in the Railway Operational Code or where the Railway Operational Code ceases to exist such other replacement document of a similar or equivalent nature which contains a definition of contingency plan similar to that contained in the Railway Operational Code) implemented by and at the instigation of Network Rail, or such other contingency or recovery plan as the Authority may agree from time to time;

(b) the ODP or any of its agents or subcontractors is prevented or restricted by Network Rail or any Facility Owner (other than a Facility Owner which is an Affiliate of the ODP) from entering or leaving:

(i) any station or part thereof (excluding any prevention or restriction from gaining access to any section or part of track running into, through or out of a station); or



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- (ii) any depot or part thereof (including the movement of trains on tracks within any depot but excluding any prevention or restriction from gaining access to any track outside such depot running into or out of that depot);
  - (c) any of the following events occurs:
    - (i) a programme of Mandatory Modifications commences;
    - (ii) any Rolling Stock Units are damaged by fire, vandalism, sabotage or a collision and are beyond repair or beyond economic repair; or
    - (iii) a government authority prevents the operation of Rolling Stock Units on the grounds of safety,and, in each case, the greater of two (2) Rolling Stock Units and ten (10) percent of all rolling stock vehicles used by the ODP in the provision of the Passenger Services in relation to any Service Group are unavailable for use in the provision of the Passenger Services as a result of the occurrence of such event;
  - (d) the ODP prevents or restricts the operation of any train on safety grounds provided that:
    - (i) the ODP has, either before or as soon as reasonably practicable after initiating such prevention or restriction, sought the confirmation of the ORR in exercise of its safety functions, or any relevant other body with statutory responsibility for safety in the circumstances, of the necessity of such prevention or restriction; and
    - (ii) if and to the extent that the ORR, or other relevant body with statutory responsibility for safety in the circumstances, in exercise of its safety functions indicates that such prevention or restriction is not necessary, then no Force Majeure Event under this paragraph 1.1(d) shall continue in respect of that restriction or prevention after the receipt of such indication from the ORR or other relevant body;
  - (e) act of God, war damage, enemy action, terrorism or suspected terrorism, riot, civil commotion or rebellion (together "**Emergency Events**") or the act of any government instrumentality (including the ORR but excluding the Authority) in so far as the act of government instrumentality directly relates to any of the Emergency Events, provided that there shall be no Force Majeure Event under this paragraph 1.1(e) by reason of:
    - (i) the suicide or attempted suicide of any person that does not constitute an act of terrorism;

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- (ii) the activities of the police, fire service, ambulance service or other equivalent emergency service that are not in response to acts of terrorism or suspected terrorism; or
  - (iii) an act of God which results in the ODP or its agents or subcontractors being prevented or restricted by Network Rail from gaining access to any relevant section or part of track; and
- (f) any strike or other Industrial Action by any or all of the employees of:
- (i) Network Rail;
  - (ii) the operator of any other railway facility;
  - (iii) the ODP performing Rail Services where such strike or Industrial Action directly arises from a requirement of the Authority as set out in paragraph 9 (Train Service Requirement) of Schedule 1.1 or Appendix 1 (Rolling Stock Requirements Table) to Schedule 1.6 of this ODP Grant Agreement;
  - (iv) the ODP performing Rail Services and Infrastructure Manager Services in respect of a dispute solely arising in the CVL;
  - (v) the ODP performing Rail Services and Infrastructure Manager Services in respect of a dispute solely arising in respect of WCB or in WCB and CVL (subject to the determination as to whether such event constitutes a Force Majeure Event being the Authority's sole discretion); or
  - (vi) any person with whom the ODP has a contract or arrangement for the lending, seconding, hiring, contracting out or supervision by that person of train drivers, conductors, other train crew or station or depot staff used by the ODP in the provision of the ODP Services,
- or of the agents or sub-contractors of any such person listed in paragraphs 1.1(f)(i) to 1.1(f)(vi).

## **2 CONDITIONS TO FORCE MAJEURE EVENTS**

- 2.1 The occurrence, and continuing existence of a Force Majeure Event shall be subject to satisfaction of the following conditions:
- (a) in relation to an event occurring under paragraph 1.1(a), that event has continued for more than twelve (12) consecutive hours;
  - (b) the ODP notifies the Authority within two (2) Weekdays of it becoming aware or, if circumstances dictate, as soon as reasonably practicable thereafter, of:

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- (i) the occurrence or likely occurrence of the relevant event; and
    - (ii) the effect or the anticipated effect of such event on the ODP's performance of the Passenger Services and/or Infrastructure Manager Services (as the case may be);
  - (c) at the same time as the ODP serves notification on the Authority under paragraph 2.1(b), it informs the Authority of the steps taken and/or proposed to be taken by the ODP to prevent the occurrence of, and/or to mitigate and minimise the effects of, the relevant event and to restore the provision of the Passenger Services and/or Infrastructure Manager Services (as the case may be);
  - (d) the relevant event did not occur as a result of:
    - (i) any act or omission to act by the ODP or its agents or subcontractors, save that in respect of the occurrence of Industrial Action in accordance with paragraph 1.1(f) the provisions of paragraph 2.2 apply; or
    - (ii) the ODP's own contravention of, or default under, the ODP Grant Agreement, any Access Agreement, Rolling Stock Related Contract, Property Lease or any other agreement;
  - (e) the ODP used and continues to use all reasonable endeavours to avert or prevent the occurrence of the relevant event and/or to mitigate and minimise the effects of such event on its performance of the Passenger Services Services and/or Infrastructure Manager Services (as the case may be) and to restore the provision of the Passenger Services Services and/or Infrastructure Manager Services (as the case may be) as soon as reasonably practicable after the onset of the occurrence of such event; and
  - (f) the ODP shall, to the extent reasonably so requested by the Authority, exercise its rights and remedies under any relevant agreement to prevent the occurrence or recurrence of any such event and to obtain appropriate redress and/or compensation from any relevant person.

2.2 Where:

- (a) Industrial Action in accordance with paragraph 1.1(f) occurs as a result of an act or omission to act by the ODP or its agents or subcontractors;
  - (b) the Authority reasonably believes that it was reasonable for the ODP, its agents or subcontractors (as the case may be) so to act or omit to act; and
  - (c) the other conditions specified in paragraph 2.1 have been satisfied,
- such occurrence shall be a Force Majeure Event.

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### **3 CONSEQUENCES OF FORCE MAJEURE EVENTS**

- 3.1 The ODP shall not be responsible for any failure to perform any of its obligations under the ODP Grant Agreement, nor shall there be any contravention of the ODP Grant Agreement if and to the extent that such failure is caused by any Force Majeure Event.
- 3.2 If any Force Majeure Event continues, with the effect of preventing the ODP from delivering, wholly or mainly, the Passenger Services Services and/or Infrastructure Manager Services (as the case may be) for more than six (6) consecutive months, it shall be a Termination Event in accordance with paragraph 2 of Schedule 10.2 (Events of Default and Termination Events).

### **4 BUSINESS CONTINUITY**

#### **4.1 Obligation to Produce a BCP**

- (a) Within one (1) month following the Start Date the ODP shall produce and provide to the Authority a written Business Continuity Plan in respect of the ODP Services and the people, facilities and assets used to provide them which is consistent with the requirements of ISO 22301.
- (b) Within one (1) month of the end of each ODP Year the ODP shall provide to the Authority a certificate addressed to the Authority and signed by a statutory director of the ODP confirming that the Business Continuity Plan is consistent with the requirements of the ISO 22301.

#### **4.2 No Relief under Force Majeure**

- (a) Nothing in paragraph 3 (Consequences of Force Majeure Events) will relieve the ODP from its obligations under the ODP Grant Agreement to create, implement and operate the Business Continuity Plan.
- (b) If a Force Majeure Event affecting the ODP occurs which is an event or circumstance that is within the scope of the Business Continuity Plan, then paragraph 3.1 will only apply to that Force Majeure Event to the extent that the impacts of that Force Majeure Event would have arisen even if:
- (i) the ODP had complied with this paragraph 4; and
  - (ii) the Business Continuity Plan had been fully and properly implemented and operated in accordance with this paragraph 4 and the terms of the Business Continuity Plan in respect of that Force Majeure Event.

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## **Schedule 10.4 - Liability**

### **1 EXCLUSION OF LIABILITY**

#### **1.1 Liability with respect to Passengers and Third Parties**

- (a) The ODP hereby acknowledges that the Authority will not be responsible for the actions of the ODP or any Affiliate of the ODP and that, except as expressly provided in the ODP Grant Agreement, the ODP shall provide and operate the ODP Services at its own cost and risk without recourse to the Authority or government funds or guarantees.
- (b) The ODP, on demand, shall hold the Authority fully protected and indemnified in respect of all losses, liabilities, costs, charges, expenses, actions, proceedings, claims or demands incurred by or made on the Authority in connection with any death, personal injury, loss or damage suffered by passengers or by any third party using or affected by the ODP Services which is caused or contributed to by the ODP, any Affiliate of the ODP, or any employee, agent, contractor or sub-contractor of the ODP or of any Affiliate of the ODP.

#### **1.2 Liability of the Authority**

Neither the Authority nor any of its officers, agents or employees shall in any circumstances be liable to the ODP for any loss or damage caused by the negligent exercise of any powers reserved to the Authority under the ODP Grant Agreement, except to the extent that such negligence also constitutes a contravention of an obligation of the Authority under the ODP Grant Agreement. The ODP may not recover from the Authority or any of its officers, agents, or employees any amount in respect of loss of profit or consequential loss.

### **2 REVIEW OR MONITORING BY THE AUTHORITY**

- 2.1 The Authority may for its own purposes (whether under the ODP Grant Agreement or under any other arrangement or otherwise and whether before or after the date of the ODP Grant Agreement) monitor or review any proposals, plans or projects (or any aspect thereof) of the ODP under the ODP Grant Agreement, but no review, enquiry, comment, statement, report or undertaking, made or given by or on behalf of the Authority during such review or monitoring (and no failure to undertake, make or give any review, enquiry, comment or statement) shall operate to exclude or relieve either Party from or reduce or otherwise affect the obligations of such Party under the ODP Grant Agreement.
- 2.2 The exercise by or on behalf of the Authority of (or, as the case may be, any failure to exercise) any of its functions, rights or obligations in respect of any review or monitoring process shall not in any way impose any liability, express or implied, on the Authority to any other Party save to the extent that the exercise (or failure to exercise) of any of such

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functions, rights or obligations results in a contravention by the Authority of an express provision of the ODP Grant Agreement and the Authority does not make or give any representation or warranty, either express or implied, as to whether any proposal, plan or project will enable either Party to comply with its obligations under the ODP Grant Agreement.

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**Schedule 11**

ODP Performance Meetings and Management Information

|                |                                     |
|----------------|-------------------------------------|
| Schedule 11.1: | ODP Performance Meetings            |
| Schedule 11.2: | Management Information              |
|                | Appendix 1: Resource Plan           |
|                | Appendix 2: Operational Information |

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### **Schedule 11.1 - ODP Performance Meetings**

#### **1 ODP PERFORMANCE MEETINGS**

- 1.1 The Parties shall hold an ODP Performance Meeting at least once in every Reporting Period (or such other interval as the Authority may notify to the ODP in writing) at a time and location notified to the ODP by the Authority.
- 1.2 The ODP shall ensure that:
- (a) the representatives of the ODP at an ODP Performance Meeting shall include such directors and/or senior managers of the ODP as the Authority may require; and
  - (b) representatives of the Parent (which shall include such directors and/or senior managers of the Parent as the Authority may reasonably require) attend an ODP Performance Meeting at least once every quarter.
- 1.3 Not used.
- 1.4 The ODP shall prepare and present such Additional Reports as the Authority may reasonably request following the process defined in Schedule 11.2 Paragraph 8 (“**Additional Reports**”) to each ODP Performance Meeting. The ODP's obligations under this paragraph 1.4 are subject to the ODP receiving at least twenty eight (28) days' notice of the requirement to prepare and present any such Additional Report.
- 1.5 No comment or failure to comment nor any agreement or approval, implicit or explicit by either Party at an ODP Performance Meeting shall relieve the ODP of any of its obligations, constitute a waiver of an obligation or otherwise vary the terms of the ODP Grant Agreement. The terms of the ODP Grant Agreement shall only be capable of waiver or variation in writing in accordance with clause 14.1 (Waivers) and paragraph 1 of Schedule 9.3 (variations to the ODP Grant Agreement and Incentivising Beneficial Changes) (respectively).



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## Schedule 11.2 - Management Information

### **1 CORPORATE INFORMATION**

- 1.1 The ODP shall provide the following information to the Authority on the Start Date and shall notify the Authority of any change to such information within twenty one (21) days of such change:
- (a) its name;
  - (b) its business address and registered office;
  - (c) its directors and company secretary;
  - (d) its auditors;
  - (e) its trading name or names;
  - (f) to the best of the ODP's knowledge and belief, having made due and diligent enquiry, the identity of all persons holding, separately or acting by agreement, directly or indirectly, the right to cast more than twenty percent (20%) of the votes at general meetings of the ODP; and
  - (g) for each subsidiary entity under the control of the ODP, the ODP shall provide the following information to the Authority on the Start Date and shall notify the Authority of any change to such information within twenty one (21) days of such change:
    - (i) its name;
    - (ii) its business address and registered office;
    - (iii) its directors and company secretary;
    - (iv) its auditors; and
    - (v) its trading name or names.
- 1.2 The ODP shall inform the Authority of any:
- (a) material change or proposed material change in its business (which shall include the employment or the termination of employment of any Key Personnel or the termination of any Key Contract);
  - (b) material change in or restructuring of the capitalisation or financing of the ODP, the Parent or the Guarantor; and
  - (c) litigation or other dispute which may have a material effect on its business.

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## **2 INFORMATION ABOUT ASSETS USED IN THE ODP SERVICES**

The ODP shall at all times during the ODP Grant Agreement Term maintain (and shall provide copies to the Authority when requested to do so from time to time) records covering the following information:

- (a) for each Primary Rail Services Asset or other asset which is the subject of, or operated under, a Key Contract:
  - (i) the progress and completion of all work described in the maintenance schedules and manuals;
  - (ii) all operating manuals (including any safety related regulations); and
  - (iii) all permits, licences, certificates or other documents required to operate such asset; and
  - (iv) a printed or electronic list of all assets owned by the ODP from time to time (excluding, unless otherwise requested by the Authority, any office furniture and consumable items).

## **3 IDENTIFICATION OF KEY PERSONNEL, PROVISION OF ORGANISATION CHART AND RESOURCE PLAN**

3.1 The ODP shall identify and provide to the Authority a schedule of Key Personnel who shall be employed by the ODP in the performance of the ODP Grant Agreement. This shall include but not be limited to the following persons:

- (a) a managing director whose role will include the overall management of the operation of the ODP Services;
- (b) a train service delivery director, whose role will include responsibility for ensuring compliance by the ODP with Schedule 7.1 (Operational Performance);
- (c) a safety director, whose role will include responsibility for ensuring that the ODP complies with its legal obligations in relation to the ODP Services including the Safety Certificate;
- (d) a Sustainable Development Manager pursuant to paragraph 4 of Schedule 13.3;
- (e) a finance director, whose role will include responsibility in relation to the Final Tender Financial Model; and
- (f) the ODP's Infrastructure Manager Representative.

3.2 The ODP shall nominate a board level director of the ODP (or at the Authority's discretion, a director of the Parent or any appropriate Affiliate) within seven (7) days of the date of this ODP Grant Agreement. Such director's responsibilities include overseeing, at a strategic level, the

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ODP's interface with the Authority or the Secretary of State in relation to sections 119 to 121 (inclusive) of the Act and co-ordinating relevant activities and delivery of counter terrorist security on behalf of the ODP in connection with the ODP's compliance with relevant instructions issued by the Authority or the Secretary of State under section 119 of the Act from time to time. Such director shall be identified by job title in the organisation chart referred to in paragraph 3.3 and shall be deemed part of the Key Personnel.

- 3.3 On or before the Start Date the ODP shall provide to the Authority an organisational chart detailing the responsibilities and reporting lines of each of the Key Personnel and shall update such chart (and provide a copy to the Authority promptly thereafter) as and when any material changes occur.
- 3.4 The ODP shall, where reasonably possible, obtain the prior written consent of the Authority before removing or replacing any Key Personnel during the ODP Grant Agreement Term, and, where practicable, at least one (1) month's written notice shall be provided by the ODP of its intention to replace Key Personnel.
- 3.5 The Authority shall not unreasonably delay or withhold its consent to the appointment of a replacement for any relevant Key Personnel by the ODP. The Authority may give notice of its requirement to interview the candidates for Key Personnel positions before they are appointed.
- 3.6 The ODP acknowledges that the Key Personnel are essential to the proper provision of the Services to the Authority. The ODP shall ensure that the role of any Key Personnel is not vacant for any longer than fifteen (15) days and that any replacement shall be fully qualified to carry out such role and is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced, provided always that the ODP may in satisfaction of this provision appoint an interim replacement from among its management staff in an acting capacity pending the appointment of a permanent replacement.
- 3.7 The ODP shall use reasonable endeavours to ensure that each of the Key Personnel shall work for such a period of time in the performance of the ODP Services that is commensurate with and sufficient to perform the obligation of that person's role unless the Authority otherwise gives its prior written consent. To the extent that it can do so without disregarding its statutory obligations, the ODP shall take reasonable steps to ensure that it retains the services of all the Key Personnel.
- 3.8 The Authority may acting reasonably identify any of the ODP Services Employees as Key Personnel, who will then be included on the list of Key Personnel by the ODP.
- 3.9 The Authority may acting reasonably require the ODP to remove any Key Personnel that the Authority considers in any respect unsatisfactory, provided always that the Authority shall give the ODP no less than two (2) months' notice, prior to the date of the required removal, of the Authority's performance concerns in respect of any Key Personnel.

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3.10 The Parties acknowledge and agree that the Resource Plan sets out the ODP's resourcing plan.

3.11 From the Start Date, the ODP shall:

- (a) periodically update and maintain the Resource Plan (including core roles, skills and responsibilities) to reflect the actual resourcing of the ODP Services; and
- (b) provide the most up-to-date Resource Plan to the Authority as soon as reasonably practicable (but in any event no later than one month) following a request by the Authority for such plan.

3.12 The Parties acknowledge and agree that resourcing of the ODP Services is an ODP responsibility and that the Resource Plan is to be used exclusively for:

- (a) reporting purposes and (where applicable) for information in respect of assessing adjustments to Rail Service Payments and Infrastructure Manager Services Payments in accordance with Schedule 9.1 (Financial and other consequences of a Change); and
- (b) in the event of any relevant contravention by the ODP of the ODP Grant Agreement, the ODP shall, where requested by the Authority, be required to assess and justify to the Authority any material reduction or change in resourcing relevant roles from the Resource Plan which may have contributed (directly or indirectly) to such contravention.

#### **4 OPERATIONAL PERFORMANCE INFORMATION**

4.1 The ODP shall provide to the Authority the information specified in Appendix 2 (Operational Information) to this Schedule 11.2 at the times specified therein.

#### **5 MAINTENANCE OF RECORDS**

5.1 The ODP shall at all times create and maintain true, up to date and complete records and other materials relating to the:

- (a) operation and maintenance of the Rail Services Assets;
- (b) operation of the ODP Services; and
- (c) financial performance of the ODP.

in each case exercising that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would reasonably be expected from a prudent Train Operator and in order to fulfil the requirements of this ODP Grant Agreement including in relation to the continued maintenance of the Rail Services as a going concern in accordance with paragraph 1 of Schedule 14.1 (Maintenance as a Going Concern).

5.2 Unless otherwise agreed by the Authority, all records and materials required to be maintained by the ODP in accordance with this Schedule 11.2 shall be held in a form that is capable of

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audit for a period of not less than six (6) years following the Expiry Date or the date of an early termination of this ODP Grant Agreement.

- 5.3 References to records and materials in this Schedule 11.2 shall include records and materials maintained under any Previous Franchise Agreement to the extent that such records relate to services equivalent to the ODP Services and the ODP has access to them (which it shall use all reasonable endeavours to secure). Notwithstanding the requirements of paragraphs 5.2 and 5.4, the ODP shall only be required to hold such records and materials created under any Previous Franchise Agreement for a period of six (6) years following the date of this ODP Grant Agreement.
- 5.4 The ODP shall not be responsible for any records maintained under any Previous Franchise Agreement, as referred to in paragraph 5.3, being true, complete and up to date. As soon as reasonably practicable after becoming aware that any such records are not true, complete and up to date, the ODP shall take all reasonable steps to remedy any such deficiency, and shall thereafter maintain such records in accordance with paragraph 5.1.

## **6 RIGHT TO INSPECT**

- 6.1 The ODP shall, if requested by the Authority, allow the Authority and its representatives and advisers:
- (a) to inspect and copy any records referred to in this Schedule 11.2 and the Authority may verify any such records; and
  - (b) to inspect and copy at any reasonable time any books, records and any other material kept by or on behalf of the ODP and/or its auditors and any assets (including the Rail Services Assets) used by the ODP in connection with the ODP Services.
- 6.2 The ODP shall make available to the Authority, its representatives and advisers the information referred to in paragraph 6.1 and grant or procure the grant of such access (including to or from third parties) as the Authority, its representatives and advisers shall reasonably require in connection therewith. The obligation of the ODP under this paragraph 6.2 shall include an obligation on the ODP to grant or procure the grant of such access to premises (including third party premises) where the information referred to in paragraph 6.1 is kept by or on behalf of the ODP.
- 6.3 The Authority, its representatives and advisers shall be permitted to take photographs, film or make a video recording, or make any other kind of record of any such inspection.
- 6.4 If any inspection reveals that information previously supplied to the Authority was, in the reasonable opinion of the Authority, inaccurate in any material respect or if such inspection reveals any other contravention of the ODP's obligations under the ODP Grant Agreement

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which the Authority considers to be material, the costs of any such inspection shall be borne by the ODP.

## **7 INFORMATION TO OTHER BODIES**

The ODP shall comply with any reasonable requests and guidance issued by the Authority from time to time in respect of the provision of information to and co-operation and consultation with “Transport Focus” (the Passenger Council, established by Section 20 of Railways Act 2005 and subsequent amendments and which has an operating name of Transport Focus), the Department for Transport, the UK Government, other devolved governments, Local Authorities Rail User Groups, Community Rail Partnerships, and other relevant passenger or public transport organisations.

## **8 ADDITIONAL REPORTS**

8.1 The ODP shall prepare and submit to the Authority additional reports other than those specified within this Schedule 11.2 and otherwise in the ODP Grant Agreement in each Reporting Period which shall:

- (a) contain such information as the Authority may specify from time to time for the previous Reporting Period, or such other period as may be reasonably required; and
- (b) disaggregated to the extent required by the Authority (“**Additional Reports**”).

8.2 The ODP's obligations under this paragraph 8.2 are subject to the ODP receiving at least twenty eight (28) days' notice of:

- (a) the requirement to prepare any such report; and
- (b) any amendments required to the contents of such report.

## **9 FINANCIAL INFORMATION**

### **9.1 Accounting Records**

The ODP shall prepare and at all times during the Rail Services Term maintain true, up to date and complete accounting records as are required to be kept under Section 386 of the Companies Act 2006. Such records shall be prepared on a consistent basis for each Reporting Period.

### **9.2 Reporting Period Financial Information**

- (a) Unless stated otherwise, the ODP will deliver to the Authority the information specified in 9.2(b), (c) and (d) for each of the service elements comprising the ODP Services, namely:
  - (i) Rail Services;

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- (ii) Infrastructure Services;
    - (iii) ODP Infrastructure Works; and
    - (iv) Infrastructure Manager Services.
  - (b) The ODP shall deliver to the Authority, within ten (10) Weekdays of the end of each Reporting Period:
    - (i) Management Accounts for such Reporting Period, setting out a cashflow statement, profit and loss account and balance sheet for that Reporting Period and cumulatively for the ODP Year to date;
    - (ii) written confirmation that the Management Accounts, to the best of the knowledge, information and belief of the board of directors of the ODP, both for each part of the ODP Services and in aggregate, contain a true and accurate reflection of the current assets and liabilities of the ODP (including contingent assets or liabilities and known business risks and opportunities) and, to the extent that they do not, identify in a written report relevant issues in reasonable detail and provide such further information that the Authority shall reasonably require in relation; and
    - (iii) in circumstances where the ODP was in a Lock-up Period during such Reporting Period, written confirmation from a statutory director of the ODP that the ODP has complied with the restrictions applicable during a Lock-up Period pursuant to paragraph 3 of Schedule 12 (Financial Covenants and Bonds).
  - (c) The ODP shall ensure that the aggregate costs, revenues, assets and liabilities shown in its cashflow statement, profit and loss account and balance sheets for each of the ODP Service elements shall materially reconcile to the total costs, revenues, assets and liabilities of the ODP.
  - (d) The Management Accounts shall also set out:
    - (i) in relation to the Rail Services, sufficient information to enable the Authority to calculate Actual Operating Costs and Modified Revenue on a cumulative basis for the previous thirteen (13) Reporting Periods;
    - (ii) in relation to the Rail Services, a detailed profit and loss report sufficient to enable the Authority to calculate adjustments to the ODP Grant Agreement following a Change, such report shall be in the format set out in P&L 1 in the FTFM; and
    - (iii) for Rail Services the ratio of the ODP's:

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- (A) Total Modified Revenue to its Total Actual Operating Costs; and
  - (B) Total Forecast Modified Revenue to its Total Forecast Operating Costs,

together with supporting information showing how the ODP has calculated such ratios including a breakdown of the Modified Revenue, Forecast Modified Revenue, Actual Operating Cost and Forecast Operating Costs for each of the Reporting Periods used for the purposes of the calculation of the ratios pursuant to this paragraph 9.2(d);

- (iv) a comparison of the ODP's financial performance during such period against the forecast provided by the ODP in the then current Business Plan;
- (v) a comparison of the ODP's cumulative financial performance during the ODP Year in which such period occurs against the forecast referred to in paragraph 9.2(d)(iv);
- (vi) a detailed statement and a detailed and comprehensive written explanation of any material differences between such Management Accounts and the forecast referred to in paragraph 9.2(d)(iv);
- (vii) where the level of financial performance reported in the Management Accounts is, in the reasonable opinion of the Authority, materially worse than forecast by the ODP in its current Business Plan, the Authority may require the ODP to prepare and submit to the Authority, as soon as reasonably practicable, a Financial Action Plan to ensure that the level of financial performance forecast in its current Business Plan for the remainder of the currency of that Business Plan is achieved and the ODP shall use all reasonable endeavours to implement such Financial Action Plan;
- (viii) a detailed statement and explanation of any Agreed Funding Commitment and PCS Advances (each as defined in the Funding Deed) provided during such Reporting Period and any repayments made during such Reporting Period in respect of (i) previously provided Agreed Funding Commitments as against the AFC Plan (as defined in the Funding Deed) and (ii) PCS Advances; and
- (ix) a detailed profit and loss report sufficient to enable the Authority to identify and calculate the actual operating costs and revenues of the following:
  - (A) Stations;
  - (B) advertising and marketing;
  - (C) ticketing; and



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(D) car parks.

### 9.3 Quarterly Financial Information

- (a) For each of the ODP Services, unless stated otherwise, the ODP will deliver to the Authority the information specified in 9.3(b) below.
- (b) Within twenty (20) days after the end of the third (3<sup>rd</sup>), sixth (6<sup>th</sup>), ninth (9<sup>th</sup>) and twelfth (12<sup>th</sup>) Reporting Periods in each ODP Year, the ODP shall deliver to the Authority the following information:
- (i) an updated version of the profit and loss forecast, cash flow forecast and forecast balance sheet provided in accordance with paragraph 10.1(iv) together with a detailed and comprehensive written explanation as to any changes in such forecast from the previous forecast provided pursuant to the provisions of this Schedule 11.2, for each of the following thirteen (13) Reporting Periods;
  - (ii) a statement of calculation demonstrating the ODP's performance against each of the financial covenants in paragraph 2 of Schedule 12 (Financial Covenants and Bonds) at the beginning of each Reporting Period and a forecast of performance against such covenants for each of the following thirteen (13) Reporting Periods; and
  - (iii) Management Accounts for such quarterly periods, setting out a cashflow statement, profit and loss account and balance sheet for that quarterly period and cumulatively for the ODP Year to date.
- (c) Where any Reporting Period falls partly within one ODP Year and partly within another, the results for each section of such Reporting Period falling either side of such ODP Year end shall be prepared on an accruals basis for each such section of such Reporting Period.

### 9.4 Annual Financial Information

- (a) Unless stated otherwise, the ODP will deliver to the Authority within fifteen (15) days of the end of each ODP Year, its Annual Management Accounts for that ODP Year for each of the service elements comprising the ODP Services, namely:
- (i) Rail Services;
  - (ii) Infrastructure Services;
  - (iii) ODP Infrastructure Works; and
  - (iv) Infrastructure Manager Services.

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(b) The ODP shall deliver to the Authority:

- (i) in respect of any ODP Year other than the final ODP Year, its Annual Financial Statements for that ODP Year within three (3) Reporting Periods of the end of that ODP Year; and
- (ii) in respect of the final ODP Year, its Annual Financial Statements for the period from the start of that ODP Year to the end of the ODP Grant Agreement Term within three (3) Reporting Periods of the end of the ODP Grant Agreement Term,

each together with a reconciliation to the Management Accounts for the same period.

(c) Within four (4) Reporting Periods after the end of each ODP Year, the ODP shall deliver to the Authority the following information:

- (i) certified true copies of its annual report and Annual Audited Accounts for that ODP Year, together with copies of all related directors' and auditors' reports;
- (ii) a reconciliation to the Management Accounts for the same period in a format to be agreed with the Authority;
- (iii) a statement from the ODP's auditors confirming compliance with the financial covenants in paragraph 2 of Schedule 12 (Financial Covenants and Bonds); and
- (iv) a statement from the ODP (signed by a statutory director of the ODP) confirming compliance with the reporting requirements of paragraph 9.2(d)(viii) of this Schedule.

(d) Within four (4) Reporting Periods after the end of each ODP Year, the ODP shall deliver to the Authority the following information:

- (i) a reconciliation of the profit and loss account, cash flow and balance sheets required of the ODP in paragraph 9.4(b) to the profit and loss account, cash flow and balance sheets required of the ODP in paragraph at 9.4(c);
- (ii) where there is a material difference between the reconciled values provided in paragraph at 9.4(d)(i) then the ODP will provide a detailed statement and a detailed and comprehensive written explanation of any material differences; and
- (iii) where such an explanation, in the reasonable opinion of the Authority, is considered insufficient then the Authority may, at its absolute discretion exercise its rights to undertake an Authority Audit pursuant to paragraph 9.7(a).

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## 9.5 Accounting Standards and Practices

- (a) Each set of Management Accounts and Annual Management Accounts shall:
- (i) be in the formats developed by the ODP and approved by the Authority prior to the Start Date or in such other format as the Authority may reasonably specify from time to time;
  - (ii) be prepared consistently in accordance with the ODP's normal accounting policies, details of which shall be supplied on request to the Authority; and
  - (iii) identify to the reasonable satisfaction of the Authority, any changes in such accounting policies from those policies that were applied in preparing each of the profit and loss account, the cashflow projection and the balance sheet contained in the Final Tender Financial Model on the date of the ODP Grant Agreement.
- (b) The Annual Audited Accounts shall:
- (i) be prepared and audited in accordance with GAAP, consistently applied and in accordance with the Companies Act 2006; and
  - (ii) give a true and fair view of:
    - (A) the state of affairs, profits and financial condition of the ODP for the period covered by such accounts; and
    - (B) the amount of its total revenue (being all revenue whatsoever from any source obtained from any commercial or non-commercial activity or undertaking of the ODP, such revenue to be disaggregated by reference to revenue derived by the ODP from:
      - 1) the sale of tickets;
      - 2) income received from Network Rail pursuant to Schedule 4 and Schedule 8 to the Track Access Agreement; and
      - 3) other income categories;
    - (C) or to such other level of disaggregation as may be notified to the ODP by the Authority from time to time) derived by the ODP in respect of that ODP Year.
- (c) For Annual Audited Accounts in respect of ODP Years beginning on or after 1 January 2019 the ODP will deliver within four (4) Reporting Periods after the end of each ODP Year:

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- (i) following the introduction of IFRS 16 from 1 January 2019, a reconciliation between the Relevant Profit as bid under pre-existing GAAP and Relevant Profit as shown in its Management Accounts, Annual Financial Statements and Annual Audited Accounts; and
  - (ii) for any other change in GAAP that the Authority, at its absolute discretion, considers to have a material impact on financial reporting, a reconciliation between the Relevant Profit as bid under pre-existing GAAP and Relevant Profit as shown in their Management Accounts, Annual Financial Statements and Annual Audited Accounts.

#### **9.6 Parent and Guarantor Accounts**

The ODP shall, upon the request of the Authority, promptly deliver to, or procure delivery to, the Authority, certified true copies of the annual reports and audited accounts of the Parent, the Guarantor and any Affiliate, together with copies of all related directors' and auditors' reports. If any of the Parent, the Guarantor or any Affiliate is domiciled outside England and Wales, the equivalent documents in the jurisdiction of residence of the Parent, the Guarantor, or the Affiliate (as applicable) shall be delivered to the Authority.

#### **9.7 Authority Audit of calculations provided pursuant to paragraph 9.2(d)(iii)**

- (a) Without prejudice to paragraph 2.2 of Schedule 12 (Financial Covenants and Bonds) or to any other rights of the Authority under the ODP Grant Agreement, the Authority and its representatives shall be permitted to inspect at any time the books, records and any other material kept by or on behalf of the ODP in order to check or audit any item contained in or relating to the Management Accounts in so far as they relate to the statement of calculations required by paragraph 9.2(d)(iii) of this Schedule 11.2 and any other matter in connection with the ODP's obligations under paragraph 2 of Schedule 12 (Financial Covenants and Bonds).
- (b) The ODP shall make available to the Authority and its representatives such information and grant such access or procure the grant of such access (including to or from third parties) as they shall reasonably require in connection with any audit to be carried out pursuant to paragraph 9.7(a). If any audit carried out pursuant to paragraph 9.7(a) reveals, in the reasonable opinion of the Authority, any material inaccuracy in the Management Accounts (but only in so far as such accounts relate to the statement of calculations required by paragraph 9.2(d)(iii)) then the Authority may exercise its rights as described in paragraphs 2.2(b)(i) or 2.22(b)(ii) of Schedule 12 (Financial Covenants and Bonds) and the ODP shall pay all reasonable costs of any such audit as a monitoring cost pursuant to paragraph 7.4 of Schedule 10.1 (Procedure for remedying a Contravention of the ODP Grant Agreement).

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## 10 BUSINESS PLANS

### 10.1 Initial Business Plan

- (a) Notwithstanding the obligation on the ODP to provide an Infrastructure Works Plan in accordance with Schedule 3B (Infrastructure Services and Infrastructure Works), within three (3) Reporting Periods of the Start Date, the ODP shall deliver to the Authority its Initial Business Plan:
- (i) describing its planned activities for each ODP Year during the Rail Services Term, which shall include:
    - (A) a description as to how the ODP will meet its obligations under the ODP Grant Agreement for the Rail Services Term, supported by operational plans demonstrating this;
    - (B) details of any investments proposed to be made or procured by the ODP in relation to the ODP Services during the Rail Services Term;
    - (C) a summary of the ODP's plans for marketing and developing the ODP Services; and
  - (ii) a profit and loss forecast, cash flow forecast and forecast balance sheet for each of the Reporting Periods following the Start Date to 31<sup>st</sup> March 2019 and for the thirteen (13) Reporting Periods from 1<sup>st</sup> April 2019 to 31<sup>st</sup> March 2020, together with a list of assumptions on the basis of which each such forecast has been prepared.
- (b) For each of the ODP Services, unless stated otherwise, the ODP will deliver to the Authority the information specified in 10.1(a)(i) and 10.1(a)(ii) above.

### 10.2 Annual Business Plans

- (a) The ODP shall, at all times during the Rail Services Term (other than in respect of the first ODP Year), provide to the Authority any annual business plan (in written or electronic form) that it provides to its Parent (or any other document or documents which individually or collectively can reasonably be considered to be an annual business plan) and which describes the ODP's planned activities or describes the manner in which the ODP will meet its obligations under the ODP Grant Agreement in respect of that ODP Year (the "**Business Plan**"). Any such Business Plan shall be provided to the Authority within one month of submission of the same to the Parent. Where the ODP does not produce an annual business plan it shall notify the Authority of all the periodic plans that it does produce and:
- (i) the Authority shall be entitled to copies of such periodic plans as it shall reasonably determine; and

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- (ii) any such periodic plans shall be deemed to be Annual Business Plans for the purposes of this paragraph 10.2.
  - (b) The ODP shall, at the same time as it submits the Annual Business Plan to the Authority in accordance with paragraph 10.2 (or to the extent that no Annual Business Plan is submitted to the Parent in any ODP Year, not more than three (3) Reporting Periods and not less than one (1) Reporting Period prior to the start of each ODP Year), provide to the Authority:
    - (i) a revised profit and loss forecast, cash flow forecast and forecast balance sheet for each of the thirteen (13) Reporting Periods in the relevant ODP Year and each subsequent ODP Year of the Rail Services Term;
    - (ii) a statement of calculation demonstrating the ODP's performance against each of the financial covenants in paragraph 2 of Schedule 12 (Financial Covenants and Bonds) at the beginning of each of the Reporting Periods in the then current ODP Year preceding the relevant ODP Year and a forecast of performance against such covenants for each of the following thirteen (13) Reporting Periods;
    - (iii) an annual improvement plan providing:
      - (A) details of any new technologies, processes, developments and/or proposals which could improve the provision of the ODP Services, reduce the cost of providing the ODP Services or enable the ODP Services to be provided more efficiently;
      - (B) an analysis of the impact of any technologies, processes, developments and/or proposals that are proposed in relation to the ODP Services, including analyses of the costs of and timescale for effecting such changes and the impact on the provision of the ODP Services;
      - (C) details of those technologies, processes, developments and/or proposals which the ODP proposes to implement during the relevant ODP Year;
      - (D) an analysis of the technologies, processes, developments and/or proposals which the ODP implemented in the previous ODP Year including details of any cost reductions and/or efficiency gains arising from the same and a reconciliation to the annual improvement plan for that previous ODP Year; and
    - (iv) a statement from each of, a statutory director of the ODP and, a statutory director of the Parent confirming that the Annual Business Plan has been

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provided to, considered and endorsed by the board of directors of the Parent and that the board of directors of the Parent is not aware of any other plan which may alter, vary of impact on the Business Plan and shall at any time during the following twelve (12) months notify the Authority should any of them become aware of any such plan.

- (c) If at any time during an ODP Year the ODP produces any other annual business plan or periodic plan which is delivered to its Parent it shall at the same time as delivering such plan to its Parent notify the Authority of all such plans and shall explain to the Authority how (if at all) such further plan alters, amends or otherwise varies or impacts on the applicable Annual Business Plan or Initial Business Plan. The Authority shall be entitled to copies of such further plans as they shall reasonably request.
- (d) The Authority may at any time require the ODP to produce a Business Action Plan in respect of any aspect of the Business Plan. Such Business Action Plan may include steps relating to:
  - (i) timetable and service pattern development;
  - (ii) Station facility improvement;
  - (iii) performance management improvement;
  - (iv) customer service improvement;
  - (v) asset management and improvement; and
  - (vi) improvements in the quality of service delivery or the efficiency of delivery of the ODP Services.
- (e) The ODP shall comply with any guidance issued by the Authority about how and with whom any consultation on the content of a Business Action Plan is to take place.
- (f) Any proposal in a Business Action Plan shall only be implemented if and to the extent that the Authority decides it is appropriate to do so and subject to any conditions which it may impose.

## **11 SAFETY INFORMATION**

### **11.1 Safety**

- (a) The ODP shall co-operate with any request from any relevant competent authority for provision of information and/or preparation and submission of reports detailing or identifying compliance with safety obligations set out in the Safety Regulations including any breaches of the Safety Regulations.

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- (b) The ODP shall notify the Authority as soon as practicable of the receipt and contents of any formal notification relating to safety or any improvement or prohibition notice received from the ORR. Immediately upon receipt of such notification or notice, the ODP shall provide the Authority with a copy of such notification or notice.
  - (c) The ODP shall participate in industry groups and committees addressing the domestic and European safety agenda of the Railway Group.

## **12 FURTHER INFORMATION**

12.1 The ODP shall:

- (a) deliver to the Authority, or procure the delivery to the Authority of, such information, records or documents as it may request within such period as it may reasonably require and which relate to or are connected with the ODP's performance of the ODP Grant Agreement; and
- (b) procure that each Affiliate of the ODP complies with paragraph 12.1(a) in respect of any information, records or documents that relate to its dealings with the ODP in connection with the ODP's performance of its obligations under the ODP Grant Agreement.

12.2 The information referred to in paragraph 12.1 shall include:

- (a) any agreement, contract or arrangement to which the ODP is a party in connection with any rolling stock vehicles used in the operation of the Passenger Services;
- (b) in so far as the ODP has or is able to obtain the same, any other agreement contract or arrangement which may be associated with the procurement, leasing, financing or maintenance of any such rolling stock vehicles;
- (c) any agreement for the manufacture or supply of any rolling stock vehicles;
- (d) any arrangements for the securitisation of any lease granted in respect of such rolling stock vehicles; or
- (e) any information relating to the Infrastructure Manager Services.

12.3 The Authority may require the ODP to provide:

- (a) the information required to be provided under this Schedule 11.2 more frequently than set out in this Schedule 11.2;
- (b) the information required to be provided under this Schedule 11.2, or, in the Authority's discretion, more detailed financial information, at any time in connection with the re-letting of the Rail Services; and
- (c) such unaudited accounts under such accounting policies as may be prescribed by the Authority, acting reasonably, from time to time.



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### **13 INFORMATION FROM THIRD PARTIES**

- 13.1 The ODP shall, if the Authority so requests, use all reasonable endeavours to ensure that the Authority has direct access to any information, data or records relating to the ODP which is or are maintained by third parties and to which the Authority is entitled to have access, or of which the Authority is entitled to receive a copy under the ODP Grant Agreement.
- 13.2 The ODP shall, if the Authority so requests, procure the provision by RSP to the Authority of such information, data and records as the ODP is entitled to receive under the Ticketing and Settlement Agreement, in such form as the Authority may specify from time to time.
- 13.3 The obligations of the ODP under this Schedule 11.2 to provide information to the Authority shall not apply if the Authority notifies the ODP that it has received the relevant information directly from any other person (including Network Rail or RSP). The ODP shall, if the Authority so requests, confirm or validate any such information which is received from any such other person.
- 13.4 The ODP shall promptly advise the Authority of any changes that are to be made to its systems or processes or the systems and processes of the RSP that will, in the reasonable opinion of the ODP, materially affect the continuity of any of the records that are provided pursuant to this Schedule 11.2. Any such advice shall include an assessment of the materiality of the relevant change.

### **14 COMPATIBILITY OF INFORMATION**

- 14.1 All financial, operational or other information and reports required to be provided to the Authority under the ODP Grant Agreement shall be provided in formats specified by the Authority acting reasonably. This may include paper and electronic formats including spreadsheets. Where calculations or other summarisation is made within such reports, the formulas utilised and any external linked data shall be made available to the Authority.
- 14.2 All financial, operational or other information, and any data and records required to be provided to the Authority under the ODP Grant Agreement shall be provided, if so requested by the Authority, in a form compatible with the Authority's electronic data and records systems on the Start Date, as modified from time to time in accordance with paragraphs 5 and 9 of Schedule 13.1 (Rail Industry Initiatives).
- 14.3 The ODP shall ensure that the interconnection of such systems or the provision of such information, data and records to the Authority under the ODP Grant Agreement will not result in any infringement of any third party Intellectual Property Rights to which its systems or such information, data or records may be subject.

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**Appendix 1 to Schedule 11.2**

Resource Plan

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**Appendix 2 to Schedule 11.2**

Operational Performance Information

**1 INFORMATION ABOUT THE OPERATIONAL PERFORMANCE OF THE ODP**

- 1.1 The ODP shall at all times during the Rail Services Term maintain records in relation to its operational performance under the ODP Grant Agreement, covering the areas and the information described in this Appendix 2. Such information shall include details as to whether or not any curtailment, diversion, delay or failure to attain any connection is attributable, in the ODP's opinion, to either a Force Majeure Event or the implementation of a Service Recovery Plan.
- 1.2 The ODP shall, subject to paragraph 1.3, provide to the Authority the information set out in the following tables at the frequency specified in the Column of each such table headed "**When information to be provided**".
- 1.3 The ODP shall make such information available for review by the Authority by reference to:
- (a) disaggregation of CVL and WCB Rail Services;
  - (b) disaggregation of stations in England and stations in Wales; and
  - (c) disaggregation of Rail Services to or within England.
- 1.4 When so requested by the Authority, the ODP shall, within such reasonable period as the Authority may specify, make such information available for review by the Authority by reference to:
- (a) Such additional level of disaggregation (including by Route or Service Group) as is reasonably specified by the Authority; and
  - (b) any particular day, week or other longer period as is reasonably specified by the Authority.
- 1.5 The following key shall apply to the table in this Appendix 2:

|            |  |
|------------|--|
| <b>A =</b> | Information to be provided on or before any Passenger Change Date;   |
| <b>B =</b> | Information to be provided for every Reporting Period within ten (10) days of the last day of each Reporting Period; and |
| <b>C =</b> | Information to be provided annually within ten (10) Weekdays of the last day of each ODP Year.                           |

1.6 This Appendix 2 shall be interpreted in accordance with any guidance issued by the Authority from time to time for that purpose.

| <b>Table 1 - Operational Information</b>   |                             |  |
|--|-----------------------------|--|
| <b>Information to be provided</b>  | <b>Information (format)</b> | <b>When information to be provided</b> |
| <b>Number of Passenger Services</b>  |                             |  |
| Number of Passenger Services in the Timetable  | Number                      | B                                      |
| Number of Passenger Services in the Enforcement Plan of the Day  | Number                      | B                                      |
| <b>Number of Cancellations and Partial Cancellations</b>   |                             |  |
| Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Cancellation   | Number                      | B                                      |
| Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Partial Cancellation   | Number                      | B                                      |
| Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Cancellation attributable to the ODP's implementation of a Service Recovery Plan         | Number                      | B                                      |
| Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Partial Cancellation attributable to the ODP's implementation of a Service Recovery Plan | Number                      | B                                      |
| Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Network Rail Cancellation  | Number                      | B                                      |
| Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Network Rail Partial Cancellation  | Number                      | B                                      |
| Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Disputed Cancellation  | Number                      | B                                      |

| <b>Table 1 - Operational Information</b>   |                             |  |
|--|-----------------------------|--|
| <b>Information to be provided</b>  | <b>Information (format)</b> | <b>When information to be provided</b> |
| Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Disputed Partial Cancellation  | Number                      | B                                      |
| Number of Disputed Cancellations and Disputed Partial Cancellations for the twelve (12) preceding Reporting Periods for which the attribution remains in dispute between Network Rail and the ODP  | Number                      | B                                      |
| Number of Disputed Cancellations and Disputed Partial Cancellations from the twelve (12) preceding Reporting Periods for which disputed attribution has been resolved or determined since the ODP's previous report including whether each relevant Disputed Cancellation and/or Disputed Partial Cancellation was attributed to Network Rail or to the ODP            | Number                      | B                                      |
| Where there is a difference between the Timetable and the Plan of the Day on any day the following:<br><br>(a) the fact of such difference; and<br><br>(b) the number of:<br><br>(i) Passenger Services affected; and<br><br>(ii) Cancellations or Partial Cancellations which would have arisen if the Timetable on that day had been the same as the Plan of the Day | Number                      | B                                      |

| <b>Table 1 - Operational Information</b>   |                             |  |
|--|-----------------------------|--|
| <b>Information to be provided</b>  | <b>Information (format)</b> | <b>When information to be provided</b> |
| Where there is a difference between the Plan of the Day and the Enforcement Plan of the Day on any day:<br><br>(a) the fact of such difference;<br><br>(b) the number of:<br><br>(i) Passenger Services affected; and<br><br>(ii) Cancellations or Partial Cancellations which would have arisen if the Plan of the Day had been the same as the Enforcement Plan of the Day | Number                      | B                                      |
| Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a cancellation and which satisfied the conditions of the term Cancellation, except that such cancellations occurred for reasons attributable to the occurrence of a Force Majeure Event  | Number                      | B                                      |
| Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a partial cancellation and which satisfied the conditions of the term Partial Cancellation, except that such partial cancellations occurred for reasons attributable to the occurrence of a Force Majeure Event  | Number                      | B                                      |
| <b>Number of Short Formations</b>  |                             |  |
| Number of Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan  | Number                      | B                                      |
| Number of Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan attributable to the ODP's implementation of a Service Recovery Plan  | Number                      | B                                      |

| <b>Table 1 - Operational Information</b>  |                             |  |
|---|-----------------------------|--|
| <b>Information to be provided</b>   | <b>Information (format)</b> | <b>When information to be provided</b> |
| Number of Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan attributable to the occurrence of a Force Majeure Event   | Number                      | B                                      |
| Number of Passenger Services scheduled (excluding Cancellations or Partial Cancellations)   | Number                      | B                                      |
| <b>Minutes Delay</b>  |                             |  |
| Number of Minutes Delay attributable to the ODP   | Minutes                     | B                                      |
| Number of Minutes Delay attributable to Network Rail;   | Minutes                     | B                                      |
| Number of Minutes Delay attributable to any other Train Operator  | Minutes                     | B                                      |
| Number of Minutes Delay for such Reporting Period for which the attribution is in dispute between Network Rail and the ODP  | Minutes                     | B                                      |
| Number of Minutes Delay for the twelve (12) preceding Reporting Periods for which the attribution remains in dispute between Network Rail and the ODP   | Minutes                     | B                                      |
| Number of Minutes Delay from the twelve (12) preceding Reporting Periods for which disputed attribution has been resolved or determined since the ODP's previous report and the number of such Minutes Delay attributed to each of the ODP and Network Rail as a result of such resolution or determination | Minutes                     | B                                      |
| Number of Minutes Delay attributed to the occurrence of a Force Majeure Event   | Minutes                     | B                                      |
| <b>CaSL and PPM</b>   |                             |  |
| Number of Passenger Services in the Plan of the Day   | Number                      | B                                      |

| <b>Table 1 - Operational Information</b>  |                             |  |
|---|-----------------------------|--|
| <b>Information to be provided</b>   | <b>Information (format)</b> | <b>When information to be provided</b> |
| Number of Passenger Services cancelled.<br>For these purposes, “ <b>cancelled</b> ” shall have the same meaning as adopted by Network Rail for the calculation of PPM.      | Number                      | B                                      |
| Number of Passenger Services as specified in the Plan of the Day which arrive at their scheduled terminating station 30 minutes or more late                                | Number                      | B                                      |
| Number of Passenger Services as specified in the Plan of the Day which arrive at their terminating station within the PPM punctuality threshold for that Passenger Service. | Number                      | B                                      |
| <b>Train Mileage</b>  |                             |  |
| Planned Train Mileage   | Mileage                     | A                                      |
| Actual Train Mileage  | Mileage                     | B                                      |
| <b>Passenger Time Lost Delay (“PTL”)</b>  |                             |  |
| The Deemed Minutes Late for each Service Group allocated to the ODP, calculated in accordance with paragraph 5.12 to Schedule 8 of the Track Access Agreement.              | Minutes                     | B                                      |
| The average minutes late for each Service Group allocated to the ODP, calculated in accordance with paragraph 5.12 to Schedule 8 of the Track Access Agreement.             | Minutes                     | B                                      |
| <b>Punctuality</b>  |                             |  |
| Number of Passenger Services as specified in the Plan of the Day which arrive at their terminating station on time.   | Number                      | B                                      |
| Aggregate total of the number of Passenger Services as specified in the Plan of the Day which arrive at each station within three minutes of the scheduled arrival time.    | Number                      | B                                      |



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## Schedule 12

### Financial Covenants and Bonds

#### **1 OBLIGATIONS**

1.1 Except to the extent that the Authority may otherwise agree from time to time, the ODP shall not, and shall procure that OpCo and InfraCo shall not:

- (a) incur any liability or financial indebtedness except in the ordinary course of providing and operating the ODP Services;
- (b) make any loan or grant any credit, or have or permit to subsist any loan or any credit, to any person (other than the deposit of cash with a Bank as permitted under paragraph (d) or to an employee in the ordinary course of its business);
- (c) create or permit to subsist any Security Interest over any of their assets or property or give any guarantee or indemnity to or for the benefit of any person or otherwise assume liability or become obliged (actually or contingently) in respect of any obligation of any other person, in each case other than in the ordinary course of the business of providing and operating the ODP Services; or
- (d) create or acquire any subsidiary or make or have any investment in any other entity, except for the deposit of cash with a Bank.

#### **2 FINANCIAL RATIOS**

2.1 The ODP covenants that as at the end of each Reporting Period during the Rail Services Term:

- (a) the ratio of the OpCo's Modified Revenue to its Actual Operating Costs during the Preceding thirteen (13) Reporting Periods of the Rail Services Term (or, prior to the end of the thirteenth such Reporting Period, during all preceding Reporting Periods) will **equal or exceed the ratio of 1.050:1**; and
- (b) the ratio of the OpCo's Forecast Modified Revenue to its Forecast Operating Costs for the next thirteen (13) Reporting Periods (or, where there are less than thirteen (13) Reporting Periods remaining in the Rail Services Term, for all such remaining Reporting Periods) will **equal or exceed the ratio of 1.050:1**; and

for the purposes of this paragraph 2 "**Preceding thirteen (13) Reporting Periods**" means the Reporting Period just ended and the preceding twelve (12) Reporting Periods of the Rail Services Term.

2.2 If:

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- (a) in respect of any Reporting Period, the ODP fails pursuant to paragraph 9.2(d) of Schedule 11.2 (*Management Information*) to provide a statement of calculation of performance against the covenants set out in paragraph 2.1(b) for each of the next thirteen (13) Reporting Periods (or, where there are less than thirteen (13) Reporting Periods remaining in the Rail Services Term, for all such remaining Reporting Periods) following any such Reporting Period; or
  - (b) the Authority reasonably considers that any particular item of Forecast Modified Revenue or Forecast Operating Cost used for the purposes of determining the OpCo's performance against the covenants set out in paragraph 2.1(b) has not been accounted for on a reasonable basis (including where the accounting treatment looks to the form rather than the substance),

then the Authority may:

- (c) in the circumstances referred to in paragraph (a) above reasonably determine the ratio of the Forecast Modified Revenue and Forecast Operating Cost on the basis of information available to it; or
- (d) in the circumstances referred to in paragraph (b) above require any such particular item of Forecast Modified Revenue or Forecast Operating Cost to be adjusted in a manner which is fair and reasonable and, so far as reasonably determinable, on the basis on which such particular item of Forecast Modified Revenue or Forecast Operating Cost should have been accounted for by the OpCo as reasonably determined by the Authority,

in either case after having exercised its rights under paragraph 9.7 (Authority Audit of calculations provided pursuant to paragraph 9.2(d)(iii)) of Schedule 11.2 (*Management Information*) to the extent that it considers appropriate in the circumstances for the purpose of making any such reasonable determination.

### **3 BREACH OF FINANCIAL RATIOS**

3.1 The ODP shall procure that OpCo shall not during any Lock-up Period, do any of the following without the Authority's consent:

- (a) declare or pay any dividend (equity or preference) or make any other distribution including surrendering any taxable losses to any of its Affiliates or ODP or InfraCo or any of their Affiliates, or pay any of its Affiliates or ODP or InfraCo or any of their Affiliates in respect of taxable losses that they wish to surrender to the OpCo, without the prior written consent of the Authority;
- (b) pay management charges to any of its Affiliates or ODP or InfraCo or any of their Affiliates in excess of those specified in the Initial Business Plan; or

- 
- (c) make payment under any intra-group borrowings,

provided that, during the Lock-up Period, the OpCo may repay any borrowing and/or make any payment in respect of interest accrued on such borrowing, in each case relating to the Agreed Funding Commitment in accordance with the AFC Plan (each as defined in the Funding Deed).

3.2 “**Lock-up Period**” means any period from the time when either of the ratios referred to in paragraphs 2.1(a) and 2.1(b) falls below the ratio of **1.070:1** until the time at which the Authority is satisfied that the relevant ratio is again above the ratio of **1.070:1**.

3.3 Failure by the ODP to procure that OpCo at any time complies with either of the ratios referred to in paragraph 2.1 shall be an Event of Default under paragraph 1.8 of Schedule 10.2 (*Events of Default and Termination Events*).

#### **4 PERFORMANCE BOND**

4.1 The ODP shall procure that there shall be a valid and effective Performance Bond in place with effect from the date of the ODP Grant Agreement, and the ODP shall procure that there shall be a valid and effective Performance Bond in place:

- (a) throughout the Rail Services Term; and
- (b) for a further period that is the later of the date:
  - (i) falling one (1) month after the determination of the Purchase Price (as defined in any Supplemental Agreement) under the Supplemental Agreement; and
  - (ii) that is seven (7) Reporting Periods after the end of the ODP Grant Agreement Term.

The provisions of this paragraph 4.1 shall survive the termination of the ODP Grant Agreement.

4.2 Each Performance Bond shall:

- (a) be substantially in the form of Appendix 1 (*Form of Performance Bond*) to this Schedule 12;
- (b) be issued by a Bond Provider;
- (c) in the case of the Initial Performance Bond, have a value of [REDACTED], and in the case of any Replacement Performance Bond, have a value equal to the amount determined under paragraph 4.4, less the amount paid to the Authority under any Performance Bond as the result of a Partial Termination; and

- 
- (d) have a minimum duration of three (3) years.

#### 4.3 **Provision of Replacement Performance Bond**

- (a) The ODP may replace the then current Performance Bond at any time.
- (b) The ODP shall replace each Performance Bond at least six (6) months prior to its scheduled expiry with a Replacement Performance Bond.
- (c) If at any time the Authority reasonably considers the Bond Provider under the then current Performance Bond to be unacceptable, the Authority may require the ODP within twenty (20) Weekdays to procure the execution and delivery of a new Performance Bond by a Bond Provider acceptable to the Authority.

#### 4.4 **Amount of Replacement Performance Bond**

The value of any Replacement Performance Bond shall be as follows:

- (a) in relation to the first (1<sup>st</sup>) Replacement Performance Bond, an amount which is [REDACTED] x RPI; and
- (b) in relation to each subsequent Replacement Performance Bond an amount which is the amount of the Replacement Performance Bond that it is replacing x RPI,

and, for the purpose of this paragraph 4.4, **RPI** shall be the quotient of the Retail Prices Index for the month for which the Retail Prices Index has most recently been determined on the date on which the ODP is to replace the Performance Bond divided by the Retail Prices Index for the month in which the Performance Bond that is being replaced was required to be delivered to the Authority.

#### 4.5 **Demands under the Performance Bond**

- (a) The Performance Bond shall be on terms that it is payable without further enquiry by the Bond Provider to the Authority in full on first written demand by the Authority on the Bond Provider, certifying as to any one or more of the following:
- (i) that the ODP Grant Agreement has:
- (A) either terminated or expired and, in either case, in circumstances where there are liabilities or obligations outstanding from the ODP to the Authority; and/or
- (B) terminated solely as a consequence of the occurrence of one or more Events of Default or a Termination Event of a type described in paragraphs 2.2, 2.3, 2.4 and 2.5 of Schedule 10.2 (*Events of Default and Termination Events*) or pursuant to

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Clause 4.2(b) or 4.3(b) of the Conditions Precedent Agreement in circumstances where the Authority has incurred or expects to incur losses, liabilities, costs or expenses in connection with early termination of the ODP Grant Agreement;

- (ii) that a railway administration order has been made in relation to the ODP pursuant to sections 60 to 62 of the Act;
- (iii) the occurrence of an Event of Default:
  - (A) under paragraph 1.12(a) of Schedule 10.2 (*Events of Default and Termination Events*) in relation to the Performance Bond; or
  - (B) under paragraph 1.12(b) of Schedule 10.2 (*Events of Default and Termination Events*),

whether or not the ODP Grant Agreement is, or is to be, terminated as a result thereof;

- (iv) that the ODP has failed to perform or comply with its obligations under any Supplemental Agreement;
- (v) that the ODP has failed to provide a replacement Performance Bond complying with this paragraph 4 at least six (6) months prior to the scheduled expiry of the existing Performance Bond; or
- (vi) that the ODP has failed to procure the execution and delivery of a new Performance Bond by a Bond Provider acceptable to the Authority when required to do so in accordance with paragraph 4.3(c).

- (b) If the Authority makes a demand under the Performance Bond, it shall, within a reasonable period, account to the ODP for the proceeds of such Performance Bond **less** the amount of the losses, liabilities costs or expenses which, in the reasonable opinion of the Authority, the Authority or a Successor Operator has incurred or suffered or may be reasonably likely to incur or suffer including as a result of:

- (i) early termination of the ODP Grant Agreement; and/or
- (ii) any failure by the ODP to perform or comply with any of its obligations to the Authority under the ODP Grant Agreement or to a Successor Operator under the Supplemental Agreement,

and which are not otherwise recovered by the Authority (including pursuant to Clause 7.3 of the Funding Deed).

- 
- (c) It is agreed that for the purposes of paragraph 4.5(b) losses, liabilities, costs or expenses which the Authority or a Successor Operator has incurred or suffered or may be reasonably likely to incur or suffer shall include any losses, liabilities, costs or expenses consequent upon the fact that the Successor Operator and any Train Operators that might succeed the ODP in providing all or any of the ODP Services during the remainder of the ODP Grant Agreement Term may do so on a different financial basis with regard to amounts equivalent to the ODP Services Payments and/or other amounts payable pursuant to Schedule 8 of the ODP Grant Agreement than the financial basis on which the ODP provided the ODP Services pursuant to the ODP Grant Agreement.
- (d) Nothing in paragraphs 4.5(b) and 4.5(c) shall oblige the Authority to account to the ODP for the proceeds of such Performance Bond in the circumstances described in paragraphs 4.5(a)(iii), 4.5(a)(v) or 4.5(a)(vi) until such time as the ODP has procured a replacement Performance Bond which complies with the requirements of paragraph 4.

#### **4.6 Characteristics of Performance Bond Provider**

- (a) In determining whether a Bond Provider under any replacement Performance Bond is acceptable, the Authority may exercise its discretion and shall not be obliged to accept a Bond Provider accepted under any previous Performance Bond.
- (b) The ODP shall provide such information relating to any Bond Provider or proposed Bond Provider as the Authority may require from time to time.

#### **4.7 Provision of more than one Performance Bond**

The ODP shall be permitted subject to the prior consent of the Authority (such consent not to be unreasonably withheld or delayed) to meet its obligations to provide a valid and effective Performance Bond by providing up to three (3) valid and effective Performance Bonds, the aggregate value of which at all times is equal to the value determined under paragraph 4.2(c) with the exception of the value of each individual Performance Bond the provisions of the ODP Grant Agreement in relation to the Performance Bond shall be deemed to apply separately in relation to each such Performance Bond. Where more than one (1) Performance Bond is provided, each claim by the Authority shall be made against (i) all of such Performance Bonds, and (ii) each Performance Bond in the proportion that the Performance Bond bears to value determined under paragraph 4.2(c).

### **5 SEASON TICKET BOND**

#### **5.1 Provision of Season Ticket Bond**

The ODP shall procure that, for each ODP Year throughout the Rail Services Term and during the relevant call period specified in Clauses 6 and 7 of the Season Ticket Bond,

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there shall be in place a valid and effective Season Ticket Bond substantially in the form of Appendix 2 (*Form of Season Ticket Bond*) to this Schedule 12.

**5.2 Provision of Replacement Season Ticket Bond**

No later than one (1) Reporting Period before the expiry of each Bond Year, the ODP shall provide to the Authority (or procure that the Authority receives) a Season Ticket Bond for the following Bond Year:

- (a) substantially in the form of Appendix 2 (*Form of Season Ticket Bond*) to this Schedule 12 (or in any other form acceptable to the Authority in its discretion);
- (b) duly executed and delivered by a Bond Provider acceptable to the Authority; and
- (c) in an amount determined in accordance with paragraph 5.3.

**5.3 Amount of Season Ticket Bond**

The amount of any Season Ticket Bond shall vary for each Reporting Period during the Bond Year to which the Season Ticket Bond relates in accordance with the following formula:

$$STBA = STL \times \frac{((RPI \times 100) + k)}{100} \times Z$$

**where:**

**STBA** equals the amount of the Season Ticket Bond in the relevant Reporting Period;

**STL** equals in respect of such Reporting Period:

- (a) the maximum amount which would be payable by the ODP in respect of Season Ticket Fares under and in accordance with a Supplemental Agreement and paragraph 3.3 of Schedule 15.4 (*Provisions Applying on and after Termination*) and the rights and liabilities of the ODP relating to an obligation of carriage under the terms of any Season Ticket Fares which were transferred under a Transfer Scheme relating to that Supplemental Agreement to a Successor Operator at that time; and
- (b) the Stored Credit Balance which would be held by the ODP,

if the ODP Grant Agreement were to terminate on any day during the Reporting Period (the “**Relevant Reporting Period**”) falling thirteen (13) Reporting Periods before such Reporting Period,

provided that for these purposes only:

- 
- (i) Season Ticket Fares shall mean any Season Ticket Fare which expires more than seven (7) days after it first comes into effect;
  - (ii) the Start Date shall be assumed, where relevant, to have occurred before the commencement of the Relevant Reporting Period; and
  - (iii) if STL cannot reasonably be determined at the time at which the ODP is required under paragraph 5.4 to provide its estimate of the amount of the relevant Season Ticket Bond (including because the Relevant Reporting Period has not yet occurred), the Relevant Reporting Period shall be the Reporting Period falling twenty six (26) Reporting Periods before the Reporting Period in the relevant Bond Year;

**RPI** equals the quotient of the Retail Prices Index for the month for which the Retail Prices Index has most recently been determined at the time the ODP is required under paragraph 5.4 to provide its estimate of the amount of the relevant Season Ticket Bond divided by the Retail Prices Index for the month falling twelve (12) months before such month;

**k** has the value attributed to it in Schedule 5 (Fares and Smart Ticketing) for the Fare Year in which the Reporting Period in the relevant Bond Year falls; and

**Z** equals **+1** or, if the Relevant Reporting Period falls twenty six (26) Reporting Periods before such Reporting Period, an amount equal to:

$$\frac{(RPI \times 100) + k}{100}$$

where **RPI** and **k** are determined for the twelve (12) months and the Fare Year preceding the twelve (12) months and the Fare Year for which **RPI** and **k** are respectively determined above.

- 5.4 The ODP shall supply to the Authority, not later than three (3) Reporting Periods before the end of each Bond Year, its estimate of the amount of the Season Ticket Bond for each Reporting Period during the following Bond Year and shall supply such details as the Authority may request in connection therewith.
- 5.5 The ODP and the Authority shall endeavour to agree the amount of such Season Ticket Bond by no later than two (2) Reporting Periods before the end of each Bond Year. If the Parties are unable to agree the amount of the Season Ticket Bond in respect of any Reporting Period during the following Bond Year, the matter shall be resolved in accordance with the Dispute Resolution Rules.
- 5.6 If the amount of the Season Ticket Bond for each Reporting Period during a Bond Year has not been agreed two (2) Reporting Periods before the end of the preceding Bond



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Year, then, until the amount is agreed or determined in accordance with the Dispute Resolution Rules, the amount thereof shall be the amount determined by the Authority.

5.7 The Authority and the ODP may agree to increase or reduce the amount covered or required to be covered under a Season Ticket Bond from time to time.

**5.8 Demands under the Season Ticket Bond**

(a) The Season Ticket Bond shall be on terms that it is payable without further enquiry by the Bond Provider to the Authority in full in Cardiff on first written demand by the Authority on the Bond Provider, certifying as to any one or more of the following:

- (i) that the ODP Grant Agreement has terminated or expired;
- (ii) that a railway administration order has been made in relation to the ODP pursuant to sections 60 to 62 of the Act; or
- (iii) that an Event of Default:
  - (A) under paragraph 1.12(a) of Schedule 10.2 (*Events of Default and Termination Events*) in relation to the Season Ticket Bond; or
  - (B) under paragraph 1.12(c) of Schedule 10.2 (*Events of Default and Termination Events*),has occurred (whether or not the ODP Grant Agreement is, or is to be, terminated as a result thereof).

(b) If the Authority makes a demand under the Season Ticket Bond, it shall account to the ODP for the proceeds of such Season Ticket Bond remaining following settlement of all liabilities or obligations of the ODP in respect of any Season Ticket Fares and/or Stored Credit Balance that may be transferred or is transferred whether under a Transfer Scheme (or otherwise) to a Successor Operator.

**5.9 Characteristics of Season Ticket Bond Provider**

(a) In determining whether a Bond Provider under any replacement Season Ticket Bond is acceptable, the Authority may exercise its discretion and shall not be obliged to accept a Bond Provider accepted under any previous Season Ticket Bond.

(b) The ODP shall provide such information relating to any Bond Provider or proposed Bond Provider as the Authority may require from time to time.

(c) The Authority agrees that, subject to receipt of a Season Ticket Bond in an amount determined in accordance with paragraph 5.3 in respect of any Bond Year, it shall

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release the relevant Bond Provider from any liability under the Season Ticket Bond provided in relation to the preceding Bond Year on the expiry of such Bond Year, provided that no Event of Default has occurred and is unremedied or continuing.

**5.9A Provision of more than one Season Ticket Bond**

The ODP shall be permitted subject to the prior consent of the Authority (such consent not to be unreasonably withheld or delayed) to meet its obligations to provide a valid and effective Season Ticket Bond by providing up to three (3) valid and effective Season Ticket Bonds, the aggregate value of which at all times is equal to the value determined under paragraph 5.3. With the exception of the value of each individual Season Ticket Bond the provisions of the ODP Grant Agreement in relation to the Season Ticket Bond shall be deemed to apply separately in relation to each such Season Ticket Bond. Where more than one (1) Season Ticket Bond is provided, each claim by the Authority shall be made against (i) all of such Season Ticket Bonds, and (ii) each Season Ticket Bond in the proportion that the Season Ticket Bond bears to value determined under paragraph 5.3.

**5.10 Meaning of “Reporting Period”**

References in this paragraph 5 to a “**Reporting Period**” shall be construed, where the ODP so requests and the Authority consents (such consent not to be unreasonably withheld), to be references to each consecutive seven (7) day period (or such other period as may be agreed) during such Reporting Period. The ODP may only make such a request in respect of a maximum of two (2) Reporting Periods in each Bond Year and only where the amount of the Season Ticket Bond over any such period would, in the reasonable opinion of the ODP, differ materially if determined by reference to such seven (7) day periods.

**6 TAX COMPLIANCE**

6.1 The ODP represents and warrants that as at the Start Date, it has notified the Authority in writing of any Occasions of Tax Non-Compliance where the ODP (including where the ODP is an unincorporated joint venture or consortium, the members of that unincorporated joint venture or consortium) is the Affected Party (as defined in paragraph 6.3 below) or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance where the ODP (including where the ODP is a joint venture or consortium, the members of that joint venture or consortium) is the Affected Party.

6.2 If, at any point during the Rail Services Term, an Occasion of Tax Non-Compliance occurs in relation to any Affected Party, the ODP shall:

- (a) notify the Authority in writing of such fact within five (5) Weekdays of its occurrence; and

- 
- (b) promptly provide to the Authority:
- (i) details of the steps which the Affected Party is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
  - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

6.3 For the purposes of this paragraph 6, the following defined terms shall have the following meanings:

**“Affected Party”** has the meaning given to it in the definition of Occasion of Tax Non-Compliance;

**“DOTAS”** means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;

**“General Anti-Abuse Rule”** means:

- (a) the legislation in Part 5 of the Finance Act 2013; and
- (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions; and

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**“Halifax Abuse Principles”** means the principle explained in the CJEU Case C-255/02 Halifax and others;

**“Occasion of Tax Non-Compliance”** means, in respect of the ODP (including where ODP is an unincorporated joint venture or consortium, the members of that unincorporated joint venture or consortium) or the ODP (such party being the **“Affected Party”**):

- (a) any tax return of the Affected Party submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 is found to be incorrect as a result of:
  - (i) a Relevant Tax Authority successfully challenging the Affected Party under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
  - (ii) the failure of an avoidance scheme which the Affected Party was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
- (b) any tax return of the Affected Party submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at

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the Start Date or to a civil penalty for  
fraud or evasion.

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**Appendix 1 to Schedule 12**

[DOCUMENT "PB" - PERFORMANCE BOND]

Dated [INSERT DATE]

[INSERT NAME OF BOND PROVIDER]

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*[Template]* Performance Bond

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*[Welsh Ministers]*

*[Crown Buildings]*

*Cathays Park*

*Cardiff*

*CF10 3NQ]*

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To: Welsh Ministers  
[Crown Buildings  
Cathays Park  
Cardiff  
CF10 3NQ]  
(the “**Authority**”)

Whereas:

We are informed that you have entered into an agreement dated [INSERT DATE] (the “**ODP Grant Agreement**”) with [INSERT NAME OF ODP] (the “**ODP**”). Pursuant to the ODP Grant Agreement the ODP will provide certain railway passenger services.

We are further informed that the ODP Grant Agreement requires that the Authority receives a duly executed performance bond in the amount of [REDACTED] (the “**Bond Value**”) to secure the performance by the ODP of and its compliance with their respective obligations under the ODP Grant Agreement and any Supplemental Agreement.

Accordingly:

[At the request of our clients, [REDACTED], we][We] hereby unconditionally and irrevocably undertake to pay to you in full, immediately upon receipt of your first written demand on us in the form set out in the Schedule and, without further enquiry, the sum specified therein. Such written demand shall state:

- 1 the Call Event (as defined in Clause 2 hereof) that has occurred; and
- 2 the date of occurrence of such Call Event.

You may call on us for the whole or part of the amount of our liability hereunder and you may make any number of calls on us up to a maximum aggregate amount of the Bond Value. All sums payable hereunder shall be paid free of any restriction or condition and free and clear of and (except to the extent required by law) without any deduction or withholding, whether for or on account of tax, by way of set-off or otherwise.

- 3 The undertaking given by us above shall operate provided that:
  - 3.1 our maximum liability shall be limited to a sum or sums not exceeding in the aggregate the amount of the Bond Value or such lesser amount as you may notify us of from time to time in writing, separately from any demand, shall constitute the Bond Value of this Bond; and
  - 3.2 notwithstanding anything contained herein, our liability hereunder shall expire on the earliest of:
    - (a) the date falling six (6) months after the date on which any railway administration order is made in relation to the ODP pursuant to sections 60 to 62 of the Railways Act 1993; and

- 
- (b) the latest of:
- (i) the date falling one (1) month after the determination of the Purchase Price (as defined in any Supplemental Agreement) under each relevant Supplemental Agreement; and
  - (ii) the date falling seven (7) Reporting Periods after the end of the ODP Grant Agreement Term; and
  - (iii) the end of the ODP Grant Agreement Term; and

(c) [INSERT DATE],

except in respect of any written demand for payment complying with all the requirements hereof which is received by us on or before such date for either the Bond Value, or for such lesser amount which, when aggregated with any previous demands, amounts to the Bond Value or less, after which date this undertaking shall be void whether returned to us or not.

**4** “**Call Event**” means, in this Bond, any of:

- 4.1 the termination or expiry of the ODP Grant Agreement in circumstances where there are liabilities or obligations outstanding from the ODP to the Authority;
- 4.2 the termination of the ODP Grant Agreement solely as a consequence of the occurrence of one or more Events of Default or a Termination Event of a type described in paragraphs 2.2, 2.3, 2.4 and 2.5 of Schedule 10.2 (*Events of Default and Termination Events*) or pursuant to Clause 4.2(b) or 4.3(b) of the Conditions Precedent Agreement in circumstances where the Authority has incurred or expects to incur losses, liabilities, costs or expenses in connection with early termination of the [INSERT NAME OF ODP] ODP;
- 4.3 the making of a railway administration order in relation to the ODP pursuant to sections 60 to 62 of the Railways Act 1993;
- 4.4 the occurrence of an Event of Default under the ODP Grant Agreement in respect of:
  - (a) paragraph 1.12(a) of Schedule 10.2 (*Events of Default and Termination Events*) of the ODP Grant Agreement in relation to the Performance Bond; or
  - (b) paragraph 1.12(b) of Schedule 10.2 (*Events of Default and Termination Events*) of the ODP Grant Agreement,

whether or not the ODP Grant Agreement is, or is to be, terminated as a result thereof;



- 
- 4.5 the failure by the ODP to perform or comply with its obligations under any Supplemental Agreement;
- 4.6 the failure by the ODP to provide the Authority with a replacement Performance Bond which complies with paragraph 4 of Schedule 12 (*Financial Covenants and Bonds*) of the ODP Grant Agreement at least six (6) months prior the scheduled expiry of the existing Performance Bond;
- 4.7 the failure by the ODP to procure the execution and delivery of a new Performance Bond by a Bond Provider in favour of and acceptable to the Authority when required to do so in accordance with paragraph 4.3(c) of Schedule 12 (*Financial Covenants and Bonds*) of the ODP Grant Agreement; or
- 4.8 the termination of any or all of the CVL Services on the occurrence of one or more Events of Default, where the Authority has issued a Partial Termination Notice.
- 5 This undertaking is made to you, your successors and your assigns.
- 6 You may not assign or otherwise transfer your rights under this Bond without our prior written consent (such consent not to be unreasonably withheld or delayed if the assignment of the rights or transfer of the rights under this Bond is to your assignee or successor under the ODP Grant Agreement).
- 7 This undertaking shall not be discharged or released by time, indulgence, waiver, alteration or release of, or in respect to, the obligations of the ODP under the ODP Grant Agreement or any Supplemental Agreement or any other circumstances that might operate as a release of a guarantor at law or in equity.
- 8 You may make demand or give notice to us under this Bond in writing by hand or via email transmission to us as follows:
- Address: [INSERT BOND PROVIDER'S ADDRESS]
- Email Address: [INSERT BOND PROVIDER'S EMAIL ADDRESS]
- 9 References in this Bond to the ODP Grant Agreement and the Supplemental Agreement are to the ODP Grant Agreement and any Supplemental Agreement as amended from time to time.
- 10 Where used in this Bond, capitalised terms have the same meanings as in the ODP Grant Agreement.
- 11 This Bond shall be governed by and construed in accordance with the laws of England and Wales.

Executed as a deed this [INSERT DAY AND MONTH] of [INSERT YEAR].



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## SCHEDULE TO THE PERFORMANCE BOND

### Specimen Demand Notice

To: [INSERT NAME AND ADDRESS OF BOND PROVIDER]

[INSERT DATE OF DEMAND NOTICE]

We refer to the performance bond issued by you on [INSERT DATE OF BOND] (the “**Performance Bond**”) in connection with the agreement (the “**ODP Grant Agreement**”) entered into between Welsh Ministers (the “**Authority**”) and [INSERT NAME OF ODP] (the “**ODP**”) on [INSERT ODP GRANT AGREEMENT SIGNATURE DATE].

We hereby notify you that the following Call Event (as defined in the Performance Bond) occurred on [INSERT DATE OF OCCURRENCE OF CALL EVENT]: **[DRAFTING NOTE: DELETE AS APPROPRIATE]**

- [The ODP Grant Agreement has **[terminated/expired]** on [INSERT DATE OF TERMINATION/EXPIRY] in circumstances where there are liabilities or obligations outstanding from the ODP to the Authority.]
- The ODP Grant Agreement has terminated solely as a consequence of the occurrence of one or more Events of Default or a Termination Event of a type described in paragraphs 2.2, 2.3, 2.4 and 2.5 of Schedule 10.2 (Events of Default and Termination Events) on [INSERT DATE OF TERMINATION] in circumstances where the Authority has incurred or expects to incur losses, liabilities, costs or expenses in connection with early termination of the [INSERT NAME OF THE ODP] ODP.
- [A railway administration order has been made in relation to the ODP pursuant to sections 60 to 62 of the Railways Act 1993.]
- [That an Event of Default under the ODP Grant Agreement has occurred under:
- [paragraph 1.12(a) of Schedule 10.2 (Events of Default and Termination Events) of the ODP Grant Agreement in relation to the Performance Bond; or]
- [paragraph 1.12(b) of Schedule 10.2 (Events of Default and Termination Events) of the ODP Grant Agreement.]]
- [The ODP Grant Agreement has terminated pursuant to Clause 4.2(b) or 4.3(b) of the Conditions Precedent Agreement in circumstances where the Authority has incurred or expects to incur additional costs in connection with early termination of the [INSERT NAME OF ODP] ODP.]

- 
- [The ODP has failed to perform or comply with its obligations under any Supplemental Agreement.]
  - [The ODP has failed to provide a replacement Performance Bond (as described in the ODP Grant Agreement) complying with paragraph 4 of Schedule 12 (*Financial Covenants and Bonds*) of the ODP Grant Agreement at least six (6) months prior to the scheduled expiry of the existing Performance Bond.]
  - [The ODP has failed to procure the execution and delivery of a new Performance Bond by a Bond Provider acceptable to the Authority when required to do so in accordance with paragraph 4.3(c) of Schedule 12 (*Financial Covenants and Bonds*) of the ODP Grant Agreement.]
  - [The termination of any or all of the CVL Services on the occurrence of one or more Events of Default, where the Authority has issued a Partial Termination Notice]

We hereby demand immediate payment from you of [SPECIFY ALTERNATIVE AMOUNT IF NOT BOND VALUE] or the Bond Value, whichever is smaller.

Please arrange for immediate payment of the relevant amount as follows:

[INSERT ACCOUNT DETAILS TO WHICH BOND MONIES TO BE PAID INTO]

Where used in this Notice, capitalised terms have the same meanings as in the ODP Grant Agreement.

For and on behalf of **Welsh Ministers**

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**Appendix 2 to Schedule 12 - Template Form of Season Ticket Bond**

***DOCUMENT "STB" - SEASON TICKET BOND***

Dated [INSERT DATE]

[INSERT NAME OF BOND PROVIDER]

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***[Template] Season Ticket Bond***

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*Welsh Ministers*

*Crown Buildings*

*Cathays Park*

*Cardiff*

*CF10 3NQ*

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To: Welsh Ministers  
Crown Buildings  
Cathays Park  
Cardiff  
CF10 3NQ  
(the “**Authority**”)

Whereas:

We are informed that you have entered into an agreement dated [INSERT DATE] (the “**ODP Grant Agreement**”) with Keolis Amey Wales Cymru Limited (the “**ODP**”) under which the ODP will provide certain railway passenger services.

We are further informed that the ODP Grant Agreement requires that the Authority receives a duly executed season ticket bond to secure the performance by the ODP of and its compliance with its obligations under the ODP Grant Agreement and any Supplemental Agreement.

Accordingly:

[At the request of our clients, [REDACTED] , we][We] hereby unconditionally and irrevocably undertake to pay to you in full, immediately upon receipt of your first written demand on us in the form set out in Schedule 1 (Specimen Demand Notice) and, without further enquiry, the sum specified therein. Such written demand shall state:

- 1 the Call Event (as defined in Clause 2) that has occurred; and
- 2 the date of occurrence of such Call Event.

You may call on us for the whole or part of the amount of our liability hereunder and you may make any number of calls on us up to a maximum aggregate amount of the Bond Value (as defined in Clause 3). All sums payable hereunder shall be paid free and clear of any restriction or condition and free and (except to the extent required by law) without any deduction or withholding, whether for or on account of tax, by way of set-off or otherwise.

- 3 The undertaking given by us above shall operate provided that:
  - 3.1 our maximum liability shall be limited to a sum or sums not exceeding in the aggregate the amount of the Bond Value on the date of occurrence of the Call Event stated in your written demand on us; and
  - 3.2 you may only call on us (whether on one or more occasions) in relation to one Call Event, such Call Event to be determined by reference to the first written demand which is received by us in the form set out in Schedule 1 (Specimen Demand Notice).
- 4 “**Call Event**” means, in this Bond, any of:
  - 4.1 the termination or expiry of the ODP Grant Agreement;

- 
- 4.2 the making of a railway administration order in relation to the ODP pursuant to sections 60 to 62 of the Railways Act 1993;
- 4.3 the occurrence of an Event of Default under paragraph 1.12(a) (in relation to a Season Ticket Bond) or paragraph 1.12(c) of Schedule 10.2 (*Events of Default and Termination Events*) of the ODP Grant Agreement (whether or not the ODP Grant Agreement is, or is to be, terminated as a result thereof); or
- 4.4 the termination of any or all of the CVL Services on the occurrence of one or more Events of Default, where the Authority has issued a Partial Termination Notice.
- 5 Bond Value shall mean, in respect of any date, the amount specified in Schedule 2 (Bond Value) as being the value of this Bond for such date (provided that for these purposes the date of occurrence of the Call Event specified in Clause 2(c) shall be deemed to be the last date for which a Bond Value is assigned under Schedule 2 (Bond Value) of this Bond).
- 6 Notwithstanding anything contained herein, but subject to Clause 7, our liability hereunder in respect of any Call Event shall expire no later than the end of the ODP Grant Agreement Term and:
- 6.1 in relation to a Call Event specified in Clauses 2(a) and 2(b), at noon (London time) on the date falling three (3) business days after the date of occurrence of such Call Event (business day being a day on which banks are open for business in the City of London); and
- 6.2 in relation to any other Call Event, on the day falling one (1) month after the last date for which a Bond Value is assigned under Schedule 2 of this Bond unless you notify us in writing prior to the relevant expiry time that the relevant Call Event has occurred (whether or not you call on us at the same time under this Bond).
- 7 If you do notify us under Clause 4 our liability shall expire on:
- 7.1 if the Call Event in respect of which you may call on us under this Bond is the termination of the ODP Grant Agreement, the date falling one (1) month after the determination of the Purchase Price (as defined in the Supplemental Agreement) under each relevant Supplemental Agreement;
- 7.2 if the Call Event in respect of which you may call on us under this Bond is the making of a railway administration order in relation to the ODP pursuant to sections 60 to 62 of the Railways Act 1993, the date falling three (3) months after the making of such railway administration order; or

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7.3 if the Call Event in respect of which you may call on us under this Bond is the occurrence of an Event of Default under paragraph 1.12(a) (in relation to a Season Ticket Bond) or paragraph 1.12(c) of Schedule 10.2 (*Events of Default and Termination Events*) of the ODP Grant Agreement (whether or not the ODP Grant Agreement is, or is to be, terminated as a result thereof), the date falling one (1) month after your notification to us under Clause 4,

except, in each case, in respect of any written demand for payment complying with all the requirements hereof which is received by us on or before the relevant date, after which date this undertaking shall be void whether returned to us or not.

8 This undertaking is made to you, your successors and your assigns.

9 You may not assign or otherwise transfer your rights under this Bond without our prior written consent (such consent not to be unreasonably withheld or delayed if the assignment of the rights or transfer of the rights under this Bond is to your assignee or successor under the ODP Grant Agreement).

10 This undertaking shall not be discharged or released by time, indulgence, waiver, alteration or release of, or in respect to, the obligations of the ODP under the ODP Grant Agreement or any Supplemental Agreement or any other circumstances that might operate as a release of a guarantor at law or in equity.

11 You may make demand or give notice to us under this Bond in writing by hand or via email transmission to us as follows:

Address: [INSERT BOND PROVIDER'S ADDRESS]

Email Address: [INSERT BOND PROVIDER'S EMAIL ADDRESS]

12 References in this Bond to the ODP Grant Agreement and the Supplemental Agreement are to the ODP Grant Agreement and the Supplemental Agreement as amended from time to time and terms defined therein shall have the same meaning in this Bond.

13 Where used in this Bond, capitalised terms have the same meanings as in the ODP Grant Agreement.

14 This Bond shall be governed by and construed in accordance with the laws of England and Wales.

Executed as a deed this [INSERT DAY AND MONTH] of [INSERT YEAR].



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**SCHEDULE 1 TO THE SEASON TICKET BOND**

**Specimen Demand Notice**

To: [INSERT NAME AND ADDRESS OF BOND PROVIDER]

[INSERT DATE OF DEMAND NOTICE]

We refer to the season ticket bond issued by you on [INSERT DATE OF BOND] (the “**Season Ticket Bond**”) in connection with the agreement (the “**ODP Grant Agreement**”) entered into between Welsh Ministers (the “**Authority**”) and Keolis Amey Wales Cymru Limited (the “**ODP**”) on [INSERT ODP GRANT AGREEMENT SIGNATURE DATE].

We hereby notify you that the following Call Event (as defined in the Season Ticket Bond) occurred on [INSERT DATE OF OCCURRENCE OF CALL EVENT]: **[DRAFTING NOTE: DELETE AS APPROPRIATE]**

- [The ODP Grant Agreement **[terminated/expired]** on [INSERT DATE OF [TERMINATION/EXPIRY].
- [A railway administration order has been made in relation to the ODP pursuant to sections 60 to 62 of the Railways Act 1993.]
- [An Event of Default occurred under paragraph 1.12(a) (in relation to a Season Ticket Bond) or paragraph 1.12(c) of Schedule 10.2 (*Events of Default and Termination Events*) of the ODP Grant Agreement.]
- [The termination of any or all of the CVL Services on the occurrence of one or more Events of Default, where the Authority has issued a Partial Termination Notice]

We hereby demand immediate payment from you of [SPECIFY ALTERNATIVE AMOUNT IF NOT BOND VALUE] or the Bond Value, whichever is smaller.

Please arrange for immediate payment of the relevant amount as follows:

[INSERT ACCOUNT DETAILS TO WHICH BOND MONIES TO BE PAID INTO]

Where used in this Notice, capitalised terms have the same meanings as in the ODP Grant Agreement.

For and on behalf of **Welsh Ministers**

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**SCHEDULE 2 TO THE SEASON TICKET BOND**

**Bond Value**

| <b>Call Event occurring in Reporting<br/>Period</b> | <b>Bond Value<br/>£</b> |
|---|-------------------------|
| 1   | [INSERT AMOUNT]         |
| 2   | [INSERT AMOUNT]         |
| 3   | [INSERT AMOUNT]         |
| 4   | [INSERT AMOUNT]         |
| 5   | [INSERT AMOUNT]         |
| 6   | [INSERT AMOUNT]         |
| 7   | [INSERT AMOUNT]         |
| 8   | [INSERT AMOUNT]         |
| 9   | [INSERT AMOUNT]         |
| 10  | [INSERT AMOUNT]         |
| 11  | [INSERT AMOUNT]         |
| 12  | [INSERT AMOUNT]         |
| 13  | [INSERT AMOUNT]         |

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### **Schedule 13**

#### **Rail Industry Initiatives, Innovation Obligations and Sustainability and Ethical Procurement**

|                |   |
|----------------|---|
| Schedule 13.1: | Rail Industry Initiatives   |
|                | Appendix 1: Community Rail Partnerships                             |
|                | Appendix 2: Proposed Community Rail Partnerships                    |
|                | Appendix 3: Plan for Network Rail Co-operation                      |
| Schedule 13.2: | Innovation Obligations  |
|                | Appendix 1: Initial Innovation Strategy                             |
| Schedule 13.3: | Sustainability and Ethical Procurement                              |
|                | Part 1: Scope   |
|                | Part 1 Appendix 1: Initial Sustainable Development Plan             |
|                | Part 1 Appendix 2: Sustainable Development Strategy                 |
|                | Part 2: Economic and Ethical Procurement                            |
|                | Part 3: Social  |
|                | Part 3 Appendix 1: ODP Commitments                                  |
|                | Part 4: Environment   |
|                | Part 4 Appendix 1: Sustainability and Ethical Procurement Reporting |
|                | Part 4 Appendix 2: Environment Targets                              |
|                | Part 5: Culture   |

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### Schedule 13.1 – Rail Industry Initiatives

#### **1 BRITISH TRANSPORT POLICE**

- 1.1 The ODP shall give due consideration to any request by the British Transport Police to provide suitable accommodation (including additional or alternative accommodation) or facilities at Stations to enable the British Transport Police to effectively perform the services owed to the ODP under any contract or arrangement entered into between the British Transport Police and the ODP.
- 1.2 The ODP shall:
- (a) work with the British Transport Police to:
    - (i) reduce crime and anti-social behaviour on the railway;
    - (ii) reduce minutes lost to police-related disruption; and
    - (iii) increase passenger confidence with personal security on train and on station;
  - (b) work in partnership with the British Transport Police and conduct an annual assessment of the security and crime risk at all Stations and across the Rail Services generally;
  - (c) co-operate with the British Transport Police to provide it with access to records and/or systems maintained by the ODP which relate to lost property to enable the British Transport Police to have access to such information when dealing with items reported to them as lost; and
  - (d) consult with the British Transport Police as to its requirements in relation to records and/or systems and shall ensure that the British Transport Police has access to such records and/or systems within fifteen (15) Weekdays of the Start Date and in any event within five (5) Weekdays of the notification of a crime by the British Transport Police.
- 1.3 The ODP shall consult with the British Transport Police in relation to plans to develop any part of the land within a Property Lease which could affect staff or customers and give the British Transport Police an opportunity to advise on and/or provide comments on any opportunities for the enhancement of safety and reduction in crime.
- 1.4 The ODP shall from the Start Date (unless otherwise agreed by the Authority) spend [REDACTED] (indexed) annually (such amount to be pro-rated for any part year) in contribution to the funding of additional Police Community Support Officers, inspectors or such other resource to assist with the matters of safety and crime reduction (“**Additional BTP Funding**”).

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- 1.5 Within three (3) months of the Start Date and thereafter within two (2) months of the end of each ODP Year, the ODP shall submit to the Authority its proposed plan for the forthcoming ODP Year in respect of Additional BTP Funding, such plan shall set out:
- (a) (where applicable) Additional BTP Funding spent in the previous ODP Year;
  - (b) Additional BTP Funding to be committed in the forthcoming ODP Year including details on the allocation of such funding; and
  - (c) proposed targets to be met by the ODP in respect of the enhancement of safety and reduction of crime through the Additional BTP Funding for the forthcoming ODP Year and (where applicable) a report on whether such targets were met (with supporting evidence) in respect of the previous ODP Year.

such plan being the “**Additional BTP Funding Plan**”

- 1.6 The Additional BTP Funding Plan shall be approved by the Authority or determined through the Dispute Resolution Procedure in accordance with the Process for the Acceptance of Document Deliverables as set out in Appendix 1 to Schedule 18.3 of this ODP Grant Agreement.

## **2 SUICIDE PREVENTION**

### **2.1**

- (a) As soon as reasonably practicable after the Start Date the ODP shall, in consultation with the British Transport Police and the wider cross-industry suicide prevention group, develop a draft suicide prevention plan that fully delivers and complies with the Suicide Prevention Strategy and the Suicide Prevention Duty Holders’ Group’s 9 Point Plan and submit it to the Suicide Prevention Duty Holders Group (or such other group as may replace the Suicide Prevention Duty Holders Group from time to time) for approval.
- (b) The ODP shall make such amendments to the draft suicide prevention plan as:
  - (i) the British Transport Police shall require for the purposes of ensuring that it fully delivers and complies with the Suicide Prevention Strategy; and
  - (ii) the Suicide Prevention Duty Holders Group (or such other group as may replace the Suicide Prevention Duty Holders Group from time to time) shall require for the purposes of ensuring that it fully delivers and complies with the Suicide Prevention Duty Holders’ Group’s 9 Point Plan.
- (c) The ODP shall submit a completed suicide prevention plan (the “**Plan**”) to the Authority together with written confirmation from the British Transport Police that the Plan complies with the requirements of the Suicide Prevention Strategy and from the Suicide Prevention

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Duty Holders Group (or such other group as may replace the Suicide Prevention Duty Holders Group from time to time) that the Plan complies with the Suicide Prevention Duty Holders' Group's 9 Point Plan as soon as reasonably practicable and in any event within twelve (12) months of the Start Date.

- (d) The ODP shall review and update the Plan:
    - (i) at least once every twelve (12) months; and
    - (ii) as soon as reasonably practicable following any amendment to, or replacement of, the Suicide Prevention Strategy and/or the Suicide Prevention Duty Holders' Group's 9 Point Plan.
- 2.2 Such review and any updating shall be by reference to changing circumstances, new relevant information and any amended or replaced Suicide Prevention Strategy and/or the Suicide Prevention Duty Holders' Group's 9 Point Plan with the intention that it is kept as up to date and effective as reasonably possible. The ODP shall consult with the British Transport Police and wider cross-industry suicide prevention group (as appropriate) in relation to any such review and update of the Plan. The ODP shall deliver a copy of any revised and/or updated Plan to the Authority as soon as is reasonably practicable together with written confirmation from the British Transport Police that the Plan complies with the requirements of the Suicide Prevention Strategy and the Suicide Prevention Duty Holders' Group's 9 Point Plan and accordingly remains approved by it.
- 2.3 The ODP shall implement the Plan as it may be revised and/or updated pursuant to paragraph 2.1 in accordance with its then prevailing provisions.

### **3 COMMUNITY RAIL PARTNERSHIPS**

- 3.1 The ODP shall become a member of and shall continue to participate in the Community Rail Partnerships relevant to the Passenger Services, including but not limited to the Community Rail Partnerships listed in the table in Appendix 1 to this Schedule 13.1 (and any successor Community Rail Partnership). As part of such participation the ODP shall identify a senior ODP Services Employee whose duties shall include:
- (a) supporting the Community Rail Partnerships;
  - (b) ensuring managerial focus within the ODP's organisation to enable the ODP meet its Community Rail Partnership obligations; and
  - (c) leading on the ODP's development of community rail projects.
- 3.2 The ODP shall, at the request of the Authority:

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- (a) co-operate with the Authority, Network Rail, ACoRP, local transport authorities and/or any other person as the Authority may nominate for the purposes of developing and furthering the success of the Community Rail Partnerships;
  - (b) co-operate with, establish and/or participate in any Community Rail Partnership;
  - (c) provide technical support in respect of timetable specification for the Community Rail Partnerships, including providing appropriate journey and revenue data; and
  - (d) co-operate in the development of the Authority's initiatives to examine:
    - (i) options for a more cost effective delivery of the railway passenger services operated on any Community Rail Route (such options to include changes in working practices of the relevant ODP Services Employees, reducing rolling stock lease costs and maximising opportunities for obtaining local funding of development at relevant stations and developing new ways of maintaining and renewing relevant railway infrastructure);
    - (ii) the actual costs incurred in operating and, to the extent such information is available to the ODP, maintaining and renewing the infrastructure relevant for such Community Rail Route; and
    - (iii) where required by the Authority, co-operate with the Authority and Network Rail in the designation of Community Rail Routes.

3.3 The ODP shall use reasonable endeavours to develop and implement the Community Rail Partnership's initiatives in order to increase the use of the Passenger Services by non-users of the Passenger Services and tourists including, where appropriate, the development of and implementation of marketing strategies.

3.4 The ODP shall use reasonable endeavours to establish further Community Rail Partnerships as set out in Appendix 2 to this Schedule 13.1 or others as agreed between the ODP and the Authority.

3.5 The Authority may at any time, by proposing a Variation pursuant to paragraph 1.1(a) of Schedule 9.3 (Variations to the ODP Grant Agreement and Incentivising Beneficial Changes), require the ODP to develop and/or implement any changes to the Rail Services and/or the transfer of any Rail Services to another Train Operator in order to deliver either of the initiatives that were examined pursuant to paragraph 2.2(d).

3.6 The ODP shall become a member and shall continue to participate in the Community Rail Development Implementation Steering Group or such successor or other similar group as required by the Authority and notified to the ODP.

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- 3.7 Within three (3) months of the Start Date in respect of the first ODP Year and no later than three (3) months before the start of each subsequent ODP Year, the ODP shall provide to the Authority a report (“**Community Rail Report**”) setting out the full CRP Amount and the proposed distribution of the CRP Amount amongst the Community Rail Partnerships identified in paragraphs 2.1 and 2.2 for projects identified at date of report issue.
- 3.8 The ODP shall, from the Start Date, fund the CRP Amount of [REDACTED] (indexed) annually (such amount to be pro-rated for any part year), unless otherwise agreed by the Authority.
- 3.9 The Community Rail Report shall contain the following information:
- (a) a statement confirming that the ODP's distribution of funds to the Community Rail Partnerships takes account of the Authority's then current published Community Rail Strategy or equivalent successor strategy;
  - (b) a statement confirming that the ODP has discussed the funding of the Community Rail Partnerships with ACoRP or the Authority as relevant to the Community Rail Partnership and has taken sufficient account of ACoRP's or the Authority's views (as applicable);
  - (c) confirmation that the ODP has discussed with all Community Rail Partnerships the aims and needs of such partnerships and the funding required to achieve these;
  - (d) a table setting out the relevant portions of the CRP Amount which are to be paid to each Community Rail Partnership (on a non-indexed basis) over the next three (3) years (it being acknowledged that these amounts are likely to be different for each Community Rail Partnership);
  - (e) the activities undertaken by the ODP pursuant to paragraph 2.3 of this Schedule 13;
  - (f) Community Rail Service Level Commitments (“**CRSLC**”) to be agreed with the Authority within six (6) months of the Start Date including:
    - (i) response time to CRP enquiries;
    - (ii) sharing passenger data;
    - (iii) provision of timetable experts;
    - (iv) attendance at meetings; and
    - (v) provision of free travel to Community Rail Partnership and ACoRP representatives in connection with Community Rail Partnership related travel.



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- (g) The ODP shall review the CRSLC every three (3) years and agree with the Authority any change to the CRSLC; and
- (h) such further information as the Authority may from time to time request.
- 3.10 Within twenty-eight (28) days of the date of this Agreement, the ODP shall notify the Community Rail Partnerships of the CRP Amount which shall be distributed to such partnerships during the Rail Services Term. The ODP shall within thirty (30) days of the commencement of each ODP Year, make the relevant payments totalling the CRP Amount to each of the Community Rail Partnerships identified in the Community Rail Report for that year.
- 3.11 The ODP shall hold an annual conference for the Community Rail Partnership's officers and station adopters in conjunction with the Authority and ACoRP as appropriate to encourage the spread of best practice and to communicate plans for rail services development. The first such conference shall be held within six (6) months of the Start Date and in each ODP Year thereafter.
- 3.12 In collaboration with the relevant Community Rail Partnership and other Stakeholders the ODP shall use reasonable endeavours to identify sources of third party funding for the Community Rail Partnerships and encourage such third parties including other Train Operators running services on the Community Rail Routes to make funding commitments.

#### **4 STATION ADOPTION**

- 4.1 The ODP shall devise and implement in collaboration with the relevant Community Rail Partnership and other organisations a “**station adopters scheme**” under which members of the local community can “**adopt**” a local Station and engage in activities such as:
- (a) promotion of the Passengers Services calling at the Station;
- (b) monitoring and reporting faults, damage, anti-social and criminal behaviour;
- (c) carrying out minor Station cleaning and maintenance tasks and the development and cultivation of Station gardens;
- (d) promoting national and local culture and heritage; and
- (e) other relevant activities which will improve passenger experience at the Station.
- 4.2 The ODP shall take use all reasonable endeavours to maintain and extend the scope of existing station adoptions, promote the station adopters scheme and provide safety and other training and support to participants. The ODP shall support local communities with

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adopting a Station so that within five (5) years of the Start Date no less than ninety percent (90%) of Stations are adopted by local community groups.

4.3 The ODP shall encourage station adoption by the offer by the ODP of free travel on the Passenger Services to members of the local community involved in the station adoption scheme to the value of [REDACTED] per annum (indexed) for individual adopters and [REDACTED] per annum (indexed) for local community group adopters with a minimum of four (4) members.

4.4 In collaboration with relevant Station adopters, the relevant Community Rail Partnership, and other Stakeholders the ODP shall use reasonable endeavours to identify sources of third party funding for Station adoption and encourage such third parties to make funding commitments.

## **5 CO-OPERATION WITH LOCAL AUTHORITIES**

5.1 The ODP shall fully and effectively co-operate with any Local Authority or group thereof that seeks to promote a scheme for the provision of additional or varied Passenger Services including by attending meetings, contributing to feasibility schemes and project plans and liaising with relevant industry participants including Network Rail.

5.2 Paragraph 5.1 does not oblige the ODP to incur any cost in the actual provision of the revised Passenger Services.

## **6 STAKEHOLDER CONSULTATION**

6.1 In respect of material changes to the Services the ODP shall consult with and take into account the views of relevant community organisations and stakeholders including (without limitation):

- (a) Community Rail Partnerships;
- (b) Rail User Groups;
- (c) Community organisations;
- (d) Local and Regional Authorities;
- (e) Town, Community and Parish Councils;
- (f) Business organisations;
- (g) Trade Unions; and
- (h) Other organisations within the areas served by the ODP Services having an interest in public transport services.

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6.2 The ODP shall consult with, participate in meetings of and support by the provision of information to multi-organisational transport bodies within Wales and the areas served by the Rail Services where nominated from time to time by the Authority and including the following:

- (a) Cross Border Forum; and
- (b) North Wales and Mersey Dee Rail Task Force.

## **7 DEVELOPMENT OF INDUSTRY SYSTEMS**

The ODP shall fully and effectively co-operate with Network Rail, the Authority, ORR and all other relevant railway industry bodies and organisations in relation to the development of anything that can reasonably be considered to be a railway industry system including systems in relation to the attribution of train delay, the allocation of revenue and the collection and dissemination of industry wide information.

## **8 CO-OPERATION WITH INDUSTRY SCHEMES**

The ODP shall fully and effectively co-operate with the Authority, the relevant Local Authority and/or any other affected railway industry parties in the development and the implementation of initiatives relating to its participation in multi-modal fares schemes and Traveline including Traveline Cymru (the “**Industry Schemes**”), where such Industry Schemes relate to the Rail Services.

## **9 CO-OPERATION WITH NETWORK RAIL AND ALLIANCING**

9.1 The ODP shall use all reasonable endeavours to work with Network Rail to identify ways in which co-operation between the ODP and Network Rail can be enhanced with the following objectives:

- (a) improvement of the resilience of the Passenger Services;
- (b) reduction of costs for provision of the Passenger Services;
- (c) efficient and effective maintenance and renewal on Network Rail infrastructure utilised by the ODP in the provision of the Passenger Services;
- (d) minimisation of service disruptions;
- (e) management of possessions;
- (f) effective management of and communication concerning perturbation;
- (g) improved services for passengers;
- (h) deliver safety improvements;

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- (i) deliver improvements in operational performance of the Passenger Services (including improvements to service quality);
  - (j) develop joint initiatives and projects that deliver value for money for the railway; and
  - (k) provide better value for passengers, the Authority and any other relevant stakeholders.

9.2 The ODP shall to the extent reasonably requested by Network Rail share with Network Rail all relevant data including GPS data and data derived from geometry measurement systems, forward facing CCTV, driver advisory systems and train condition monitoring systems fitted to any rolling stock within the Train Fleet. Any such data provided to Network Rail shall be provided in such format as Network Rail may reasonably request without charge.

9.3 The ODP shall enter into agreements or other arrangements with Network Rail as set out in the “Plan for Network Rail Co-operation” as set out in Appendix 3 to this Schedule 13.1. Prior to any such agreements being entered into the ODP shall provide such agreement to the Authority for its approval and the ODP shall not enter such agreement without the Authority’s written consent.

9.4 The ODP agrees that any approval of an agreement entered into with Network Rail in accordance with paragraph 9.3 shall (without prejudice to the unfettered discretion of the Authority to refuse to consent to such agreement) be conditional upon:

- (a) the Authority being satisfied that such agreement(s) with Network Rail is / are consistent with the objectives set out in paragraph 9.1 above; and
- (b) where such agreements with Network Rail include the ODP agreeing to a fair and reasonable allocation of the gain from such agreement being passed to the Authority (whether through profit share or otherwise):
  - (i) this is consistent with the role of the Authority in funding the railway network; and
  - (ii) where relevant, the ODP entering into a deed of amendment to the ODP Grant Agreement in a form reasonably determined by the Authority.

## **10 ROUTE EFFICIENCY BENEFIT SHARE MECHANISM/REBS MECHANISM**

10.1 Where participation in a Route Efficiency Benefit Share Mechanism is made available under a Track Access Agreement, the ODP shall elect not to participate in such a mechanism for all its Routes.

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## 11 ERTMS

### 11.1 ERTMS Programme

- (a) The ODP shall co-operate in good faith with the relevant third parties involved in the implementation of the ERTMS Programme (including Network Rail and any relevant ROSCO) with the intention of ensuring the timely, efficient and cost effective development and implementation of the ERTMS Programme.
- (b) The Parties agree and acknowledge that Network Rail shall be responsible for the capital costs arising from the implementation of the infrastructure elements of the ERTMS Programme and the National Joint ROSCO Project.
- (c) The Parties agree and acknowledge that the Authority shall be responsible for the Fleet Fitment and Mobilisation Costs of implementing the ERTMS Programme and where the ODP is required to incur Fleet Fitment and Mobilisation Costs a Qualifying Change will occur.
- (d) The ODP shall prepare the ODP ERTMS Plan and submit such plan to the Authority within six (6) months of the Start Date (and keep such plan under review and provide an updated plan to the Authority on a quarterly basis).
- (e) The ODP shall ensure that the ODP ERTMS Plan is prepared so that it is consistent with the Network Rail ERTMS Implementation Plan, to the extent such plan is obtainable by the ODP. The ODP shall include within the ODP ERTMS Plan details of how the ODP will deliver those activities for which the ODP is responsible under the ERTMS Programme including:
  - (i) the ODP's team responsible for delivering the ODP's responsibilities under the ERTMS Programme, including the team's structure and how it is integrated into the overall governance of the ODP's organisation;
  - (ii) milestones for ERTMS entering into service operations;
  - (iii) milestones for and requirements for obtaining approvals, consents and certification for fitment of ERTMS equipment;
  - (iv) milestone and requirements for the installation, testing and commissioning of any relevant ERTMS equipment;
  - (v) milestones and requirements for the training of ODP Services Employees who are drivers, rolling stock maintenance staff and other relevant ODP Services Employees, and training of any other rolling stock maintenance providers;

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- (vi) any requirements in respect of the readiness of depot and stabling points; and
    - (vii) details of mobilisation activities and issues including the on-going maintenance of any ERTMS equipment.
  - (f) The ODP shall comply with the terms of the ODP ERTMS Plan, as prepared and amended in accordance with this Schedule 13.1.
  - (g) The ODP shall provide a copy of the ODP ERTMS Plan to Network Rail at the request of the Authority (acting reasonably) subject to redactions agreed by both Parties provided that in the absence of agreement between the Parties the redaction of the ODP ERTMS Plan shall be determined by the Authority (acting reasonably).
  - (h) The Authority may request from the ODP such other information in relation to the implementation of the ODP ERTMS Plan, including additional progress reports and the latest ODP ERTMS Plan (as at the date of such request), as the Authority may reasonably require to satisfy itself that that the ODP ERTMS Plan is robust and deliverable and that the ODP is co-operating with the implementation of the ERTMS Programme.
  - (i) The ODP shall as soon as reasonably practicable and in any event within five (5) Weekdays following the date of receipt by the ODP of any such request under paragraph 7.2(h), provide such information to the Authority.
  - (j) The ODP shall, upon reasonable notice, attend any meeting as the Authority may reasonably require for the purposes of discussing and explaining the ODP ERTMS Plan (including progress on the implementation of such plan).
  - (k) If at any time the Authority considers that the ODP has not complied or is not likely to comply with its obligations in this paragraph 11 it may at its discretion, and entirely without prejudice to its other rights consequent upon the relevant contravention, serve a Remedial Plan Notice pursuant to paragraph 2 (Remedies for Contraventions of the ODP Grant Agreement) of Schedule 10.1 (Procedure for remedying a Contravention of the ODP Grant Agreement).

#### **11.2 Network Change Compensation Claims**

- (a) The ODP shall use all reasonable endeavours to ensure that any Track Access Agreement that it enters into with Network Rail reflects the following principles:
  - (i) there will be no right for the ODP to claim compensation from Network Rail under Condition G.2 of the Network Code in relation to the direct or indirect consequences of any and all impacts on the Passenger Services

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due to the implementation of the ERTMS Programme except in the circumstances provided in paragraph 11.2(a)(ii) (“**Network Change Compensation Claims**”); and

- (ii) the ODP will have the right to claim under Condition G.2 of the Network Code for any additional costs (which for these purposes shall include any loss of revenue which the ODP is entitled to claim thereunder) it incurs where there is a material change to the actual implementation plans (including the relevant timescales for the delivery of such plans) adopted by Network Rail in respect of the ERTMS Programme when compared to the plans as specified in the Network Rail ERTMS Implementation Plan except where such material change is wholly attributable to the actions or inactions of the ODP.

- (b) If and to the extent that the Track Access Agreement entered into by the ODP does not reflect any of the principles set out in paragraph 11.2(a) including as a result of:

- (i) the ODP not being able to obtain the ORR's approval to any such terms; or
- (ii) the ODP not complying with its obligations under paragraph 7.3(a) and entirely without prejudice to the other rights the Authority may have under the ODP Grant Agreement consequent upon a contravention by the ODP of the provisions of paragraph 7.3(a),

then the ODP shall immediately pay to the Authority (as a debt), an amount equal to any amounts received by the ODP from Network Rail in respect of any Network Change Compensation Claim(s).

- (c) Any amounts payable by the ODP to the Authority pursuant to this paragraph 11.2 shall be paid on the next Payment Date following receipt by the ODP of any such amounts from Network Rail or where no such Payment Date exists shall be paid within thirty (30) days of receipt by the ODP of any such amounts from Network Rail.

## **12 HS2 PROJECT**

- 12.1 The ODP shall from the Start Date until the completion of the HS2 Project fully and effectively co-operate and engage constructively with all relevant parties responsible for the delivery of the HS2 Project with the intention of assisting in the timely, efficient and cost effective implementation and delivery of the HS2 Project in a manner which provides the best overall solution for the network. To the extent that the HS2 Project leads to the ODP having rights under railway industry procedures including Network Change or Station Change the ODP shall not act in a way designed to directly or indirectly prevent, prejudice or frustrate the delivery of the HS2 Project and the ODP shall not unreasonably

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raise any objection under any railway industry procedure including Network Change or Station Change. It is acknowledged that the ODP may make reasonable objections with a view to mitigating the impact of the HS2 Project and their implementation on passengers and the Rail Services, while recognising the need for the HS2 Project to be able to be undertaken in a reasonable manner.

- 12.2 The ODP shall provide such information in respect of the HS2 Project as the Authority may reasonably request from time to time.



**Appendix 1 to Schedule 13.1 - Community Rail Partnerships**

|    | <b>Community Rail Partnership</b>      | <b>Rail Line/Services forming Community Rail Partnership</b> | <b>Status at Start Date</b> |
|----|--|--|-----------------------------|
| 1. | Borderlands Line Rail Partnership      | Wrexham to Bidston line                                      | Existing                    |
| 2. | Cambrian Rail Partnership              | Cambrian Line  | Existing                    |
| 3. | Conwy Valley Rail Initiative           | Conwy Valley Line  | Existing                    |
| 4. | Heart of Wales Development Company     | Heart of Wales Line  | Existing                    |
| 5. | Chester to Shrewsbury Rail Partnership | Chester to Shrewsbury  | Existing                    |

**Appendix 2 to Schedule 13.1 – Proposed Community Rail Partnerships**

|    | <b>Community Rail Partnership</b> | <b>Rail Line/Services forming Community Rail Partnership</b> | <b>Status at Start Date</b> |
|----|-----------------------------------|--|-----------------------------|
| 1. | Valley Lines – T/A/M              | Treherbert / Aberdare / Merthyr Lines                        | October 2019                |
| 2. | Valley Lines Cardiff/Rhymney –    | Cardiff and Rhymney Lines                                    | October 2019                |
| 3. | North Wales Coast                 | North Wales Coast  | October 2020                |
| 4. | South East Wales                  | Ebbw Vale and STAG lines (part of Maesteg to Cheltenham Spa) | October 2020                |
| 5. | Crewe to Hereford                 | Crewe to Hereford  | Oct 2021                    |
| 6. | South West Wales                  | Swansea and West Wales Lines                                 | Oct 2021                    |
| 7. | South West Cardiff                | Maesteg to Bridgend / Vale of Glamorgan                      | Oct 2022                    |

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**Appendix 3 to Schedule 13.1 – Plan for Network Rail Co-operation**

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## Schedule 13.2 - Innovation Obligations

### **1 INNOVATION STRATEGY**

- 1.1 The ODP shall at all times comply with the Initial Innovation Strategy or the Innovation Strategy (as applicable).
- 1.2 The ODP shall provide reasonable assistance to, and shall co-operate with, the Authority with regard to the Authority implementing the Welsh Government Innovation Strategy including implementation of the following programmes:
- (a) SMART Innovation;
  - (b) SMART Expertise; and
  - (c) SMART Cymru.
- 1.3 Within six (6) months of the Start Date and by the first anniversary of the Start Date and every one (1) year thereafter, the ODP shall submit to the Authority for approval (such approval not to be unreasonably withheld) a revised Initial Innovation Strategy or Innovation Strategy (as applicable) updated in accordance with the requirements of paragraph 1.4.
- 1.4 Each Innovation Strategy submitted in accordance with this paragraph 1 shall set out:
- (a) how the ODP has developed, and proposes to develop during the Rail Services Term, its innovation capability, including leadership, employees, technology, systems and processes, and how progress is measured;
  - (b) how the ODP has utilised, and proposes to utilise during the Rail Services Term, Smart techniques for capturing ideas from employees, passengers, the community, industry partners and the supply chain;
  - (c) how, during the Rail services Term, the ODP will partner and collaborate with other organisations (including but not limited to Innovate UK and the Rail Safety Standards Board)) and seek third party funding (where appropriate) for a minimum of one (1) new project each ODP Year that will bring innovative and viable technologies (including traction power technologies), processes, business models and products to the rail market that meet the requirements of one (1) or more key Capabilities in the Rail Technical Strategy Capability Delivery Plan (or successor documents), that are viable for implementation during the Rail Services Term and that offer better value to the Authority, improved services for passengers and/or other benefits;
  - (d) a roadmap for innovation in the ODP Services identifying anticipated changes within the following five (5) years.

- 
- (e) a list of innovations for the ODP services categorised according to their maturity, proximity to implementation, demonstration, proof of concept and other steps proposed to move them towards full implementation;
  - (f) where and how existing UK wide innovation programmes such as Innovate UK Accelerating Innovation in Rail will be leveraged to achieve cost effective delivery; and
  - (g) Identification of specific innovations that the ODP plans to introduce to the ODP Services with specific timescales.

## **2 SMALL BUSINESS RESEARCH INITIATIVE**

- 2.1 In delivering the ODP Services, the ODP shall fully and effectively co-operate with, the Authority to ensure innovation through the supply chain supporting initiatives such as the Small Business Research Initiative (SBRI).

## **3 OPEN INNOVATION PROGRAMME**

- 3.1 The ODP shall fully and effectively co-operate with, the Authority and Innovate UK Rail Innovation Programme to establish open and collaborative innovative approaches to innovation that creates opportunities for innovative Welsh SMEs & academia and enables new ways to accelerate the delivery of innovation to the rail market.
- 3.2 The ODP shall fully and effectively co-operate with, the Authority and Innovate UK to utilise the Expertise Wales website to launch challenges and collaborative project opportunities.
- 3.3 The ODP shall fully and effectively co-operate with, the Authority and Innovate UK to consider the 'Catalogue' of Innovations from Wales and similar "catalogues" produced by RSSB and Innovate UK, and agree a clear plan and timeline for innovation demonstrators as relevant that focus upon improving the rail passenger experience during the Rail Services Term.
- 3.4 As part of its Innovation Strategy, the ODP shall agree with the Authority a joint plan for stimulating technology and innovation within Wales (or areas served by the Rail Services) and shall commit to granting twenty five thousand pounds (£25,000) each ODP Year of the ODP Grant Agreement for this purpose, such sum to be committed through (as agreed between the Parties) either the issuing of prizes or the ODP entering into sub-contracts for technology innovation.
- 3.5 The ODP shall detail how it will deliver the requirements of this paragraph 3 within its Innovation Strategy and each update to its Innovation Strategy.

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**Appendix 1 to Schedule 13.2**

Initial Innovation Strategy

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## **Schedule 13.3 - Sustainability and Ethical Procurement**

### **Part 1 to Schedule 13.3 - Scope**

#### **1 NOT USED**

#### **2 SUSTAINABILITY – GENERAL OBLIGATIONS**

2.1 In carrying out the ODP Services the ODP shall:

- (a) have regard to the objectives and requirements of the Future Generations Act;
- (b) fully and effectively co-operate with, the Authority to allow the Authority to comply with the Future Generations Act;
- (c) comply with the ODP's obligations as set out in this Schedule 13.3 (Sustainability and Ethical Procurement); and
- (d) comply with the Welsh Government's Code of Practice for Ethical Employment in Supply Chains.

#### **3 SUSTAINABLE DEVELOPMENT MANAGER**

3.1 The ODP shall appoint a Sustainable Development Manager to promote, manage and assure the ODP's delivery of the programme of sustainable development, ethical procurement and innovation envisaged by this Schedule 13.3 (Sustainability and Ethical Procurement).

3.2 The Sustainable Development Manager shall be identified in the schedule of Key Personnel to be provided to the Authority by the ODP in accordance with paragraph 3.1 of Schedule 11.2 of this ODP Grant Agreement.

#### **4 SUSTAINABILITY AND OTHER RELATED INITIATIVES**

4.1 Initial Sustainable Development Plan

The ODP's initial plan for the delivery of the requirements set out in this Schedule 13.3 are set out in Appendix 1 to Part 1 of this Schedule 13.3.

- (a) By no later than six (6) months following the Start Date, the ODP shall consult with Stakeholders as agreed between the Authority and the ODP (or, in the absence of agreement, such Stakeholders as the Authority shall reasonably determine) on the Initial Sustainable Development Plan in order to finalise:
  - (i) the key priority sustainable development areas specified in the Initial Sustainable Development Plan; and

- 
- (ii) the outcomes associated with such key priority sustainable development areas in the Initial Sustainable Development Plan.
  - (b) The ODP shall (if appropriate) revise the Initial Sustainable Development Plan to take into account the outcome of such consultation and the ODP shall propose a final version of the Initial Sustainable Development Plan which shall be agreed or determined by no later than twelve (12) months after the Start Date for the purposes of this ODP Grant Agreement following the Process for the Acceptance of Document Deliverables specified in Appendix 1 to Schedule 18.3. Such agreed plan shall be the Sustainable Development Plan for the purposes of this ODP Grant Agreement.

#### 4.2 Sustainable Development Strategy

- (a) By no later than six (6) months following the Start Date, the ODP shall consult with the Authority, the RSSB and such other Stakeholders as agreed between the Authority and the ODP (or, in the absence of agreement, such Stakeholders as the Authority shall determine) in order to agree:
  - (i) key priority sustainable development areas;
  - (ii) the outcomes associated with such key priority and sustainable development areas;
  - (iii) the annual traction carbon trajectory (CO<sub>2</sub>E/vehicle km) for the duration of the Rail Services Term; and
  - (iv) target levels according to the Rail Safety and Standards Board Sustainable Development Self-Assessment Framework that will be reached by the end of the third (3rd), sixth (6th), ninth (9th), twelfth (12<sup>th</sup>) and fifteenth (15<sup>th</sup>) ODP Years.
- (b) The ODP shall develop the Sustainable Development Strategy to reflect such consultation and the ODP shall propose and agree a final version of the Sustainable Development Strategy with the Authority by no later than twelve (12) months after the Start Date. Such agreed strategy shall be the “**Sustainable Development Strategy**” for the purposes of the ODP Grant Agreement, provided that in the absence of agreement between the Parties of the Sustainable Development Strategy shall be the strategy determined by the Authority (acting reasonably).
- (c) The ODP shall at all times comply with the Sustainable Development Strategy. Any amendments to the Sustainable Development Strategy must be agreed by the Authority.
- (d) By no later than three (3) months following the end of the third (3rd), sixth (6th), ninth (9th), twelfth (12<sup>th</sup>) and fifteenth (15<sup>th</sup>) ODP Years, the ODP shall, at its own cost, procure

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a suitably qualified independent body (such independent body to be appointed only with the prior written approval of the Authority) to undertake an assessment of performance against the requirements of this Schedule 13.3, Welsh Government legislation and policy and the Rail Safety and Standards Board's Sustainable Development Self-Assessment Framework, and produce a report in respect of such assessment, such assessment to review performance against the targets set out in the Sustainable Development Strategy. Without prejudice to such periodic assessments, the Authority further reserves the right to appoint an independent body, at the cost of the Authority, to undertake such additional assessments as the Authority may require from time to time during the ODP Grant Agreement Term.

- (e) The ODP shall submit a copy of the assessment report produced by the independent body pursuant to paragraph 4.2(b) to the Authority within six (6) months following the end of the third (3<sup>rd</sup>), sixth (6<sup>th</sup>), ninth (9<sup>th</sup>), twelfth (12<sup>th</sup>) and fifteenth (15<sup>th</sup>) ODP Years.
- (f) Where the assessment report identifies a significant shortfall against the targets set out in the Sustainable Development Strategy, the ODP shall as soon as reasonably practicable and in any event within two (2) months, produce an improvement plan which, in the reasonable opinion of the Authority, is capable of achieving the targets set out within the Sustainable Development Strategy.
- (g) The ODP shall use all reasonable endeavours to implement the improvement plan referred to in paragraph 4.2(f) and improve its performance against the targets set out in the Sustainable Development Strategy against the agreed timeframes for performance as set out in the revised Sustainable Development Plan.
- (h) The ODP shall within three (3) months following the end of each ODP Year provide to the Authority a report showing:
  - (i) progress against the outcomes in key priority sustainable development areas;
  - (ii) progress on development of ODP Services Employees to ensure they have the skills and knowledge required to deliver a sustainable franchise; and
  - (iii) all proposed revisions to the Sustainable Development Strategy (such revisions to include those revisions reflecting feedback and advice from Stakeholders and which have been consulted on with RSSB).
- (i) On request by the Authority, the ODP shall publish (in such form as the Authority may reasonably determine):
  - (i) all or any part of its Sustainable Development Strategy; and/or



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(ii) all or any of the information described in paragraphs 4.2(h)(i) to (h)(iii).

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**Appendix 1 to Part 1 Schedule 13.3 – Initial Sustainable Development Plan**

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**Appendix 2 to Part 1 Schedule 13.3 – Sustainable Development Strategy**

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## **Part 2 to Schedule 13.3 – Economic and Ethical Procurement**

### **1 LOCAL SUPPLIERS, SMALL AND MEDIUM SIZE ENTERPRISES (SMES) AND THIRD SECTOR ENTERPRISES (TSES)**

- 1.1 In delivering the ODP Services, the ODP shall provide opportunities for:
- (a) Local Suppliers;
  - (b) SMEs; and
  - (c) TSEs in Wales and outside Wales in locations served by the Rail Services.
- 1.2 In providing the ODP Services where there are tender opportunities for sub-contractors to the ODP, the ODP shall work collaboratively with Business Wales and other relevant Welsh Government agencies and/or departments to hold regular events and workshops (involving where appropriate its sub-contractors) and advertise, where reasonably practicable, all new tender opportunities in respect of the provision of the ODP Services through Sell2Wales to help ensure resulting business opportunities are maximised with Local Suppliers, SMEs and TSEs.
- 1.3 The ODP shall at all times keep accurate and complete records of its use of and interaction with Local Suppliers, SMEs and TSEs in delivering the ODP Services.
- 1.4 By no later than 31 January in each ODP Year (and within one (1) month of the end of the ODP Grant Agreement Term) the ODP shall deliver to the Authority a breakdown of the number of Local Suppliers, SMEs and TSEs used by the ODP in providing the ODP Services during the calendar year (or part thereof) which ended on the immediately preceding 31 December or at the end of the ODP Grant Agreement Term (as applicable).

### **2 USE OF ETHICAL RESOURCES**

- 2.1 The ODP shall ensure that the materials used by it and its sub-contractors comply with the requirements of “BES 6001 Responsible Sourcing of Construction Products”.
- 2.2 The ODP shall make all reasonable endeavours to ensure that the following resources are not used in the delivery of the ODP Services:
- (a) ‘dumped’ steel which is steel provided at a cost that is subsidised by a foreign government;
  - (b) timber without Forest Stewardship Council (FSC) certification; and
  - (c) any other materials or resources the use of which would cause material damage to the reputation of the Authority through lack of ethical resourcing.

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2.3 In delivering the ODP Services, the ODP shall fully and effectively co-operate with the Authority with regard to the Authority's commitment to:

- (a) responsible and sustainable sourcing of raw materials part finished and finished products; and
- (b) Wales' status as a Fair Trade Nation and commitment to International Labour Organisation standards.

### **3 ETHICAL EMPLOYMENT**

3.1 The ODP shall sign up to and comply with the Welsh Government's Code of Practice for Ethical Employment in Supply Chains.

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## Part 3 to Schedule 13.3 - Social

### 1 SKILLS GAP ANALYSIS

- 1.1 The ODP shall fully and effectively co-operate with the Authority to identify the skills needed to deliver the ODP Services including through the ODP's supply chain which shall include (but not be limited to) the Authority's development of its own initial skills gap analysis.
- 1.2 The ODP shall provide to the Authority, within six (6) months of the date the ODP Grant Agreement, an Initial Skills Plan and Skills Gap Analysis setting out the:
- (a) skills required to deliver the ODP Services during the ODP Grant Agreement Term;
  - (b) skills available to the ODP within its current workforce and its wider supply chain; and
  - (c) skills gap which is required to be covered by training or recruitment.

### 2 SKILLS DEVELOPMENT

- 2.1 The ODP shall fully and effectively co-operate with the Authority in order to establish (where not currently in existence) and support:
- (a) training facilities related to the skills required to deliver the ODP Services as notified by the Authority to the ODP. This may involve working with, amongst others, Qualifications Wales, Network Rail, local colleges and universities, private providers, trade bodies and the Construction Wales Innovation Centre; and
  - (b) rail training centres in Wales.
- 2.2 The ODP shall submit a draft Skills and Leadership Strategy to the Authority by a date no later than six (6) months of the Start Date.
- 2.3 The draft Skills and Leadership Strategy shall:
- (a) set out the comprehensive, robust and deliverable strategy of the ODP for providing an appropriately skilled and trained workforce of ODP Services Employees based on the skills gap analysis and the delivery of the Apprenticeships specified in the Table 2 of Appendix 1 to this Schedule;
  - (b) set out the steps that the ODP intends to take to further the Authority's ambition to increase the number of women and BAME candidates;
  - (c) take into account the likely short, medium and long term requirements of the ODP and any Successor Operators including in the context of expected change to the ODP Services (including as a result of technological change) and the age profile of the ODP Services Employees; and

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- (d) include a management and leadership maturity model, to help target and improve investment in developing leadership and management.

2.4 The ODP shall provide a Skills and Leadership Strategy for agreement with the Authority within six (6) months of the Start Date according to the process set out in Appendix 1 to Schedule 18.3 – Process for the Acceptance of Document Deliverables, and the ODP shall implement it in accordance with its terms from the date that it is agreed.

2.5 The ODP shall:

- (a) on or about the date of expiry of each period of two (2) ODP Years (the first such period commencing on the Start Date) undertake and complete a review of its Skills and Leadership Strategy every second (2<sup>nd</sup>) and fourth (4<sup>th</sup>) ODP Year; and
- (b) provide the Authority with any proposed revisions to the Skills and Leadership Strategy and the Apprenticeships specified in the Table 2 of Appendix 1 of this Schedule 13.3 arising out of such review by no later than the end of each such ODP Year.

2.6 The aim of such review shall be to update the Skills and Leadership Strategy by reference to an updated skills gap analysis and to ensure that the Skills and Leadership Strategy continues to effectively achieve its purposes to the greatest extent reasonably practicable. The review shall check compliance with the targets contained in the Apprenticeships specified in the Table 2 of Appendix 1 of this Schedule 13.3 and, if they have not been met, shall propose robust and effective strategies and methodologies to be contained in the revised Skills and Leadership Strategy to ensure delivery in future. The review may propose amendments to the Apprenticeships specified in the Table 2 of Appendix 1 to this Schedule that are consistent with any proposed revisions to the Skills and Leadership Strategy. Any revisions to the Skills and Leadership Strategy (including the Apprenticeships specified in this Schedule 13.3 Table 2 of Appendix 1) shall require the consent of the Authority (such consent not to be unreasonably withheld or delayed). The ODP shall implement any revised Skills and Leadership Strategy in accordance with its terms from the date that the Authority consents to the relevant revisions.

### **3 TAKING WALES FORWARD**

3.1 The ODP shall fully and effectively co-operate with, the Authority and relevant third parties to support the Authority's objectives to implement the Welsh Government's "Taking Wales Forward" programme or any equivalent subsequent programme.

### **4 ODP SERVICES EMPLOYEES**

4.1 The ODP shall, in carrying out the ODP Services during the ODP Grant Agreement Term, deliver:

- 
- (a) a minimum number of Full Time Equivalent Jobs during the ODP Grant Agreement Term as enumerated for each ODP Year in Table 1 within Appendix 1 to Part 3 of this Schedule 13.3;
- (b) a minimum number of Full Time Equivalent Jobs to be provided for Apprentices and Graduate Schemes as enumerated for each ODP Year in Table 2 within Appendix 1 to Part 3 of this Schedule 13.3; and
- (c) a minimum number of Person-weeks of employment to be made available as work experience or work placements as enumerated for each ODP Year in Table 3 within Appendix 1 to Part 3 of this Schedule 13.3.
- 4.2 The requirements in paragraphs 4.1(b) and 4.1(c) shall be subject to a pro rata reduction in relation to the first ODP Year and in relation to the final ODP Year.
- 4.3 In relation to each Reporting Period the ODP shall record:
- (a) the qualifications and competency of each ODP Services Employee;
- (b) the full date of birth of each ODP Services Employee;
- (c) the gender of each ODP Services Employee (except in relation to those who do not permit disclosure);
- (d) each ODP Services Employee who is of BAME origin (except in relation to those who do not permit disclosure);
- (e) the number of new Apprenticeships created in that Reporting Period and the postcode of the location at which each ODP Services Employee who enters into an Apprenticeship is principally employed at (such location being the relevant train crew depot of train crew); and
- (f) the first half of each ODP Services Employee's residential postcode.
- 4.4 Such information shall be provided to the Authority with the quarterly financial information to be provided pursuant to paragraph 9.3 of Schedule 11.2 (Management Information) or at such other time as the Authority may specify.

## **5 APPRENTICES AND GRADUATE SCHEMES**

- 5.1 The ODP shall remunerate Apprentices providing the ODP Services in accordance with the ODP's terms and conditions of employment, such remuneration to be in accordance with the Apprentice Rate.
- 5.2 The ODP shall assist each Apprentice providing the ODP Services to achieve relevant Qualifications Wales qualifications or equivalent.



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- 5.3 The ODP shall meet the Specification of Apprenticeship Standards for Wales.
- 5.4 The ODP shall keep accurate and complete records of the training and apprenticeships offered by the ODP and its UK based supply chain in delivering the ODP Services.
- 5.5 By no later than 31 January in each year (and within one (1) month of the end of the ODP Grant Agreement Term) the ODP shall deliver to the Authority a breakdown of the number of training and apprenticeships offered by the ODP and its supply chain in providing the ODP Services during the calendar year (or part thereof) which ended on the immediately preceding 31 December or at the end of the ODP Grant Agreement Term (as applicable).

## **6 LIVING WAGE**

- 6.1 The ODP shall pay the Living Wage to its employees provided that this requirement does not apply to Apprentices.
- 6.2 The ODP shall procure, by no later than the date which is twelve (12) months from the Start Date, that its sub-contractors shall pay (in respect of provision of the ODP Services such requirement to be included in the sub-contract) the Living Wage to their respective employees provided that this requirement does not apply to Apprentices.

## **7 VOLUNTEERING**

- 7.1 In recognition of the value of volunteering to the community the ODP shall support its staff in voluntary community work and relevant schemes that encourage, support and reward volunteering in the communities that are served by the Rail Services.

## **8 ODP STAFF SAFETY AND WELLBEING**

- 8.1 The ODP shall support and improve the health and well-being of ODP Services Employees, including by:
- (a) monitoring, managing and improving occupational health risks, level of ODP Services Employee engagement and morale and general wellbeing of the workforce; and
  - (b) supporting the management of individual health risk.
- 8.2 The ODP shall use all reasonable endeavours to safeguard the security of ODP Services Employees and shall seek to reduce the incidence and fear of crime and anti-social behaviour against ODP Services Employees at Stations and on trains, including by:
- (a) implementing systems, including staff training, to control and minimise crime and security incidents; and
  - (b) assessing and reviewing regularly the security and crime risk to ODP Services Employees and other rail employees across the Rail Services.

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## **9 NO COMPULSORY REDUNDANCY**

- 9.1 The ODP shall not, and shall procure that no subcontractor shall, for the duration of the Rail Services Term, terminate the employment of any Protected Employee by reason of redundancy within the meaning of section 139 of the Employment Rights Act 1996 (without the prior written consent of the Authority), provided that this clause shall apply only to any such termination by reason of compulsory redundancy and shall not apply in respect of any termination of employment by the ODP or a subcontractor by reason of voluntary redundancy, by way of voluntary exit or voluntary severance, for any other reason or otherwise.

## **10 PONTYPRIDD HEADQUARTERS**

- 10.1 Subject to Clause 10.2 2, the ODP shall co-locate its headquarters with the Authority at a site in Pontypridd ("**Pontypridd HQ**") from a date and at a site notified by the Authority to the ODP, provided always that the Authority shall give no less than six (6) months written notice to the ODP of the date of commencement of this obligation setting out such date and exact location of the Pontypridd HQ.
- 10.2 The ODP shall ensure that no less than [REDACTED] ODP Services Employees connected to delivery of the ODP Services are permanently based at the Pontypridd HQ and a satellite headquarters in North Wales.
- 10.3 The Parties acknowledge that the planned completion date for Pontypridd HQ is 30 September 2020 and the Authority shall provide reasonable notice to the ODP in the event of any delay to such date.

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**Appendix 1 to Part 3 of Schedule 13.3 – ODP Commitments**

Table 1 – Minimum Number of Full Time Equivalent Jobs (including Apprentices and Graduate Schemes):

| ODP Year | Number of Full Time Equivalent Jobs |
|----------|-------------------------------------|
| 1        | [REDACTED]                          |
| 2        | [REDACTED]                          |
| 3        | [REDACTED]                          |
| 4        | [REDACTED]                          |
| 5        | [REDACTED]                          |
| 6        | [REDACTED]                          |
| 7        | [REDACTED]                          |
| 8        | [REDACTED]                          |
| 9        | [REDACTED]                          |
| 10       | [REDACTED]                          |
| 11       | [REDACTED]                          |
| 12       | [REDACTED]                          |
| 13       | [REDACTED]                          |
| 14       | [REDACTED]                          |
| 15       | [REDACTED]                          |
| 16       | [REDACTED]                          |
| 17       | [REDACTED]                          |

Table 2 – Minimum Number of Full Time Equivalent Jobs (Apprenticeships and Graduate Schemes):

| ODP Year | Number of Full Time Equivalent Jobs<br>(Apprenticeships and *Graduate Schemes) |
|----------|--|
| 1        | 26.4   |
| 2        | 51.5   |
| 3        | 79.9   |
| 4        | 75   |
| 5        | 75.6   |
| 6        | 98.9   |
| 7        | 75   |
| 8        | 75   |
| 9        | 75   |
| 10       | 75   |
| 11       | 75   |
| 12       | 75   |
| 13       | 75   |
| 14       | 75   |
| 15       | 75   |
| 16       | 75   |
| 17       | 75   |

Table 3 – Person-weeks of employment for work experience or work placements:

| ODP Year | Number of Person-weeks |
|----------|------------------------|
| 1        | 74                     |
| 2        | 124                    |
| 3        | 174                    |
| 4        | 34                     |
| 5        | 34                     |
| 6        | 34                     |
| 7        | 74                     |
| 8        | 124                    |
| 9        | 174                    |
| 10       | 34                     |
| 11       | 34                     |
| 12       | 34                     |
| 13       | 74                     |
| 14       | 124                    |
| 15       | 174                    |
| 16       | 34                     |
| 17       | 34                     |

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## **Part 4 to Schedule 13.3 - Environment**

### **1 ENVIRONMENTAL MANAGEMENT AND ACCREDITATION**

- 1.1 The ODP shall, no later than 16 February 2020, attain and, at all times thereafter, maintain certification pursuant to ISO14001:2015 and ISO50001:2011 or equivalent standards.
- 1.2 The ODP shall provide the Authority with copies of the certificated audit reports and a copy of their ISO50001 Energy Review within four (4) weeks of their certification and each subsequent recertification during the ODP Grant Agreement Term.

### **2 ENVIRONMENT - GENERAL OBLIGATIONS**

- 2.1 In delivering the ODP Services, the ODP shall assist the Authority in meeting its obligations under the following:
- (a) the Environment (Wales) Act 2016;
  - (b) the "Towards Zero Waste Strategy";
  - (c) the Construction Demolition Sector Plan; and
  - (d) the recommendations of the Green Growth Wales Paper.

### **3 NATURAL ENVIRONMENT AND BIODIVERSITY**

- 3.1 In delivering the ODP Services, the ODP shall use its best endeavours not to do anything that would have an adverse effect on the integrity of any Natura 2000 site.
- 3.2 In delivering the ODP Services, the ODP shall have due regard to conserving and enhancing biodiversity and in particular, have due regard to:
- (a) the United Nations Environmental Programme Convention on Biological Diversity of 1992;
  - (b) any list of living organisms and types of habitat published by the National Assembly for Wales under section 42 of the Natural Environment and Rural Communities Act 2006; and
  - (c) and conserving biodiversity includes, in relation to a living organism or type of habitat, restoring or enhancing a population or habitat.
- 3.3 In delivering the ODP Services, the ODP shall take all reasonable precautions to reduce or prevent pollution of air, soils and water, and meet the costs of fully rectifying any pollution caused by the ODP Services in accordance with the Polluter Pays Principle.

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- 3.4 The ODP shall implement an Environmental Management Plan no later than the Start Date that details the major environmental risks associated with the ODP Services and the measures adopted to mitigate such risks. The Environmental Management Plan must include details of the identities, roles, responsibilities and experience of those responsible for managing and monitoring the environmental performance of the Services.

#### **4 WASTE MANAGEMENT AND RECYCLING**

- 4.1 In delivering the ODP Services, the ODP shall, and shall use reasonable endeavours to procure that its sub-contractors shall, use reasonable endeavours to minimise the impact of waste through implementing a plan that deals with waste in the following descending order of priority:

- (a) prevention of waste;
- (b) minimisation of waste;
- (c) re-use of waste;
- (d) recycling of waste; and
- (e) disposal of waste,

being the “**Waste Management Plan**”

- 4.2 Details of the ODP’s Waste Management Plan including the separate collection requirements as set out in Part IV of the Environment (Wales) Act 2016 shall be proposed by the ODP and agreed or determined no later than six (6) months after the Start Date, following the Process for the Acceptance of Document Deliverables specified in Appendix 1 to Schedule 18.3.

- 4.3 In delivering the ODP Services, the ODP shall implement measures across the ODP Services which seek to minimise water usage. By the end of the second (2nd) ODP Year, the ODP shall install automatic meter readings (AMR) for all water meters, where practicable. The ODP shall determine a baseline of water consumption by the end of the third (3rd) ODP Year, such baseline to be agreed with the Authority. The ODP shall develop a target to reduce water consumption against the agreed baseline referred to above by the end of the fourth (4th) ODP Year, such target to be agreed with the Authority.

- 4.4 In delivering the ODP Services, the ODP shall:

- (a) use all reasonable endeavours to use recycled aggregates and recycled paint; and
- (b) ensure that by the second ODP Year and for each ODP Year thereafter a minimum of fifty percent (50%) of all paper used in the delivery of the ODP Services shall be recycled paper.

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## 5 CARBON REDUCTION

### 5.1 The ODP shall:

- (a) adopt a low carbon impact strategy to help minimise the greenhouse gas emissions arising from provision of the ODP Services in accordance with the principles and goals set out in the Welsh Government publication 'Climate Change Strategy for Wales';
- (b) set Carbon Reduction Targets to comply with the Authority's requirements as set out in Part 2 Appendix 2 of this Schedule and those of ERDF (where relevant) in respect of this ODP Grant Agreement and shall comply with such targets as set out in Part 2 Appendix 2 of this Schedule;
- (c) calculate on the Start Date and in each ODP Year thereafter the estimated carbon emissions that will be produced in carrying out the ODP Services and, as soon as reasonably practicable after such calculation, provide to the Authority each annual estimate and a breakdown of how the same was calculated;
- (d) implement a low carbon impact strategy in relation to traffic and traffic miles to help monitor and minimise the movements to and from sites for the transporting of the workforce and materials;
- (e) where reasonably practicable, deliver and operate the CVL Rail Services, Infrastructure Works and Infrastructure Services with taking into account the Authority's objective of zero carbonisation; and
- (f) implement measures to minimise energy usage in relation to the ODP Services.

## 6 ACTIVE TRAVEL

- 6.1 In carrying out the ODP Services, and in addition to other requirements concerning the ODP Services and Rail Services Assets, the ODP shall have due regard to the desirability of acting in a manner which facilitates end to end journeys that involve travel by all transport modes (including cycles).
- 6.2 The ODP shall have regard to and provide support to the Authority in undertaking responsibilities under the Active Travel (Wales) Act including to support an increase in walking and cycling. The ODP shall attend meetings and participate in the Authority's Active Travel Board and the Authority's Integration Alliance Board ("**IAB**").
- 6.3 The ODP shall use all reasonable endeavours in co-operation with Local Authorities and others as relevant to:
  - (a) enable safe walking access to stations from neighbouring communities;
  - (b) enable safe cycle access to stations; and



- (c) promote travelling by rail to destinations for leisure cycling and walking;
- (d) promote rail as part of active travel; and
- (e) co-operate with Local Authorities' active travel planning.

6.4 Within six (6) months of the date of the ODP Grant Agreement the ODP shall develop and provide an Active Travel and Cycling Policy and Strategy following the Process for the Acceptance of Document Deliverables and following such agreement or determination shall make the strategy and policy available to passengers.

6.5 The ODP shall implement the Active Travel and Cycling Policy and Strategy and shall set out in the Sustainable Development Plan how such implementation will be achieved.

6.6 The ODP shall review and revise the Active Travel and Cycling Policy and Strategy every two (2) years following the Process for the Acceptance of Document Deliverables and following such review and agreement or determination shall make the strategy and policy available to passengers.

**7 OBLIGATION TO PROCURE ENERGY FROM RENEWABLE SOURCES**

7.1 Where the procurement of electricity is within the ODP's control and electricity from Renewable Resources is available for procurement, the ODP shall procure, and shall ensure that its agents or subcontractors procure, the percentage of electricity that is used in the performance of the ODP Services is procured from Renewable Sources as defined by s.32Z2(2) of the Electricity Act 1989 for each ODP Year shall be as set out in the table below. Such percentages shall include any microgeneration of electricity from renewable sources undertaken by the ODP at Stations or other premises and which the Authority wishes to see increased as set out in the Green Growth Wales Paper.

| <b>ODP Year</b> | <b>Percentage of electricity procured from Renewable Sources</b> |
|-----------------|--|
| 1               | 100  |
| 2               | 100  |
| 3               | 100  |
| 4               | 100  |
| 5               | 100  |
| 6               | 100  |

|    |     |
|----|-----|
| 7  | 100 |
| 8  | 100 |
| 9  | 100 |
| 10 | 100 |
| 11 | 100 |
| 12 | 100 |
| 13 | 100 |
| 14 | 100 |
| 15 | 100 |
| 16 | 100 |
| 17 | 100 |

## 8 SUSTAINABLE CONSTRUCTION

8.1 For Infrastructure Services and ODP Infrastructure Works and other works required as part of the ODP Grant Agreement (including building refurbishment or fit out):

- (a) which are either being funded by the ODP or in respect of which the ODP has design responsibility; and
- (b) in respect of which the total capital cost exceeds one hundred thousand pounds (£100,000) (indexed by the Retail Prices Index in the same way as variable costs are indexed in Appendix 1 (Annual Rail Services Payments) to Schedule 8.1 (Rail Services Payments)),

the ODP shall use reasonable endeavours to achieve at least an “**excellent**” rating from an accredited assessor using BREEAM or CEEQUAL (or a rating equivalent to “**excellent**” in an equivalent recognised standard such as the SKA Rating Standard as appropriate) at both the design stage and the post-construction stage unless the Authority (acting reasonably) agrees that the relevant project is not of a suitable scale or type to be so assessed and the ODP shall provide to the Authority such information in relation to any construction project as the Authority may reasonably request.

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## **9 REPORTING**

- 9.1 The ODP shall record the sustainability benefits it achieves in providing the ODP Services and shall provide a report to the Authority on delivery of such benefits on an annual basis with the first such report being provided on the anniversary of the Start Date. The report shall cover as a minimum the matters included within Appendix 1 to Part 2 of this Schedule 13.3 and shall record progress to achievement of the targets as set out in Appendix 2 to Part 2 of this Schedule 13.3.

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**Appendix 1 to Part 4 of Schedule 13.3 - Sustainability and Ethical Procurement reporting**

These reports shall be made following the Welsh Government's Community Benefits Measurement tool and must relate specifically to the relevant ODP Year or Reporting Period.

**1 LOCAL SUPPLIERS, SMALL AND MEDIUM SIZE ENTERPRISES (SMES) AND THIRD SECTOR ENTERPRISES (TSES)**

| <b>Description</b>  | <b>Unit of Measure</b> | <b>ODP to Report</b>                            | <b>Frequency of Reporting</b> |
|---|------------------------|---|-------------------------------|
| The amount of the contract that relates to goods, services, and overheads                               | £                      | Total £ contract value for the Reporting Period | Annual                        |
| The amount spent with businesses based in Wales and the borders providing goods, services, or overheads | £                      | Total £ amount for the Reporting Period         | Annual                        |
| The amount spent with small and medium-size enterprises (SMEs) based in Wales and the borders           | £                      | Total £ amount spent for the Reporting Period   | Annual                        |
| The amount spent with Third Sector Enterprises (TSEs) based in Wales and the borders during the period. | £                      | Total £ amount for the Reporting Period         | Annual                        |
| The percentage (%) of sub-contractors paid within 30 days during the period.                            | %                      | % paid within 30 days for the Reporting Period  | Annual                        |

## 2 SKILLS, DISADVANTAGED GROUPS AND TRAINING

### Skills

| Description  | Unit of Measure | ODP to Report  | Frequency of Reporting |
|--|-----------------|--|------------------------|
| The amount of the contract that relates to staff and labour  | £               | Total £ value for the Reporting Period                                   | Annual                 |
| The amount paid to people living in Wales and the borders who are/were employed as a result of this contract   | £               | Total £ paid for the Reporting Period                                    | Annual                 |
| Has this contract allowed the contractor or subcontractors to retain staff who would have been made redundant without the work provided by this contract?                          | Yes/No          | Yes/No for the Reporting Period  | Annual                 |
| Staff, living in Wales and the borders retained as a result of this contract.  | Number          | Number of people retained for the Reporting Period                       | Annual                 |
| People living in Wales and the borders, who were previously unemployed but are now employed by the contractor and/or subcontractors during the period as a result of this contract | Number          | Number of previously unemployed people employed for the Reporting Period | Annual                 |

### Disadvantaged groups – specific information required per individual

|   |
|---|
| Was this individual <u>UNEMPLOYED</u> for up to 6 months immediately prior to being taken on?   |
| Would this individual have been considered a <u>DISADVANTAGED</u> worker prior to being taken on for this contract? i.e. unemployed for 6 months or more but less than 24 months or falls into one of the categories in the definition of disadvantaged workers |
| Would this individual have been considered a <u>SEVERELY DISADVANTAGED</u> worker prior to being taken on for this contract? i.e. unemployed for 24 months or more  |
| Is this individual considered to be a <u>DISABLED</u> worker?   |
| Was this individual <u>recruited through the LIFT programme</u> ?   |
| Will the contractor and/or subcontractors continue to employ this individual after the current contract?  |

### Training

| Description  | Unit of Measure | ODP to Report   | Frequency of Reporting |
|--|-----------------|---|------------------------|
| Apprenticeships started by people living in Wales and the borders as part of this contract                       | Number          | Number of apprenticeships started for the Reporting Period  | Annual                 |
| Apprenticeship weeks completed by people living in Wales and the borders as part of this contract                | Number          | Number of apprenticeship weeks completed for the Reporting Period                                   | Annual                 |
| Traineeships by people living in Wales and the borders were started and completed as part of this contract       | Number          | Number of traineeships started and completed for the Reporting Period                               | Annual                 |
| Work experience / internship opportunities for people living in Wales and the borders were started and completed | Number          | Number of work experience / internship opportunities started and completed for the Reporting Period | Annual                 |

|  |        |   |        |
|--|--------|---|--------|
| Work experience / internship weeks in total completed as part of this contract   | Number | Total number of work experience / internship weeks started and completed for the Reporting Period | Annual |
| Graduate placements for people living in Wales and the borders started and completed as part of this contract                            | Number | Number of graduate placements started and completed for the Reporting Period                      | Annual |
| Graduate placement weeks in total completed as part of this contract   | Number | Total number of graduate placements started and completed for the Reporting Period                | Annual |
| Work trial weeks in total completed as part of this contract   | Number | Number of work trial weeks for the Reporting Period   | Annual |
| Voluntary work opportunities completed as part of this contract  | Number | Number of voluntary work opportunities for the Reporting Period                                   | Annual |
| Voluntary work weeks completed as part of this contract  | Number | Number of voluntary work weeks completed for the Reporting Period                                 | Annual |
| Accredited training opportunities of any level completed as part of this contract<br><br>NB do not include Apprenticeship training here, | Number | Number of accredited training opportunities completed for the Reporting Period                    | Annual |
| Accredited training weeks of any level completed as part of this contract  | Number | Number of accredited training weeks completed for the Reporting Period                            | Annual |

|  |        |  |        |
|--|--------|--|--------|
|  |        |  |        |
| Non-accredited training opportunities completed as part of this contract | Number | Number of non-accredited training opportunities completed for the Reporting Period | Annual |
| Non-accredited training weeks provided as part of this contract          | Number | Number of non-accredited training weeks provided for the Reporting Period          | Annual |

### 3 Environment

| Description   | Unit of Measure | ODP to Report                            | Frequency of Reporting |
|---|-----------------|--|------------------------|
| Traction fuel / energy EC4T                                       | kWh             | Breakdown per distinct fleet – metered   | 4-week period          |
| Traction fuel / energy EC4T                                       | kWh             | Breakdown per distinct fleet - unmetered | 4-week period          |
| Traction fuel / energy Gas-oil                                    | Litre           | Breakdown per distinct fleet             | 4-week period          |
| Non-Traction fuel / energy  | kWh             | Breakdown per distinct fleet – metered   | 4-week period          |
| Non-Traction fuel / energy  | kWh             | Breakdown per distinct fleet - unmetered | 4-week period          |
| Non-Traction fuel / energy Gas-oil                                | Litre           | Breakdown per distinct fleet             | 4-week period          |
| Carbon (CO <sub>2</sub> e) Scope 1 emissions (direct emissions)   | Tonnes / km     | Total tonnes and kg per passenger km     | Annual                 |
| Carbon (CO <sub>2</sub> e) Scope 2 emissions (indirect emissions) | Tonnes / km     | Total tonnes and kg per passenger km     | Annual                 |



|  |   |  |                |
|--|---|--|----------------|
| Carbon (CO2e) Scope 3 emissions (other indirect emissions)                         | Tonnes / km   | Total tonnes and kg per passenger km     | Annual         |
| Embodied (CO2e) carbon in new projects   | Tonnes  | Total tonnes per project                 | End of project |
| Energy and fuel from renewable sources   | Kilowatt hours (kWh)  | % of total fuel                          | Annual         |
| Energy and fuel from Welsh renewable sources                                       | Kilowatt hours (kWh)  | % of total fuel                          | Annual         |
| Waste generated  | Tonnes  | Tonnes                                   | Annual         |
| Tonnes of waste diverted from landfill for re-use or recycling or waste to energy. | Tonnes  | Tonnes                                   | Annual         |
| Tonnes of hazardous waste disposed of.   | Tonnes  | Tonnes                                   | Annual         |
| Tonnes of waste going to landfill.   | Tonnes  | Tonnes                                   | Annual         |
| Mains water consumption  | Cubic metres  | Total cubic metres                       | Annual         |
| Water recycling initiatives  | n/a   | Narrative                                | Annual         |
| Noise Pollution  | Total number of noise complaints received                                   | Directly or forwarded from other sources | Annual         |
| Air Pollution  | Total oxides of nitrogen emitted per distinct fleet                         | Tonnes                                   | Annual         |
| Air Pollution  | Total oxides of nitrogen avoided through passenger use of the Rail Services | Tonnes                                   | Annual         |

|                                     |                             |                             |                          |
|-------------------------------------|-----------------------------|-----------------------------|--------------------------|
|                                     |                             |                             |                          |
| Enforcement/information notices     | Number received             | Number received             | Immediately upon receipt |
| Environmental fines or prosecutions | Number received             | Number received             | Immediately upon receipt |
| Environmental incidents             | Reported through EMS        | Reported through EMS        | Annual                   |
| Environmental training records      | % personnel briefed/trained | % personnel briefed/trained | Annual                   |

#### 4 Cultural

| Description                          | Unit of Measure | ODP to Report                               | Frequency of Reporting |
|--------------------------------------|-----------------|---|------------------------|
| Welsh speaking customer facing staff | Number          | Number of staff for the Reporting Period    | Annual                 |
| Stations adopted                     | Number          | Number of stations for the Reporting Period | Annual                 |

#### 5 ETHICAL

| Description  | Unit of Measure | ODP to Report                       | Frequency of Reporting |
|--|-----------------|-------------------------------------|------------------------|
| Directly employed staff being paid no less than the Living Wage            | %               | % of staff for the Reporting Period | Annual                 |
| Staff employed in the supply chain being paid no less than the Living Wage | %               | % of staff for the Reporting Period | Annual                 |

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| Supply chain partners who have signed up to the Welsh Government's Code of Practice for Ethical Employment in Supply Chains | Number | Number of partners for the Reporting Period | Annual |
|---|--------|---|--------|
|---|--------|---|--------|

**Appendix 2 to Part 4 of Schedule 13.3 - Environment Targets**

**Environment Targets**

| Description  | Target  | ODP to Report   | Granularity   | Notes   |
|--|---|---|---------------|---|
| <p>Carbon (CO2e)</p> <p>Scope 1 emissions (direct emissions) - CVL Traction (diesel)</p> | <p>Minimum one hundred percent (100%) reduction by the end of ODP Year 5 sustained to the end of the Term of the ODP Grant Agreement.</p> | <p>a) Kg per unit of Passenger Carrying Capacity kilometre (Target )</p> <p>b) kg per passenger km (no target)</p> <p>c) Total Tonnes (no target)</p> | <p>Annual</p> | <p>1) 5 yearly review of baseline with target review agreed acting reasonably.</p> <p>2) Baseline of 2015/16 ATW CO2e</p> <p>3) Measurement mechanism to be agreed within 6 months of signature including any reasonable adjustment to ensure figures are like-for-like (e.g. PRM and air conditioning are factored in).</p> <p>4) Increase in services will increase carbon emissions.</p> |

|        |                        |                             |        |  |
|--------|------------------------|-----------------------------|--------|--|
|        |                        |                             |        | <p>Per unit of Passenger Carrying Capacity kilometre target normalises train services.</p> <p>5) The baseline is 16.7g CO2e per passenger carrying capacity km. Baseline to be confirmed as part of Preliminary Design and Discovery.</p> <p>6) The target may be changed by agreement of the parties acting reasonably to reflect a material change to the provision of the CVL Services.</p> |
| Carbon | Minimum thirty percent | a) Kg per unit of Passenger | Annual | 1) 5 yearly review of  |

|  |  |   |   |
|--|--|---|---|
| <p>(CO2e) Scope 1 emissions (direct emissions) - WCB Traction (diesel)</p> | <p>(30%) reduction by the end of ODP Year 5 sustained to the end of the Term of the ODP Grant Agreement.</p> | <p>Seating Capacity kilometre (Target)</p> <p>b) kg per passenger km (no target)</p> <p>c) Total Tonnes (no target)</p> | <p>baseline with target review agreed acting reasonably.</p> <p>2) Baseline of 2015/16 ATW CO2e</p> <p>3) Measurement mechanism to be agreed within 6 months of signature including any reasonable adjustment to ensure figures are like-for-like (e.g. PRM and air conditioning are factored in)</p> <p>4) Increase in services will increase carbon emissions. Per unit of Passenger Seating Capacity kilometre target normalises</p> |
|--|--|---|---|

|  |  |                                     |                           |  |
|--|--|-------------------------------------|---------------------------|--|
|  |  |                                     |                           | <p>train services.</p> <p>5) The baseline is 23.9g CO2e per passenger carrying capacity km. Baseline to be confirmed with 3 months of Start Date.</p> <p>6) The target may be changed by agreement of the parties acting reasonably to reflect a material change to the provision of the WCB Services.</p> |
| Carbon (CO2e) Scope 2 emissions (indirect emissions) – electricity procured by the ODP                   | 100% reduction by the end of ODP Year 5 sustained to the end of the Term of the ODP Grant Agreement. | Total tonnes                        | Annual                    |  |
| Carbon (CO2e) Scope 3 emissions - Embodied carbon in any Associated Project (as defined in Appendix 1 of | Target to be fixed as part of as part of Preliminary Design and                                      | Total tonnes per individual project | End of individual project | 1) Target to be fixed as part of design and discovery milestone to match solution.   |

|  |   |   |        |   |
|--|---|---|--------|---|
| Schedule 3B to the ODP Grant Agreement)  | Discovery Phase.<br>Aim is zero net carbon.   |   |        | 2) Aim is zero net carbon. ODP will need to evidence where this cannot be achieved as part of design and discovery milestone. |
| Carbon (CO2e) Scope 3 emissions – WCB operations   | N/A   | a) Total tonnes carbon saved through modal shift<br>b) Total tonnes carbon saved through rail service assuming passenger journeys made by rail would have been made by road | Annual | Derived from passenger KM and modal shift modelling   |
| Carbon (CO2e) Scope 3 emissions – CVL Operations   | N/A   | a) Total tonnes carbon saved through modal shift<br>b) Total tonnes carbon saved through rail service assuming passenger journeys made by rail would have been made by road | Annual | Derived from passenger KM and modal shift modelling   |
| Energy and fuel from renewable sources from Wales or areas served by the Rail Services                             | Minimum fifty percent (50%)   | Kilowatt hours (kWh), therms, litres<br>% of total electricity<br>% of other fuels and energy sources   | Annual |   |
| Waste diverted from landfill for re-use, recycling or other recovery applications including waste to heat / energy | Minimum ninety five percent (95%) by the end of year 2 sustained to the end of the Term of the ODP Grant Agreement. | % of total waste  | Annual |   |



|                   |   |   |        |   |
|-------------------|---|---|--------|---|
| Waste to landfill | Maximum five percent (5%) by the end of year 2 sustained to the end of the Term of the ODP Grant Agreement  | % of total waste  | Annual | 1) Excluding hazardous waste.   |
| Air Pollution     | Minimum one hundred percent (100%) reduction for CVL and eighty percent (80%) reduction for WCB by the end of ODP Year 5 sustained to the end of the Term of the ODP Grant Agreement. | a) kg NOx per passenger km (target)<br>b) Total Tonnes  | Annual | 1) 5 yearly review of baseline with target review agreed acting reasonably.<br>2) Increase in services will increase NOx emissions. Per passenger km target normalises train services.<br>3) Baseline to be required prior to Start Date.<br>4) The target may be changed by agreement of the parties acting reasonably to reflect a material change to the provision of the Rail Services or material change to the predicted Passenger Demand because of exogenous factors during the Rail Services Term. |
| Air Pollution     | NA  | a) Total tonnes NOx saved through modal shift<br>b) Total tonnes NOx saved through rail service | Annual | Derived from passenger KM and modal shift modelling   |

|                                     |                                |   |        |  |
|-------------------------------------|--------------------------------|---|--------|--|
|                                     |                                | assuming passenger journeys made by rail would have been made by road |        |  |
| Enforcement/information notices     | Zero                           | Number received   | Annual |  |
| Environmental fines or prosecutions | Zero                           | Number received   | Annual |  |
| Environmental incidents             | Zero                           | Reported through EMS  | Annual |  |
| Environmental training records      | 100% personnel briefed/trained | % personnel briefed/trained   | Annual |  |

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## Part 5 of Schedule 13.3 - Culture

### 1 CULTURE – GENERAL REQUIREMENTS

- 1.1 The Authority wishes to see the language and culture of Wales promoted throughout the ODP Services. The ODP shall engage with the Arts Council of Wales, Cadw and other third parties, to promote through and within the ODP Services the arts, culture, heritage and language of Wales and the arts, culture and heritage of other areas served by the Rail Services.
- 1.2 The ODP shall support the use of the Welsh language in the ODP Services and shall have regard to:
- (a) the official status which the Welsh language has in Wales;
  - (b) the duties to use Welsh which are (or may be) imposed by law, and the rights which arise from the enforceability of those duties;
  - (c) the principle that, in Wales, the Welsh language should be treated no less favourably than the English language; and
  - (d) the principle that persons in Wales should be able to live their lives through the medium of the Welsh language if they choose to do so.

### 2 WELSH LANGUAGE – WRITTEN COMMUNICATIONS

- 2.1 All written communications by the ODP to the public and passengers within Wales other than those covered by the provisions of paragraph 2.2 shall be provided in both English and Welsh including amongst others and without exclusion:
- (a) train and station notices including PIS, CIS and other electronic communications;
  - (b) timetables;
  - (c) ticketing machines;
  - (d) terms and conditions;
  - (e) marketing and communications materials;
  - (f) documents made available to the public;
  - (g) web site content and navigation;
  - (h) social media announcements and communications presence (including Twitter and Facebook); and
  - (i) other relevant written communications from the ODP.

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2.2 Communications to individual members of the public or passengers shall be provided in English and Welsh except where the individual has selected either Welsh or English as their preferred language of communication. Where such preference has been received and recorded by the ODP, communications may be provided in the selected language of English or Welsh. Where a communication has been received in English or Welsh the ODP may reply in that language only, subject to the response including an invitation for the individual members of the public or passengers to identify a language preference for future communications.

### **3 WELSH LANGUAGE - VERBAL COMMUNICATIONS**

3.1 All public verbal one to many communications by the ODP to the public and passengers within Wales shall be provided in both English and Welsh including amongst others and without exclusion:

- (a) advertisements;
- (b) audio and audio-visual communications;
- (c) station announcements including PIS, CIS and other electronic systems (excluding those provided by individual station staff who do not speak Welsh);
- (d) on-train announcements (excluding those provided by individual on-train staff who do not speak Welsh);
- (e) automated announcements; and
- (f) other relevant verbal communications from the ODP.

### **4 WELSH LANGUAGE CUSTOMER COMMUNICATIONS**

4.1 The ODP shall offer Welsh and English language communications where requested for:

- (a) train enquiries (including providing a direct number by which services can be accessed); and
- (b) social media contact responses.

4.2 Where Welsh speaking staff are available Welsh language communications shall be provided at Station receptions and ticket offices. Where Welsh speaking staff are not available, remote staff with Welsh language skills shall be available by phone or other remote presence technologies.

### **5 WELSH LANGUAGE TRAINING**

5.1 The ODP shall offer Welsh language training to ODP Services Employees.

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5.2 By no later than 30 September 2021, the ODP shall train at least thirty percent (30%) of its customer facing ODP Services Employees in the Welsh language and shall maintain such training through the remainder of the ODP Grant Agreement Term.

**6 WELSH LANGUAGE IMPLEMENTATION PLAN**

6.1 Within twelve (12) months of the Start Date or other period as the Authority may agree for specific items, the ODP shall make any alterations, upgrades or replacements to any equipment (including hardware and software) necessary to fulfilling its obligations pursuant to paragraphs 1-5 of Part 5 of this Schedule 13.3.

6.2 From the Start Date, the ODP shall provide to the Authority a plan detailing the implementation of such alterations, upgrades or replacements in the form set out in Appendix 1 to part 5 of this Schedule 13.3.

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**Appendix 1 to Part 5 of Schedule 13.3 - Welsh Language Implementation Plan**

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**Schedule 14**

**Preservation of Assets**

|                |  |
|----------------|--|
| Schedule 14.1: | Maintenance of ODP Services                      |
| Schedule 14.2: | Maintenance of Operating Assets                  |
| Schedule 14.3: | Key Contracts                                    |
|                | Appendix 1: List of Key Contracts                |
| Schedule 14.4: | Designation of Rail Services Assets              |
|                | Appendix 1: List of Primary Rail Services Assets |
| Schedule 14.5: | Dealing with Rail Services Assets                |
| Schedule 14.6: | Residual Value Mechanism                         |
|                | Appendix 1: List of the RV Assets                |
| Schedule 14.7: | Incentivising Long-Term Investment               |

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**Schedule 14.1 - Maintenance of ODP Services**

**1 MAINTENANCE AS A GOING CONCERN**

- 1.1 The ODP shall maintain and manage the business of providing the ODP Services so that, to the greatest extent possible and practicable:
- (a) the ODP is able to perform its obligations under the ODP Grant Agreement; and
  - (b) a Successor Operator would be able to take over the business of providing the ODP Services immediately at any time.
- 1.2 The ODP's obligation under paragraph 1.1 shall include an obligation to ensure that any computer and information technology systems of the ODP shared in whole or in part with Affiliates or third parties can be operated by a Successor Operator as a stand alone system without continued reliance on such Affiliates or other third parties immediately from the date of termination of the ODP Grant Agreement without any reduction in functionality or any increase in maintenance or support costs to the Successor Operator (this obligation being without prejudice to any requirement for the ODP to obtain consent to such arrangements relating to sharing computer and information technology systems from the Authority).
- 1.3 The ODP shall use all reasonable endeavours to ensure that such Successor Operator would have immediate access to all ODP Services Employees and Primary Rail Services Assets for such purpose.
- 1.4 The ODP shall maintain and manage the business of providing the ODP Services on the basis that such business will be transferred, in the manner contemplated under the ODP Grant Agreement , as a going concern at the end of the ODP Grant Agreement Term to, and continued immediately thereafter by, a Successor Operator.
- 1.5 The ODP shall use all reasonable endeavours to ensure that an appropriate number of employees (having sufficient skills, qualifications and experience) will transfer by operation of Law to any Successor Operator following the expiry of the ODP Grant Agreement Term and in so doing shall plan for the recruitment and training of ODP Services Employees to continue up until the end of the ODP Grant Agreement Term.
- 1.6 The ODP shall comply with all reasonable requirements of the Authority to obtain or maintain the property and rights that a Successor Operator would require, or that it would be convenient for it to have, on the basis that the same will transfer by operation of Law to any Successor Operator following the expiry of the Rail Services Term.
- 1.7 The Authority and the ODP acknowledge and agree that the rights and liabilities of the Parties in respect of managing and maintaining the CVL Assets following the CVL Asset



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Transfer Date shall be as set out in Schedule 3B (Infrastructure Services and Infrastructure Works) and the CVL Asset Lease.

## **2 POST ODP SERVICES TIMETABLES**

2.1 Both prior to and following the selection of a Successor Operator (whether a franchisee or otherwise and whether or not subject to the satisfaction of any conditions), the ODP shall:

- (a) co-operate with, where a Successor Operator has been appointed, that Successor Operator, or where not, the Authority; and
- (b) take such steps as may reasonably be requested by the Authority,

so as to ensure the continuity of, and orderly handover of control over of the ODP Services.

2.2 The steps that the Authority may reasonably request the ODP to take pursuant to paragraph 2.1 include, without limitation:

- (a) participating in any timetable development process that takes place during the Rail Services Term, but which relates to any timetable period applying wholly or partly after the expiry of the Rail Services Term ("**Successor Operator Timetable**"), including bidding for and securing any Successor Operator Timetable, whether or not:
  - (i) the Successor Operator has been identified; or
  - (ii) there is in place an Access Agreement relating to the period over which that Successor Operator Timetable is intended to be operated;
- (b) using reasonable endeavours to seek amendments to and/or extensions of Access Agreements which can be transferred to the Successor Operator on expiry of the Rail Services Term;
- (c) assisting the Authority or the Successor Operator (as the case may be) in the preparation and negotiation of any new Access Agreement relating to any Successor Operator Timetable; and/or
- (d) entering into that Access Agreement in order to secure the relevant priority bidding rights required by the Successor Operator to operate that Successor Operator Timetable, provided that the ODP shall not be required to enter into any such Access Agreement unless the Authority has first provided to it confirmation in writing that the Authority will include that Access Agreement in any Transfer Scheme pursuant to paragraph 3.1 of Schedule 15.4 (Provisions Applying on and after Termination).

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## **Schedule 14.2 - Maintenance of Operating Assets**

### **1 OPERATING ASSETS**

- 1.1 The ODP shall maintain, protect and preserve the Operating Assets in good standing or good working order, subject to fair wear and tear.
- 1.2 The ODP shall carry out its obligations under paragraph 1.1 so that the Operating Assets may be transferred at the end of the ODP Grant Agreement Term to a Successor Operator and used by such Successor Operator in the provision or operation of similar services to the Rail Services.
- 1.3 Where any Operating Asset is lost, destroyed or otherwise beyond repair, the ODP shall replace the Operating Asset with property, rights or liabilities in modern equivalent form to the Operating Asset to be replaced. The ODP shall at all times maintain an appropriate volume of Spares, and/or an appropriate level of access to Spares from a third party, to enable it to perform its obligations under the ODP Grant Agreement.
- 1.4 The Authority may at any time require the ODP to provide to the Authority a schedule specifying the condition of any asset or class of assets that the Authority specifies for this purpose. Such schedule shall cover such aspects of asset condition as the Authority may reasonably require. If the Parties are unable to agree the content of such schedule of condition, either Party may refer the dispute for resolution in accordance with the Dispute Resolution Rules. Until such dispute is resolved, the ODP shall comply with the Authority's requirements in respect of such schedule of condition.

### **2 SPARES**

- 2.1 The obligation of the ODP to maintain, preserve and protect the Operating Assets under this Schedule 14.2 shall, in respect of Spares, include the obligation to replace any Spare which has been designated as a Primary Rail Services Asset, which subsequent to its designation ceases to be part of the stock of Spares available to the ODP for use in the provision of the Rail Services, with an equivalent Spare of equal or better quality than the Spare so replaced.

### **3 BRAND LICENCE AND BRANDING**

#### **3.1 Brand Licences and Brand Guidelines**

The ODP shall comply with its obligations under each of the Brand Licences and shall comply with the Brand Guidelines.

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### 3.2 Branding

Subject to any applicable obligations or restrictions on the ODP (including the terms of the Rolling Stock Leases) and to the Brand Guidelines, the ODP may apply registered or unregistered trade marks (including company names, livery and other distinctive get-up) to any assets owned or used by it in the operation and provision of the Rail Services.

- (a) Subject to paragraphs 3.2(c) and (g), the ODP may:
- (i) in respect of unregistered Marks, provide or procure the provision of an irrevocable undertaking to any relevant Successor Operator to the effect that neither it nor the owner of the Marks will enforce such rights as it may have or may in the future have in respect of such Marks against such Successor Operator and its successors; and
  - (ii) in respect of registered Marks, grant or procure the grant of an irrevocable licence to use such Marks to such Successor Operator and its successors.
- (b) Any such licence or undertaking under paragraph 3.2(a) shall be in such form as the Authority shall reasonably require except that the terms of any such licence and, to the extent appropriate, any such undertaking shall accord with the provisions of paragraph 8.3 of Schedule 15.4 (Provisions Applying on and after Termination).
- (c) Subject to paragraph 3.2(g), to the extent that:
- (i) the ODP does not provide a relevant undertaking or licence in accordance with paragraph 3.2(a);
  - (ii) the Authority considers the relevant Marks to be so distinctive or otherwise such that a Successor Operator could not reasonably be asked to use the relevant assets to which the Marks are applied; or
  - (iii) the ODP has not otherwise removed or covered such Marks in such a way as may be reasonably acceptable to the Authority prior to the expiry of the Rail Services Term,

then the ODP shall pay to the relevant Successor Operator such amount as may be agreed between the ODP and such Successor Operator, as being the reasonable cost (including any Value Added Tax for which credit is not available under sections 25 and 26 of the Value Added Tax Act 1994) of covering such Marks or otherwise removing all indications of or reference to the Marks in a manner reasonably acceptable to the Authority. Such amount shall not in any event exceed the cost to the Successor Operator of replacing such Marks with

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its own. If the ODP and the relevant Successor Operator fail to agree such cost within twenty eight (28) days of the expiry of the Rail Services Term, the ODP shall submit such dispute for resolution in accordance with such dispute resolution procedures as the Authority may require.

- (d) The amount to be paid to a Successor Operator under paragraph 3.2(c) may include the reasonable cost of:
- (i) removing or covering Marks from the exterior of any rolling stock vehicle;
  - (ii) removing or covering interior indications of the Marks including upholstery and carpets;
  - (iii) replacing or covering all station or other signs including bill boards; and
  - (iv) otherwise ensuring that such removal, covering or replacement is effected with all reasonable care and in such manner that the relevant assets may reasonably continue to be used by a Successor Operator in the provision of the Rail Services.
- (e) The ODP shall, in addition to making a payment under paragraph 3.2(c) grant or procure the grant of a licence or undertaking complying with paragraphs 3.2(a) and (b) except that such licence shall only be for such period as may be agreed between the ODP and the Successor Operator as being reasonably required by the Successor Operator to remove the Marks from all relevant assets without causing excessive disruption to the operation of services similar to the Rail Services provided by such Successor Operator. If such period cannot be agreed, the ODP shall submit such dispute for resolution in accordance with such dispute resolution procedures as the Authority may require.
- (f) The Authority shall determine at or around the end of the ODP Grant Agreement Term, and after consultation with the ODP, the maximum liability of the ODP under paragraph 3.2(c) and the maximum length of licence or undertaking under paragraph 3.2(e).
- (g) The provisions of paragraphs 3.2(a) to 3.2(f) shall not apply to the extent that the relevant asset is not to be used by a Successor Operator in the provision of services similar to the Rail Services. The Authority shall notify the ODP as soon as the Authority becomes aware of whether or not any such asset is to be so used.

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## **Schedule 14.3 - Key Contracts**

### **1 KEY CONTRACTS**

1.1 This Schedule sets out the rights of the Authority to:

- (a) designate certain contracts or categories of contracts as Key Contracts where the Authority considers that such contracts or categories of contract are necessary for the purposes of securing continuity of the ODP Services by a Successor Operator on expiry of the Rail Services Term; and
- (b) in accordance with paragraph 5, require the ODP to procure that a counterparty to a Key Contract enters into a Direct Agreement with the Authority.

This Schedule 14.3 shall apply to all contracts designated as Key Contracts from time to time.

1.2

- (a) The Key Contracts as at the date of the ODP Grant Agreement are set out in Appendix 1 (List of Key Contracts) to this Schedule 14.3.
- (b) The ODP shall enter into any and all Key Contracts which are necessary for the ODP Grant Agreement to continue in accordance with clause 5 (Duration of the ODP Grant Agreement).
- (c) Where at any time after the date of this ODP Grant Agreement the ODP proposes to enter into any agreement, contract, licence or other arrangement which falls within one of the categories listed in Appendix 1 (List of Key Contracts) to this Schedule 14.3 the ODP shall:
  - (i) inform the Authority from time to time of any such agreement, contract, licence or other arrangement which it may be intending to enter into; and
  - (ii) comply with the provisions of paragraph 5.1 in respect of any such agreement, contract, licence or other arrangement.

1.3 Without prejudice to the provisions of paragraphs 2, 3 and 4 of this Schedule 14.3, Appendix 1 (List of Key Contracts) to this Schedule 14.3 shall be amended as considered necessary from time to time to take account of any:

- (a) designation by the Authority of any actual or prospective agreement, contract, licence or other arrangement or any category of agreement, contract, licence or other arrangement, to which or under which the ODP is (or may become) a party or a beneficiary pursuant to paragraph 2 of this Schedule 14.3; or

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- (b) de-designation by the Authority of any Key Contract pursuant to paragraph 3 of this Schedule 14.3; or
  - (c) re-designation by the Authority pursuant to paragraph 4 of this Schedule 14.3.

## **2 DESIGNATION OF KEY CONTRACTS**

- 2.1 Where the Authority considers that it is reasonably necessary for securing the continued provision of the Rail Services or the provision of services similar to the Rail Services by a Successor Operator in accordance with the ODP Grant Agreement, the Authority may make a designation pursuant to paragraph 2.2.
- 2.2 The Authority may at any time, by serving notice on the ODP, designate as a Key Contract:
  - (a) any actual or prospective agreement, contract, licence or other arrangement; and/or
  - (b) any category of agreement, contract, licence or other arrangement, to which or under which the ODP is (or may become) a party or a beneficiary,with effect from the date specified in such notice.
- 2.3 Key Contracts may include any agreement, contract, licence or other arrangement whether in written, oral or other form, whether formal or informal and whether with an Affiliate of the ODP or any other person and may include any arrangement for the storage of assets (including electronic systems or Computer Systems) or accommodation of employees.

## **3 DE-DESIGNATION OF KEY CONTRACTS**

- 3.1 The Authority may at any time, by serving a notice on the ODP, de-designate any Key Contract from continuing to be a Key Contract with effect from the date specified in such notice.

## **4 RE-DESIGNATION OF KEY CONTRACTS**

- 4.1 The Authority may at any time, by serving notice on the ODP, re-designate as a Key Contract anything which has ceased to be designated as a Key Contract in accordance with paragraph 3 with effect from the date specified in such notice.

## **5 DIRECT AGREEMENTS**

- 5.1 Unless the Authority otherwise agrees, or unless directed to do so by the ORR, the ODP, InfraCo and/or OpCo shall not enter into any prospective Key Contract unless the counterparty to that prospective Key Contract has, prior to the Start Date, entered into a Direct Agreement with the Authority in respect of that prospective Key Contract, providing

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on a basis acceptable to the Authority, amongst other things, for the continued provision of the Passenger Services and/or the continued operation of the Stations and Depots in the event of:

- (i) breach, termination or expiry of such Key Contract;
- (ii) termination or expiry of the ODP Grant Agreement ; or
- (iii) the making of a railway administration order in respect of the ODP, InfraCo and/or OpCo.

5.2 Where the Authority designates or re-designates as a Key Contract:

- (a) any agreement, contract, licence or other arrangement to which the ODP, InfraCo and/or OpCo is already a party; or
- (b) any category of agreement, contract, licence or other arrangement where the ODP, InfraCo and/or OpCo is already a party to a contract, licence or other arrangement which, by virtue of the Authority's designation or re-designation, is classified in such category,

the ODP shall use all reasonable endeavours to assist the Authority in entering into a Direct Agreement as envisaged by paragraph 5.1.

5.3 The ODP shall pay to the Authority an amount equal to any losses, costs, liabilities, charges or expenses which may be suffered or incurred by the Authority under the provisions of any Direct Agreement and which may be notified to the ODP as a result of, or in connection with:

- (a) any breach by the ODP, InfraCo and/or OpCo of the terms of the Key Contract to which the relevant Direct Agreement relates; or
- (b) any unsuccessful claim being brought by the ODP, InfraCo and/or OpCo against the counterparty of any such Key Contract in relation to the termination of such Key Contract.

## **6 EMERGENCIES**

6.1 Where any emergency may arise in connection with the provision and operation of the Rail Services, the ODP:

- (a) may enter into on a short-term basis such contracts, licences or other arrangements as it considers necessary or appropriate to deal with the emergency;
- (b) need not procure that the relevant counterparty enters into a Direct Agreement in respect of such contracts or use all reasonable endeavours to assist the Authority in entering into the same;

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- (c) shall promptly inform the Authority of any such emergency and contracts, licences or other arrangements which it proposes to enter into; and
  - (d) shall take such action in relation to such emergency, contracts, licences or other arrangements as the Authority may request.

## **7 NO AMENDMENT**

- 7.1 The ODP, InfraCo and OpCo shall not without the prior consent of the Authority (which shall not be unreasonably withheld) vary, or purport to vary, the terms or conditions of any Key Contract at any time, unless directed to do so by the ORR.

## **8 REPLACEMENT OF KEY CONTRACTS**

- 8.1 The ODP, InfraCo and OpCo shall, prior to the scheduled expiry date of any Key Contract (or, if earlier, such other date on which it is reasonably likely that such Key Contract will terminate), take all reasonable steps to enter into an appropriate replacement contract (whether with the counterparty to the existing Key Contract or not) and shall comply with the reasonable instructions of the Authority in relation to such replacement contract.

## **9 TERMINATION OF KEY CONTRACTS**

- 9.1 The ODP, InfraCo and OpCo shall, to the extent so requested by the Authority, exercise its right to terminate any Key Contract on the Expiry Date.

## **10 DIRECT AGREEMENT WITH THE SECRETARY OF STATE FOR TRANSPORT.**

- 10.1 Where the ODP provides services and/or assets to a Train Operator pursuant to a Key Contract, the ODP acknowledges and agrees that this ODP Grant Agreement shall operate as a direct agreement in respect of those services and/or assets for the benefit of the Secretary of State for Transport.



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### **Appendix 1 to Schedule 14.3 - List of Key Contracts**

Subject to any de-designations by the Authority under paragraph 3 of Schedule 14.3 (Key Contracts), the following items have as at the date of the ODP Grant Agreement been agreed between the Parties to be Key Contracts:

- 1 any Access Agreement to which the ODP is a party other than in its capacity as a Facility Owner;
- 2 any Property Lease and all side agreements relating to such relevant Property Lease;
- 3 any Rolling Stock Related Contract including the Rolling Stock Leases listed in Table 1 (Original Rolling Stock), Table 2 (Specified Rolling Stock) and Table 3 (Unspecified Additional Rolling Stock) of Appendix 1 (The Composition of the Train Fleet) to Schedule 1.6 (The Rolling Stock);
- 4 NOT USED;
- 5 any contract or arrangement for the lending, seconding, hiring, contracting out, supervision, training, assessment, or accommodation by another Train Operator or other third party of any train drivers, conductors or other train crew used by the ODP in the provision of the Passenger Services;
- 6 any contract or arrangement for the subcontracting or delegation to another Train Operator or other third party of the provision of any of the Passenger Services (whether or not the consent of the Authority is required to such subcontracting or delegation under paragraph 4 of Schedule 1.1 (Rail Services and Service Development));
- 7 any contract or arrangement with a Train Operator or other third party (other than an Access Agreement) for the provision to the ODP of train dispatch, performance or supervision of platform duties, security activities, evacuation procedures, advice or assistance to customers, assistance to disabled customers, operation of customer information systems, cash management or ticket issuing systems administration;
- 8 any contract or arrangement with a Train Operator or other third party for the provision of breakdown or recovery, and track call services to assist in the provision of the Passenger Services;
- 9 any contract or arrangement for the supply of spare parts or Spares;
- 10 any contract or arrangement for the maintenance of track and other related infrastructure;
- 11 any licences of Marks to the ODP;
- 12 any contract or arrangement relating to the operation of smart ticketing;

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- 13** any licence of any CRM System or Yield Management System;
  - 14** any contract or arrangement for the provision or lending of Computer Systems (other than the CRM System and Yield Management System) that the Authority reasonably considers is essential for the delivery of the Rail Services;
  - 15** any MCS (*Mobile Communication Services*) contract; and
  - 16** the InfraCo Sub-Contract;
  - 17** the OpCo Sub-Contract; and
  - 18** any contract, agreement, lease, licence, or other arrangement that the InfraCo and/or OpCo may enter into that is of a similar nature to the arrangements set out in paragraphs 1 to 15 (inclusive).

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## Schedule 14.4 - Designation of Rail Services Assets

### **1 RAIL SERVICES ASSETS**

1.1 Subject to paragraph 1.2, all property, rights and liabilities of the ODP from time to time (including any assets of Infrastructure Manager) during the ODP Grant Agreement Term shall be designated as Rail Services Assets and shall constitute Rail Services Assets for the purposes of section 27(11) of the Act.

1.2 The rights and liabilities of the ODP in respect of the following items shall not be designated as Rail Services Assets and shall not constitute Rail Services Assets for the purposes of section 27(11) of the Act:

- (a) any contracts of employment;
- (b) the ODP Grant Agreement and any Transfer Scheme or Supplemental Agreement;
- (c) the Ticketing and Settlement Agreement;
- (d) any sums placed on deposit with a bank or other financial institution;
- (e) such other property, rights and liabilities as the ODP and the Authority may agree from time to time or as the Authority may de-designate as Rail Services Assets under paragraph 10.2; and
- (f) any Rolling Stock Leases.

1.3 The ODP shall keep vested in it at all times during the Rail Services Term all Rail Services Assets designated as such pursuant to Schedule 14.4 (Designation of Rail Services Assets) as it may require in order to comply with:

- (a) the Licences;
- (b) any contracts of employment with ODP Services Employees;
- (c) any relevant Fares;
- (d) any Key Contracts; and
- (e) any applicable safety legislation regulations or safety standards and the Safety Certificate,

in order to ensure that the Authority may designate such assets as Rail Services Assets.

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## 2 PRIMARY RAIL SERVICES ASSETS

2.1 The following property, rights and liabilities shall (to the extent that they constitute Rail Services Assets) be designated as Primary Rail Services Assets with effect from the following dates:

- (a) the property, rights and liabilities listed as such in the table in Appendix 1 (List of Primary Rail Services Assets) to this Schedule 14.4 (which constitute Primary Rail Services Assets agreed between the Parties as at the date of the ODP Grant Agreement ), on the Start Date;
- (b) any additional property, rights and liabilities designated under paragraph 3 during the Rail Services Term, on the date of such designation;
- (c) any property or right which is vested in the ODP and used for the purpose of maintaining, replacing, repairing or renewing any property designated as Primary Rail Services Assets and which forms or replaces part or all of such designated property on completion of such maintenance, replacement, repair or renewal, on the date of its use for such purpose;
- (d) the rights and liabilities of the ODP under any Key Contract designated under paragraph 5, on the date of such designation;
- (e) the rights and liabilities of the ODP in respect of the terms of any Fare or Discount Card designated under paragraph 6, on the date of such designation;
- (f) any CRM Data and/or Yield Management Data and, to the extent that any CRM System and/or Yield Management System is the property of the ODP, such CRM System and/or Yield Management System on the later of the Start Date and:
  - (i) in relation to CRM Data or Yield Management Data, the date on which such CRM Data or Yield Management Data (as applicable) is collected;  
or
  - (ii) in relation to any such CRM System or Yield Management System, the date on which such CRM System or Yield Management System is created,save, in relation to CRM Data and Yield Management Data, any data in respect of which the Data Subject has not consented to such data being disclosed and processed by any Successor Operator and/or the Authority;
- (g) any licence of any CRM System and/or Yield Management System, on the date of such licence;

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- (h) an RV Asset on the date in which such RV Asset is brought into operational use as specified in the applicable Certificate of Completion;
  - (i) Actual Passenger Demand information (and all Intellectual Property Rights in respect of the same), on the date such information is supplied to the Authority pursuant to paragraph 1.1 of Schedule 1.5 (Information about Passengers); and
  - (j) any property and rights comprised in delivered Committed Obligations or Service Improvements and designated by the Authority as Primary Rail Services Assets pursuant to paragraph 8 of Schedule 6.2 (Committed Obligations) Part 2, on the date of such designation.

### **3 DESIGNATION OF ADDITIONAL PRIMARY RAIL SERVICES ASSETS**

- 3.1 Subject to paragraph 2.2(f) the Authority may at any time and from time to time, by serving notice on the ODP, designate any or all of the Rail Services Assets as Primary Rail Services Assets.
- 3.2 Such designation shall take effect from the delivery of such notice and may refer to all or certain categories of property, rights or liabilities. Any such notice shall specify the reasons for such designation.
- 3.3 On or before designation of any Rail Services Asset as a Primary Rail Services Asset, the Authority may agree not to subsequently de-designate such Primary Rail Services Asset without the prior written consent of the ODP. If the Authority so agrees, the notice designating the relevant Rail Services Asset as a Primary Rail Services Asset shall state the commitment not to de-designate .

### **4 DESIGNATION DURING LAST TWELVE (12) MONTHS OF RAIL SERVICES TERM**

- 4.1 If the Authority designates a Rail Services Asset as a Primary Rail Services Asset under paragraph 3 at any time during the last twelve (12) months of the Rail Services Term then, within twenty eight (28) days of such designation, the Authority may, subject to paragraph 4.2, de-designate such Primary Rail Services Asset by serving notice on the ODP. Such de-designation shall take effect upon delivery of such notice.
- 4.2 Where, the Authority has given a commitment not to de-designate a Primary Rail Services Asset pursuant to paragraph 3.3, the Authority shall not de-designate such Primary Rail Services Asset pursuant to paragraph 11.2(a) without first obtaining the prior written consent of the ODP.

### **5 DESIGNATION OF KEY CONTRACTS AS PRIMARY RAIL SERVICES ASSETS**

- 5.1 The Authority shall, subject to paragraphs 1.2(b) and 7, be entitled to designate any Key Contract as a Primary Rail Services Asset at any time during the Rail Services Term by

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serving notice on the ODP. Such designation shall take effect from delivery of such notice.

## **6 DESIGNATION OF FARES AND DISCOUNT CARDS**

6.1 The Authority may designate any Fare or Discount Card as a Primary Rail Services Asset at any time during the Rail Services Term by serving a notice on the ODP. Such designation shall take effect from delivery of such notice.

## **7 RIGHTS AND LIABILITIES**

7.1 The Authority, in designating the rights and liabilities of the ODP (whether under a particular contract or other arrangement) as a Primary Rail Services Asset may, in the Authority's discretion, elect to designate some but not all of the rights and liabilities under a particular contract or other arrangement, or to designate only those rights and liabilities arising after or otherwise relating to a period after a particular time (including the period after the expiry of the Rail Services Term) or to those relating only to the Rail Services or a particular part thereof.

## **8 DISPUTES OVER DESIGNATION**

8.1 The ODP may object in writing to the Authority to any designation pursuant to paragraph 3 or 4.

8.2 Such objection may be made solely on the grounds that the designation of the relevant property, rights or liabilities specified in the objection is not, in the ODP's opinion, reasonably necessary to secure the continued provision of the Rail Services by a Successor Operator on the expiry of the Rail Services Term on a basis reasonably acceptable to the Authority or to facilitate the transfer to such Successor Operator of the provision of the Rail Services at such time.

8.3 Any such objection may only be made within twenty eight (28) days of a designation made more than twelve (12) months prior to the end of the ODP Grant Agreement Term or fourteen (14) days of a designation made during the last twelve (12) months of the Rail Services Term.

8.4 The Authority shall respond to any such objection as soon as reasonably practicable and shall take account of any representations made by the ODP regarding the use of the relevant Primary Rail Services Asset otherwise than in the provision and operation of the Rail Services.

8.5 If the ODP's objection cannot be resolved by agreement within a period of fourteen (14) days from the date of submission of that objection, the ODP may refer the dispute for resolution in accordance with the Dispute Resolution Rules.

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- 8.6 Any body duly appointed to resolve such dispute shall determine whether or not the designation of the relevant property, rights or liabilities was reasonably necessary for securing that the Rail Services may continue to be provided by a Successor Operator on the expiry of the Rail Services Term on a basis reasonably acceptable to the Authority or otherwise facilitating the transfer of the provision of the Rail Services at such time, and accordingly whether or not they should cease to be so designated.
- 8.7 If any dispute as to any designation pursuant to paragraph 3 remains outstanding on the expiry of the Rail Services Term, then such dispute shall be deemed to cease immediately before the expiry of the Rail Services Term and the relevant Rail Services Assets shall continue to be designated as Primary Rail Services Assets on and after the expiry of the Rail Services Term.

## **9 PROVISION OF INFORMATION TO THE AUTHORITY**

- 9.1 The ODP shall provide such information as the Authority may reasonably require in order to satisfy the Authority that any Rail Services Assets which are to be designated as Primary Rail Services Assets after the Start Date under this Schedule 14.4 will at the time of such designation be vested in the ODP. Such information may include details of any Security Interests over such property, rights and liabilities.
- 9.2 The ODP shall further provide such information as to the property, rights and liabilities of the ODP as the Authority may reasonably require in connection with the designation of Primary Rail Services Assets. Such information shall be supplied to the Authority within such timescale as the Authority may reasonably require.

## **10 DE-DESIGNATION OF RAIL SERVICES ASSETS AND PRIMARY RAIL SERVICES ASSETS**

- 10.1 The Authority and the ODP may agree in writing at any time that a:
- (a) Rail Services Asset shall cease to be designated as a Rail Services Asset; or
  - (b) Primary Rail Services Asset shall cease to be designated as a Primary Rail Services Asset,
- and the relevant Rail Services Asset or Primary Rail Services Asset (as the case may be) shall cease to be designated upon such agreement coming into effect.
- 10.2 The Authority may in addition at any time during the Rail Services Term, by serving notice on the ODP:
- (a) cause a Rail Services Asset which is not a Primary Rail Services Asset to cease to be designated as a Rail Services Asset. Such Rail Services Asset shall cease to be designated on the date specified in such notice; or

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(b) subject to paragraph 10.3, cause a particular Primary Rail Services Asset to cease to be designated as such. Such Primary Rail Services Asset shall cease to be designated on the date specified in such notice.

10.3 Where, the Authority has given a commitment not to de-designate a Primary Rail Services Asset pursuant to paragraph 3.3, the Authority shall not de-designate such Primary Rail Services Asset pursuant to paragraph 10.2(b) without first obtaining the prior written consent of the ODP.

10.4 The Authority's rights pursuant to paragraph 10.2(b) may be exercised, in respect of any rights and liabilities in respect of a Fare or Discount Card, at any time and, in respect of any other Primary Rail Services Asset, no later than one (1) year prior to the expiry of the Rail Services Term.

## **11 AMENDMENT OF THE LIST OF PRIMARY RAIL SERVICES ASSETS**

The table in Appendix 1 (List of Primary Rail Services Assets) to this Schedule 14.4 shall be amended as the Authority considers necessary or desirable from time to time to take account of designation and de-designation of Primary Rail Services Assets pursuant to this Schedule 14.4.



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**Appendix 1 to Schedule 14.4 - List of Primary Rail Services Assets**

| <b>Description of Primary Rail Services Asset</b>  |
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| The rights and liabilities of the Previous Franchisee under the universal licence agreement between the Board and the Previous Franchisee dated 28 May 1995; |
| The rights and liabilities of the Previous Franchisee under the sub-licence deed between the Board and the Previous Franchisee dated 28 May 1995;            |
| The rights and liabilities of the Previous Franchisee under the master software licence between the Board and the Previous Franchisee dated 28 May 1995; and |
| The rights and liabilities of the Previous Franchisee under the computer services agreement between the Board and the Previous Franchisee dated 28 May 1995. |

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## **Schedule 14.5 - Dealing with Rail Services Assets**

### **1 ASSETS NOT DESIGNATED AS PRIMARY RAIL SERVICES ASSETS**

- 1.1 This paragraph 1 relates to any Rail Services Assets that are property or rights and are not designated as Primary Rail Services Assets.
- 1.2 For the purposes of section 27(3) of the Act, the Authority consents to the ODP:
- (a) transferring or agreeing to transfer any such Rail Services Assets or any interests in, or right over, any such Rail Services Assets; and
  - (b) creating or extinguishing, or agreeing to create or extinguish, any interest in, or right over, any such Rail Services Assets.

### **2 LIABILITIES NOT DESIGNATED AS PRIMARY RAIL SERVICES ASSETS**

- 2.1 This paragraph 2 relates to any liabilities which are not designated as Primary Rail Services Assets.
- 2.2 For the purposes of section 27(3) of the Act, the Authority consents to the ODP entering into any agreement under which any such liability is released or discharged, or transferred to another person.

### **3 RAIL SERVICES ASSETS AND PRIMARY RAIL SERVICES ASSETS**

- 3.1 This paragraph 3 relates to Rail Services Assets (whether or not designated as Primary Rail Services Assets) which are property or rights.
- 3.2 The Authority hereby consents to the installation of Spares which have been designated as Primary Rail Services Assets on any rolling stock vehicles. Any Spare which is so installed shall cease to be so designated on such installation.
- 3.3 Subject to paragraph 1.3(a)(v) of Schedule 14.6, for the purposes of section 27(3) of the Act, the Authority hereby consents to the ODP creating or agreeing to create any Security Interest over any of these Rail Services Assets to the extent that the terms of any such Security Interest provided that:
- (a) if the relevant Rail Services Asset becomes the subject of a transfer scheme made under section 12 and Schedule 2 of the Railways Act 2005, it shall be fully and automatically released from the relevant Security Interest immediately before the coming into force of such transfer scheme;
  - (b) if the relevant Rail Services Asset is assigned, novated or otherwise transferred to another person pursuant to and in accordance with the ODP Grant Agreement, it shall

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be fully and automatically released from the relevant Security Interest immediately before such assignment, novation or transfer; and

- (c) such Security Interest shall not be enforced or enforceable until the date on which such Rail Services Asset ceases to be designated as a Rail Services Asset.

#### **4 PROHIBITION ON OTHER SECURITY INTERESTS**

The ODP shall not create or agree to create a Security Interest over any Rail Services Asset except on the terms permitted under paragraph 3.3.

#### **5 MISCELLANEOUS**

The ODP shall promptly inform the Authority of any Security Interest arising at any time over any of its property or rights and shall provide the Authority with such information in relation thereto as the Authority may reasonably require.

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## **Schedule 14.6 - Residual Value Mechanism**

### **1 PROVISIONS RELATING TO RV ASSETS**

1.1 The provisions of paragraphs 3, 4, 7, 8, 10 and 11 of Schedule 14.4 (Designation of Rail Services Assets) (inclusive) shall not apply in respect of any RV Asset.

#### **1.2 De-Designation of RV Assets as Primary Rail Services Assets**

The Authority may, at any time during the Rail Services Term, by serving notice on the ODP cause a particular RV Asset designated as a Primary Rail Services Asset pursuant to paragraph 2.1(h) of Schedule 14.4 (Designation of Rail Services Assets) to cease to be designated as such on the occurrence of any of the following:

- (a) such RV Asset is lost, destroyed or otherwise beyond repair after the date upon which it is designated as a Primary Rail Services Asset pursuant to paragraph 2.1(h) of Schedule 14.4 (Designation of Rail Services Assets) and such RV Asset is not replaced; or
- (b) the Authority and the ODP agree in writing at any time during the Rail Services Term that such RV Asset shall cease to be so designated as a Primary Rail Services Asset; or
- (c) for an RV Asset that is a Network Rail Fixture Asset the applicable Station Access Conditions or Depot Access Conditions are amended at any time after the date of designation of such RV Asset such that the ODP ceases to be responsible under the applicable Station Access Conditions or Depot Access Conditions (as the case may be) for the maintenance, repair and renewal of such RV Asset.

Such RV Asset shall cease to be designated as a Primary Rail Services Asset with effect from the date specified in any notice served by the Authority pursuant to this paragraph 1.2 and the table in Appendix 1 to Schedule 14.6 (List of the RV Assets) shall be deemed to be amended and thereafter shall be amended to take account of any such de-designation.

#### **1.3 Process for issue of a Certificate of Completion for RV Assets**

- (a) Within twenty (20) days of the date upon which an RV Asset is brought into operational use the ODP shall provide to the Authority such information as is required by the Authority for, and in the detail needed for demonstrating that such RV Asset has been brought into operational use and evidencing the actual capital cost incurred by the ODP on the procurement of such RV Asset including the following:
  - (i) the information described in paragraph 9 of Schedule 14.4 (Designation of Rail Services Assets), including such information as the Authority may require pursuant to paragraph 9.2 of Schedule 14.4 (Designation of Rail Services Assets);

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- (ii) information which shows the actual date upon which such RV Asset was brought into operational use (including photographic evidence or any other kind of record which shows that such RV Asset has been brought into operational use);
  - (iii) in respect of an RV Asset that is a Network Rail Fixture Asset, written confirmation from Network Rail that:
    - (A) such RV Asset will be owned by the ODP and remain the unencumbered asset of the ODP for the duration of the asset life of such RV Asset or the duration of the Rail Services Term (whichever is the shorter);
    - (B) the ODP has the responsibility under the Station Access Conditions or the Depot Access Conditions (as the case may be) applicable in relation to such Station or Depot (as the case may be) to maintain, repair and renew such RV Asset from the date upon which such RV Asset property is brought into operational use for the duration of the asset life of such RV Asset or the duration of the Rail Services Term (whichever is the shorter);
  - (iv) information evidencing the actual capital cost of procuring such RV Asset (including receipts and other supporting evidence) or where all information required to evidence the actual capital cost of procuring such RV Asset is not yet available the ODP's reasonable estimate of such actual capital cost with a commentary explaining how the estimate has been arrived at;
  - (v) confirmation by the ODP that such RV Asset will be owned by the ODP and remain the unencumbered asset of the ODP for the duration of the asset life of such RV Asset or the duration of the Rail Services Term (whichever is the shorter);
  - (vi) information which shows that such RV Asset satisfies the requirements of the Committed Obligation or Service Improvement to which it relates; and
  - (vii) the information required by paragraph 2.1; and
  - (viii) such other information as the Authority may reasonably require for the purposes of verifying the actual capital costs incurred by the ODP on the procurement of such RV Asset.

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- (b) Subject to receipt of the information required in paragraph 1.3(a) and none of the events described in paragraph 1.2 having occurred, the Authority shall issue to the ODP a certificate of completion ("**Certificate of Completion**") which shall specify for the purposes of this Agreement the date upon which the relevant RV Asset was brought into operational use provided that nothing in this paragraph 1.3(b) shall oblige the Authority to issue a Certificate of Completion in respect of any RV Asset:
- (i) if the Authority, acting reasonably is not satisfied that such RV Asset will at the time of such designation be vested in the ODP;
  - (ii) if the Authority reasonably determines that such RV Asset does not satisfy the requirements to which it relates in accordance with this Agreement; or
  - (iii) where the confirmation from Network Rail referred in paragraph 1.3(a)(iii) has not been issued.
- (c) The Authority may, prior to the issue of a Certificate of Completion in respect of an RV Asset, exercise the Authority's rights under paragraph 6 (Right to Inspect) of Schedule 11.2 (Management Information) to inspect an RV Asset for the purposes of satisfying itself that such RV Asset satisfies the requirements of the Committed Obligation or Service Improvement to which it relates.
- (d) Where the ODP is only able to provide an estimate of the capital cost of procuring an RV Asset pursuant to paragraph 1.3(a)(iv) above it shall notify the Authority of the actual capital cost of procuring the RV Asset (with receipts and other supporting evidence) as soon as reasonably practicable and in any event within six months of the date of issue of a Certificate of Completion of such RV Asset. The ODP shall provide the Authority with such further information as it may reasonably require for the purposes of verifying the actual capital costs incurred by the ODP on the procurement of such RV Asset, provided always that the maximum capital cost of such RV Asset shall not be greater than the amount set out in Appendix 1 to this Schedule 14.6.

#### 1.4 **Adjustments to the Transfer Value**

If:

- (a) the ODP Grant Agreement Term is:
- (i) extended as contemplated in clause 5 (Duration of the ODP Grant Agreement) then the Authority shall adjust the RV Asset Transfer Value applicable to each RV Asset by depreciating each such RV Asset on a straight line basis from the date specified for such RV Asset in Column 3

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of Appendix 1 to this Schedule 14.6 ("**Planned Delivery Date**") until the end of the ODP Grant Agreement Term (as extended) and so that:

- (A) the Revised RV Asset Transfer Value will be the residual value of the RV Asset following such depreciation as at the end of the ODP Grant Agreement Term (as extended) or if the RV Asset has been fully depreciated on that basis at that time, nil; and
  - (B) from the date of the extension of the ODP Grant Agreement Column 2 of the table in Appendix 1 to this Schedule 14.6 (List of the RV Assets) shall be deemed to be and shall be restated in the amounts of the Revised RV Asset Transfer Value; or
- (ii) reduced as contemplated in clause 5.6 (CVL Asset Notice) or as contemplated in paragraph 6 (Termination For Convenience) of Schedule 10.2 (Events of Default and Termination Events), then the Authority shall adjust the RV Asset Transfer Value applicable to each RV Asset by depreciating each such RV Asset on a straight line basis from the date specified for such RV Asset in Column 3 of Appendix 1 to this Schedule 14.6 ("**Planned Delivery Date**") until the end of the ODP Grant Agreement Term (as reduced) so that the Revised RV Asset Transfer Value will be the residual value of the RV Asset following such depreciation as at the end of the ODP Grant Agreement Term (as reduced) or, if the RV Asset has been fully depreciated on that basis at that time, nil; or
- (b) the actual capital cost incurred by the ODP in procuring any RV Asset is less than the amount specified in Column 5 of the table in Appendix 1 to this Schedule 14.6 (List of the RV Assets) in respect of any such RV Asset, then:
- (i) the Authority shall adjust the RV Asset Transfer Value applicable to such RV Asset by using the same principles as were specified in the Final Tender Financial Model and Record of Assumption for the calculation of the initial RV Asset Transfer Value except that actual capital cost for such RV Asset shall replace the capital cost specified for such RV Asset in Column 5 of the table of Appendix 1 to this Schedule 14.6 (List of the RV Assets) in order to calculate the Revised RV Asset Transfer Value. Such adjustment shall be deemed to take effect from the date upon which a Certificate of Completion is issued including in the circumstance where the actual capital cost is notified to the Authority pursuant to paragraph 1.3(d) after the date of issue of a Certificate of Completion; and

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- (ii) Column 2 of the table in Appendix 1 to this Schedule 14.6 (List of the RV Assets) shall be restated and shall be restated in the amounts of the Revised RV Asset Transfer Value, such restatement to be deemed to be effective from the date of issue of a Certificate of Completion.
  - (c) For the purposes of this paragraph 1.4:
    - (i) **"RV Asset Transfer Values"** means each of the transfer values relating to the RV Assets as specified in Column 2 of the table in Appendix 1 to this Schedule 14.6 (List of RV Assets);
    - (ii) **"Revised RV Asset Transfer Values"** means each of the RV Asset Transfer Values as adjusted by the Authority in accordance with the provisions of paragraph 1.4(a) or paragraph 1.4(b) (as applicable).

## **2 MAINTENANCE REQUIREMENTS FOR RV ASSETS**

- 2.1 At the same time as the ODP provides the information required pursuant to paragraph 1.3(a) in respect of any RV Asset, the ODP shall submit to the Authority a schedule of condition specifying the condition of such RV Asset as at the date upon which such RV Asset was brought into operational use as specified in the applicable Certificate of Completion. Such schedule of condition must be approved by the Authority and shall be in respect of such aspects of an RV Asset as the Authority may reasonably require. The ODP shall ensure that each RV Asset is maintained, preserved and protected in at least the same condition, subject to fair wear and tear, as specified in the applicable schedule of condition as approved by the Authority in respect of such RV Asset pursuant to this paragraph 2.1. In respect of any RV Asset that is a Network Rail Fixture Asset the ODP shall ensure that any schedule of condition prepared as required by this paragraph 2.1 shall comply with the ODP's maintenance obligations relating to such Network Rail Fixture Asset under the applicable Station Access Conditions and/or Depot Access Conditions (as the case may be).
- 2.2 Subject to paragraph 2.3, where the ODP has failed to demonstrate to the reasonable satisfaction of the Authority that it has complied with its maintenance obligations in paragraph 2.1 in respect of any RV Asset then the Authority may by notice in writing to the ODP require that the RV Asset Transfer Value payable by a Successor Operator required pursuant to the Supplemental Agreement to pay to the ODP the RV Asset Transfer Value for such RV Asset ("**Relevant Successor Operator**") is adjusted downwards by an amount that is equal to the amount that is agreed by the ODP and the Relevant Successor Operator (or on failure to agree, as reasonably determined by the Authority) as being the amount reasonably expected to be incurred by the Relevant Successor Operator for putting such RV Asset in the condition required pursuant to paragraph 2.1.



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2.3 The provisions of paragraph 2.2 shall not apply in circumstances where the ODP and the Relevant Successor Operator agree that the ODP shall either:

- (a) rectify any relevant non-compliance with the requirements of paragraph 2.1; or
- (b) indemnify the Relevant Successor Operator (the form of such indemnity to be in a form that is acceptable to the Relevant Successor Operator) against the reasonable costs of putting the relevant RV Asset in the condition required by paragraph 2.1.

### **3 EARLY PAYMENT FOR RV ASSETS**

3.1 The Authority may elect, at any time by notice to the ODP, to make advance payment of the remaining RV Asset Transfer Value on the balance sheet, such notice identifying the relevant RV Asset, the amount of planned payment towards the capital value of such RV Asset and date on which such payment shall be made.

3.2 Where such notice is issued and the amount is a complete payment of the remaining RV Asset Transfer Value on the balance sheet, the RV Asset Transfer Value will become zero and Rail Services Payments will be reduced to reflect removal of the recurring payments against the RV Asset.

3.3 Where such notice is issued and the amount is a partial payment of the remaining RV Asset Transfer Value on the balance sheet, the RV Asset Transfer Value shall be reduced by an amount equivalent to such partial payment and Rail Services Payments will be reduced to reflect reduced recurring payments against the RV Asset.

**Appendix 1 to Schedule 14.6 - List of the RV Assets**

| Column 1   | Column 2                    | Column 3              | Column 4  | Column 5         |
|--|-----------------------------|-----------------------|---|------------------|
| Description of the RV Assets                       | RV Asset Transfer Value (£) | Planned Delivery Date | Is RV Asset a Network Rail Fixture Asset (Yes/No) | Capital Cost (£) |
| Gabalfa New Station (NST02)                        | [REDACTED]                  | 31st March 2027       | No  | [REDACTED]       |
| Car Parks Programme (INT02c)                       | [REDACTED]                  | 31st March 2025       | No  | [REDACTED]       |
| Treforest Estate New Station (NST01)               | [REDACTED]                  | 31st October 2025     | No  | [REDACTED]       |
| Station Waiting Room & Shelters Programme (STN02a) | [REDACTED]                  | 31st March 2024       | No  | [REDACTED]       |
| Taff's Well Depot (RS08) <sup>2</sup>              | [REDACTED]                  | 31st August 2021      | No  | [REDACTED]       |

<sup>2</sup> Note the Taff's Well depot asset would have a net book value of [REDACTED] at the end of the core contract term, but would transfer with no payment from TfW to the ODP as there would be a grant with a net book value of equal but opposite value.

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## **Schedule 14.7 - Incentivising Long Term Investment**

This Schedule sets out the Authority's guidance on how the Authority approaches incentivising long term investment.

- 1** The Authority wishes to encourage the ODP to:
  - (a) improve the efficiency;
  - (b) reduce the cost; and
  - (c) enhance the revenue earning potential of the delivery of services to passengers, from the commencement of the Rail Services, through the Rail Services Term and into the successor Rail Services.
  
- 2** It is recognised however that the Rail Services Term may be perceived to be a barrier to undertaking investment or change programmes where:
  - (a) the time scale for implementation limits the benefit to the ODP; or
  - (b) the business case for such investment or change has a payback period longer than the Rail Services Term.
  
- 3** In this context investment or change may be considered to encompass:
  - (a) capital investments undertaken solely by the ODP;
  - (b) capital investments undertaken by the ODP in association with others;
  - (c) total or partial substitution of certain train services by bus services where an enhanced service level could be provided for reduced cost or where the provision of bus services improves the overall capacity of the network or delivers other benefits;
  - (d) changes in working practices of the ODP Services Employees;
  - (e) changes in the contracted roles and responsibilities between the ODP and its major suppliers; and
  - (f) operational changes.
  
- 4** Accordingly, the ODP is encouraged to propose schemes that seek to achieve the objectives set out in paragraph 1 for consideration by the Authority during the Rail Services Term.
  
- 5** In considering the ODP's proposals for any investment or change proposed to be undertaken, the Authority will recognise:
  - (a) the capital cost and proposed payment profile;

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- (b) legitimate costs of the ODP in developing, procuring, delivering and project managing the project;
  - (c) the life of any capital assets and the duration of the benefits stream arising;
  - (d) the remaining Rail Services Term and the projected payback period;
  - (e) the benefits associated with undertaking the investment early rather than waiting until the whole or part of the Rail Services is re-let;
  - (f) the risks of cost overrun or under performance of the projected benefits;
  - (g) a profit element for undertaking the project commensurate with the risks of the proposed project; and
  - (h) alternative benefit sharing arrangements which could be based on:
    - (i) a capital lump sum when the expenditure is incurred;
    - (ii) an enhanced Rail Services Payment over the Rail Services Term;
    - (iii) a balloon payment on expiry of the Rail Services which allocates a proportion of future benefits to the ODP;
    - (iv) an ongoing payment if the benefits materialise after the Rail Services Term; and/or
    - (v) any combination of any of paragraphs 5(h)(i) to 5(h)(iv) inclusive.

**6** In evaluating the ODP's proposals for any investment or change proposed to be undertaken and to enable best value for money to be obtained from third party financiers, the Authority shall also give consideration to the appropriateness of the provision, by the Authority, of an undertaking (or other form of comfort) pursuant to section 54 of the Act.

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**Schedule 15**

**Obligations Associated with Termination**

|                |  |
|----------------|--|
| Schedule 15.1: | Reletting Provisions   |
| Schedule 15.2: | Last Twelve (12) or Thirteen (13) months of Rail Services Term or termination of certain ODP Services and other conduct of business provisions |
| Schedule 15.3: | Handover Package   |
|                | Appendix 1: Form of Handover Package   |
| Schedule 15.4: | Provisions Applying on and after Termination   |
|                | Appendix 1: Form of Transfer Scheme  |
|                | Appendix 2: Form of Supplemental Agreement   |

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## **Schedule 15.1 - Reletting Provisions**

### **1 RELETTING OF ODP SERVICES**

- 1.1 The ODP acknowledges that the Authority may wish, at or before the expiry of the ODP Grant Agreement Term or in the event of a Partial Termination or an Infrastructure Manager Notice, either to invite persons to tender for the right to provide all or some of the ODP Services under a Successor Agreement or alternatively to enter into a Successor Agreement in respect of all or some of the ODP Services without having gone through a tendering process.
- 1.2 The ODP further acknowledges that the Authority has in certain circumstances a duty under Section 30 of the Act to secure the continued provision of services equivalent to the Passenger Services on expiry or termination of the ODP Grant Agreement or on termination of certain ODP Services following a Partial Termination Notice or Infrastructure Manager Notice. The ODP accordingly accepts and agrees to the restrictions and obligations imposed on it under Part 1 (Rail Services) of Schedule 1.1 (Rail Services and Service Development), Schedule 14 (Preservation of Assets) and Schedule 15 (Obligations Associated with Termination).
- 1.3 In the event of a Partial Termination or an Infrastructure Manager Notice, Schedule 15.1, 15.2, 15.3 and 15.4 shall apply in respect only of the relevant CVL Services or Infrastructure Manager Services and the Authority shall, acting reasonably, identify the provisions in Schedules 15.1, 15.2, 15.3 and 15.4 that shall apply in respect of the relevant CVL Services or Infrastructure Manager Services.

### **2 PREPARATION FOR RELETTING**

- 2.1 The ODP shall, if so requested by the Authority:
- (a) provide the Authority and its representatives and advisers with access to officers, the ODP Services Employees and all books, records and other materials kept by or on behalf of the ODP in connection with the ODP Services (including electronic or magnetic records, any CRM System and any Yield Management System) for the purpose of assisting such representatives and advisers:
- (i) to prepare reports or other documents in connection with any invitation to potential Successor Operators to tender for the right and obligation to operate all or any of the ODP Services;
- (ii) to prepare invitations to other potential Successor Operators to tender for the right and obligation to provide any other railway passenger services or operate any other additional railway asset; or

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- (iii) to enter into a Successor Agreement or other agreement (including any agreement entered into by the Authority or the Secretary of State in fulfilment of its duties under Section 30 of the Act) relating to the services equivalent to the ODP Services, without undergoing a tendering process,

provided that the exercise of such access rights by the Authority and its representatives and advisers shall not unduly interfere with the continuing provision and operation of the ODP Services by the ODP.

2.2 The ODP shall, if so requested by the Authority, at its own cost, publish and display such publicity and promotional material and notices as the Authority may provide to the ODP for the purposes of informing passengers of any matters relating to the Tendering/Reletting Process including:

- (a) the commencement of any Tendering/Reletting Process;
- (b) making passengers aware of any consultation being undertaken by the Authority in relation to any such Tendering/Reletting Process; and
- (c) informing passengers of the outcome of any Tendering/Reletting Process.

2.3 The obligation to publish and display pursuant to paragraph 2.2 shall mean making the relevant publicity and promotional material and notices available to passengers by such means as the Authority may reasonably require including by displaying publicity and promotional material and notices at Stations and on trains, publishing relevant information on the ODP's website, Communications Platforms and in any reports published to passengers or including such information in any leaflets, newspapers or other promotional material published to passengers by the ODP from time to time.

### **3 DATA SITE INFORMATION**

3.1 The ODP shall make available to the Authority and its representatives and advisers such Data Site Information (as defined at paragraph 3.5) as they shall reasonably require in connection with the matters referred to in paragraph 2.1 by no later than three (3) months after the date of such request.

3.2 The ODP shall prepare and present such information in such manner (including in disaggregated form) as the Authority may require, and shall provide such assistance as the Authority may require in connection with the verification of such information.

3.3 The ODP shall provide such confirmation in relation to the accuracy of:

- (a) the contents of the documents referred to in paragraph 2.1; and

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- (b) any Data Site Information uploaded to such electronic data site as the Authority may require pursuant to paragraph 3.4,

in each case, as the Authority shall require from time to time.

3.4 The ODP shall upload such Data Site Information as the Authority may require to such electronic data site as the Authority may specify and shall make a sufficient number of appropriate staff available for that purpose. The ODP shall ensure that such staff are trained in the use of such data site (such training to be at the expense of the Authority). For the avoidance of doubt, the Data Site Information required by the Authority under this paragraph may cover the entire Grant Agreement Term or any part of it.

3.5 “**Data Site Information**” means information relating to any of the following:

- (a) the ODP Services or the ODP, any Affiliate of the ODP or their respective businesses (including their audited and management accounts, asset registers and contract lists);
- (b) past and present demand for the ODP Services or any similar services (including passenger count data, Yield Management Data and CRM Data);
- (c) information required to be provided by the ODP pursuant to Schedule 1.5 (Information about Passengers);
- (d) the total revenue (being all revenue whatsoever from any source obtained from any commercial or non-commercial activity or undertaking of the ODP) received or which the ODP expects to receive during the ODP Grant Agreement Term;
- (e) the ODP's safety authorisation, safety certificate or safety management system (in each case as defined in the Safety Regulations);
- (f) any other safety matter;
- (g) the arrangements contained within the Railways Pension Scheme, the Pension Trust, the ODP Services Section, or any other pension arrangement in respect of employees of the ODP or employees of any person who was an ODP or franchise operator in relation to a Previous Franchise Agreement;
- (h) the management structure of the ODP's business (including organograms and any planned changes);
- (i) employees and contractors (including details of responsibilities, job title, remuneration, grade, qualifications and any other personnel records);
- (j) terms and conditions of employment and human resources policies;
- (k) public and working timetables;



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- (l) driver, other train crew and rolling stock diagrams;
  - (m) rolling stock (including train and vehicle miles, restrictions of use, fleet examinations and servicing, fleet performance, casualty data and any relevant reports);
  - (n) any station (including any leases, documents of title, maintenance arrangements, station facilities, plans and contingency or security plans relating to any station);
  - (o) health and safety and environmental information;
  - (p) copies of contracts (including Access Agreements, policies of insurance, property, rolling stock and other leases, catering contracts, contracts for outsourced services, and rolling stock maintenance and spares contracts);
  - (q) Network Rail charges and requirements (including rules of the route/plan);
  - (r) any information technology system (hardware or software) used or owned by the ODP or any Affiliate of the ODP (including any software licences);
  - (s) performance data;
  - (t) customer service (including staffing levels, call volumes and opening hours);
  - (u) fares and fares baskets;
  - (v) relationships with stakeholders (including minutes of meetings with unions, Passenger Transport Executives, Local Authorities, Community Rail Partnerships, Department for Transport and other relevant bodies as identified by the Authority from time to time);
  - (w) Information relating to the provision of the Infrastructure Manager role including all associated regulatory consents;
  - (x) Information concerning the CVL Assets, their design, construction, maintenance and renewal; or
  - (y) any other matter which the Authority may specify from time to time,

and in this paragraph 3.5, the term “employee” includes any person engaged by the ODP pursuant to a contract of personal service.

### 3.6 The ODP shall:

- (a) comply with its obligations under paragraph 2.1 and this paragraph 3 promptly and in any case in accordance with any reasonable timetable with which the Authority requires the ODP by notice in writing to comply;

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(b) where the Authority raises with the ODP any query in relation to any Data Site Information, make a full and substantive response to such query within five (5) Weekdays. Such response shall include any further information requested by the Authority in relation to such query; and

(c) nominate a person to whom:

- (i) all queries or requests for information pursuant to paragraph 3.6(b);
- (ii) requests for access to premises pursuant to paragraph 5; and
- (iii) requests for access to employees,

shall be addressed and who shall be responsible for complying with any such queries or requests for information and such requests for access to employees and premises. The ODP shall notify the Authority (its representatives and advisers) of the name and contact details of such person.

3.7 In connection with any proposal (whether or not yet finalised) to enter into a separate Successor Agreement and/or other agreements with more than one Successor Operator, each relating to some only of services equivalent to the ODP Services (whether or not together with other railway passenger services) at or following the end of the ODP Grant Agreement Term or to assist with the termination of an ODP Service following a Partial Termination Notice or Infrastructure Manager Notice, the ODP agrees and acknowledges that the Authority may require:

(a) that the ODP provides the Authority with additional information and reports and analysis in respect of such Service Groups as the Authority may specify. This may include:

- (i) information relating to the operational and financial performance of the ODP in relation to such Service Groups; and
- (ii) identification of those employees, assets and liabilities which relate to such Service Groups together with an indication of the extent to which the same are shared between the operation of different Service Groups; and

(b) subject to paragraph 3.8, that the ODP reorganises the business of providing services equivalent to the ODP Services in order to facilitate the transfer anticipated by this Schedule 15.1 on an ongoing basis of the business of providing the ODP Services within each of such Service Groups to separate Successor Operators. This may include, to the extent reasonably practicable:

- (i) the re-organisation of personnel such that an appropriate number of employees (having sufficient skills, qualifications and experience) will

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transfer by operation of Law to each Successor Operator of each such Service Group; and/or

- (ii) entering into additional or clarificatory contractual or other arrangements so that the Successor Operator of each such Service Group will have the necessary assets and rights to operate the ODP Services within that Service Group; and
- (iii) that the ODP uploads Data Site Information to more than one data site.

3.8 Subject to paragraph 3.9, the Authority shall reimburse any reasonable out-of-pocket expenses that the ODP may incur in complying with its obligations under this paragraph 3 save in respect of where such compliance is required following a Partial Termination Notice whereby the cost of such compliance shall be borne fully by the ODP.

3.9 Without prejudice to any other rights the Authority may have (under the ODP Grant Agreement or otherwise) in respect of any contravention by the ODP of its obligations under this paragraph 3, if the Authority is of the reasonable opinion that the ODP does not have sufficient resources to enable its compliance with its obligations under this paragraph 3 the Authority may:

- (a) require the ODP (at its own cost) to employ; or
- (b) after notification to the ODP, employ,

such suitable additional resource as may be required to ensure that the ODP can comply with its obligations under this paragraph 3. The ODP shall reimburse to the Authority, by way of adjustment to ODP Service Payments, any proper costs (including staff costs) incurred by the Authority in the employment of any such additional resource pursuant to paragraph 3.9(b).

3.10 To the extent reasonably practicable, prior to taking any of the actions referred to in paragraph 3.9, the Authority shall allow the ODP a reasonable opportunity to make representations to the Authority concerning the exercise by the Authority of its rights under paragraph 3.9 but the Authority shall not be obliged by those representations to refrain from exercising any of the actions specified under paragraph 3.9.

#### **4 NON-FRUSTRATION OF TRANSFER TO SUCCESSOR OPERATOR**

4.1 The ODP shall take no action or steps which is or are designed, directly or indirectly:

- (a) to prevent, prejudice or frustrate the transfer as a going concern of the business of providing the ODP Services at the end of the ODP Grant Agreement Term or, in the event of termination of certain ODP Services following a Partial Termination or

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Infrastructure Manager Termination, the date at which such ODP Services are transferred to a Successor Operator; or

- (b) to avoid, frustrate or circumvent any provision of the ODP Grant Agreement (including in particular the provisions of Schedule 14 (Preservation of Assets) and this Schedule 15) which is included in whole or in part for the purpose of preventing any such preventive, prejudicial or frustrating action or steps.
- 4.2 Subject to the restrictions set out in paragraph 4.1 and the other provisions of the ODP Grant Agreement, the ODP may take such action as it may require for the purposes of bidding to become, or becoming, a Successor Operator.

## **5 INSPECTION RIGHTS AT PREMISES USED FOR THE PROVISION OF THE ODP SERVICES**

- 5.1 Without limiting any other rights of the Authority under the ODP Grant Agreement and subject to paragraph 5.2, the ODP shall, if so requested by the Authority, permit the Authority (or its nominee, which for these purposes shall include potential Successor Operators including potential bidders who have expressed an interest in tendering for the right and obligation to operate any or all of the ODP Services) to have such access to premises owned or occupied by the ODP or any of its Affiliates (including Stations and Depots and which for these purposes shall include any premises used in connection with the provision of the ODP Services by the ODP or any of its Affiliates) as the Authority may reasonably require in connection with any Tendering/Reletting Process including for the purposes of inspecting such premises (including the taking of inventories) and undertaking such surveys as may be necessary or desirable for the purposes of ascertaining the condition of any such premises.
- 5.2 The Authority shall use reasonable endeavours to ensure that any access rights required pursuant to paragraph 5.1 shall be undertaken so as not to unduly interfere with the continuing provision and operation of the ODP Services by the ODP.

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**Schedule 15.2 - Last Twelve (12) or Thirteen (13) months of the ODP Grant Agreement**  
**Term or termination of certain ODP Services and other conduct of business provisions**

**1 LAST TWELVE (12) OR THIRTEEN (13) MONTH PERIOD**

1.1 Where reference is made in the ODP Grant Agreement to the last twelve (12) or thirteen (13) months of the ODP Grant Agreement Term, such period shall be deemed to commence on the earliest of the following dates:

- (a) the date which is twelve (12) or thirteen (13) months, as the case may be, prior to the Expiry Date or if the actual date of expiry of the ODP Grant Agreement Term is known the date which is twelve (12) or thirteen (13) months prior to that date;
- (b) the date on which the Authority notifies the ODP that such period of twelve (12) or thirteen (13) months shall be deemed to commence on the grounds that the Authority reasonably considers that an Event of Default may occur within the following twelve (12) months; or
- (c) the date on which the Authority notifies the ODP that such period of twelve (12) or thirteen (13) months shall be deemed to commence on the grounds that the Authority considers it reasonably likely that the ODP Grant Agreement will be terminated by agreement between the Parties within such period; or
- (d) in respect of the termination of certain ODP Services following a Partial Termination Notice or Infrastructure Manager Notice, the date which is twelve (12) or thirteen (13) months, as the case may be, prior to the actual date of cessation of the relevant ODP Services as notified to the ODP in the Partial Termination Notice or Infrastructure Manager Notice.

1.2 Any such period (which may be longer or shorter than twelve (12) or thirteen (13) months, as the case may be) shall expire on the Expiry Date or, if earlier:

- (a) in the case of periods commencing under paragraph 1.1(b) or 1.1(c), the date falling twelve (12) or thirteen (13) months after the date of any notice under paragraph 1.1(b) or 1.1(c); or
- (b) such earlier date as the Authority may determine.

**2 TERMS OF EMPLOYMENT OF EXISTING EMPLOYEES**

2.1 The ODP shall not, and shall secure that each other relevant employer shall not, without the prior consent of the Authority (which shall not be unreasonably withheld), vary or purport or promise to vary the terms or conditions of employment of any ODP Services Employee (in particular, the ODP shall not promise to make any additional payment or

provide any additional benefit or vary any term or condition relating to holiday, leave or hours to be worked) where such variation or addition:

- (a) takes effect in the last twelve (12) months of the ODP Grant Agreement Term, or in respect of termination of certain ODP Services following a Partial Termination Notice or Infrastructure Manager Notice the twelve (12) months before the date of such termination, unless it is in the ordinary course of business and, when aggregated with any other variation or addition which takes effect during such period, represents an increase in the remuneration of an ODP Services Employee of no more than the amount determined in accordance with the following formula:

|  |  |
|--|--|
| $\frac{MAWE + JAW E + SAWE + DAWE}{4}$ |  |
| <b>Where:</b>                          |  |
| <b>MAWE</b>                            | is the change in the Average Weekly Earnings between March in the preceding twelve (12) months and the corresponding March one (1) year before, expressed as a percentage;             |
| <b>JAW E</b>                           | is the change in the Average Weekly Earnings between June in the preceding twelve (12) months and the corresponding June one (1) year before, expressed as a percentage;               |
| <b>SAWE</b>                            | is the change in the Average Weekly Earnings between September in the preceding twelve (12) months and the corresponding September one (1) year before, expressed as a percentage; and |
| <b>DAWE</b>                            | is the change in the Average Weekly Earnings between December in the preceding twelve (12) months and the corresponding December one (1) year before, expressed as a percentage;       |

- (b) wholly or partly first takes effect after the end of the ODP Grant Agreement Term or in respect of a service terminated following a Partial Termination Notice or Infrastructure Manager Notice after the date such services are terminated;
- (c) results in any such employment not being terminable by the ODP or other relevant employer within six (6) months of the expiry of the ODP Grant Agreement Term or, in

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respect of a service terminated following a Partial Termination Notice or Infrastructure Manager Notice, within six (6) months of the date such services are terminated;

- (d) relates to a payment or the provision of a benefit triggered by termination of employment;
- (e) relates to the provision of a benefit (excluding base salary) which any such employee will or may have a contractual right to receive after the expiry of the ODP Grant Agreement Term or, in respect of a service terminated following a Partial Termination Notice or Infrastructure Manager Notice, after the termination of such services; or
- (f) prevents, restricts or hinders any such employee from working for a Successor Operator or from performing the duties which such employee performed for the ODP.

2.2 It is agreed that the ODP will be permitted to make a decrease in the remuneration of any ODP Services Employee that takes effect in the last twelve (12) months of the ODP Grant Agreement Term or, in respect of a service terminated following a Partial Termination Notice or Infrastructure Manager Notice, in the last twelve (12) months before the date on which such services are terminated without first obtaining the consent of the Authority in circumstances where such decrease is in the ordinary course of business and when aggregated with any other variation which takes effect during such period, represents a decrease in the remuneration of an ODP Services Employee of no more than the amount determined in accordance with the formula contained in paragraph 2.1(a) where a calculation pursuant to such formula gives rise to a negative percentage. In any other circumstances the prior consent of the Authority will be required to any decrease in the remuneration of an ODP Services Employee in the last twelve (12) months of the ODP Grant Agreement Term or, in respect of a service terminated following a Partial Termination Notice or Infrastructure Manager Notice, in the last twelve (12) months before the date on which such services are terminated.

2.3 Without limiting the foregoing, the ODP shall consult the Authority as soon as reasonably practicable in any circumstances in which the Authority's consent under paragraph 2.1 may be required. Further, it shall always be deemed to be reasonable for the Authority to withhold its consent to a variation or addition which is prohibited without such consent under paragraph 2.1(a) provided the Authority:

- (a) makes an overall increase in Rail Services Payments equal to the amount of the direct net losses suffered by the ODP on the days when the Passenger Services are affected by Industrial Action taken by the ODP Services Employees which is a consequence of a refusal by the Authority to agree to the variation or addition; and
- (b) agrees that, to the extent that the ODP would otherwise be in contravention of the ODP Grant Agreement as a consequence of the Industrial Action referred to in this paragraph

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2.2, no such contravention shall have occurred, save where such contravention relates to safety requirements.

- 2.4 The expression “promise to vary” when used in paragraph 2.2 includes any offer or indication of willingness to vary (whether or not such offer or willingness is made conditional upon obtaining the Authority's consent).

### **3 TERMS OF EMPLOYMENT OF NEW EMPLOYEES**

- 3.1 The ODP shall not, and shall secure that each other relevant employer shall not, without the prior consent of the Authority (which shall not be unreasonably withheld), create or grant, or promise to create or grant, terms or conditions of employment for any ODP Services Employee where the employment of such ODP Services Employee by the ODP or such other relevant employer may commence on or after the Start Date if and to the extent that:

- (a) such terms or conditions are, in the reasonable opinion of the ODP, materially different from the terms or conditions of employment of equivalent or nearest equivalent ODP Services Employees at the date on which such employment is scheduled to commence; and
- (b) if such terms or conditions were granted to such equivalent ODP Services Employees already employed by the ODP by way of variation to their terms or conditions of employment, the ODP would be in contravention of paragraph 2.1.

### **4 CHANGES IN NUMBERS AND TOTAL COST OF EMPLOYEES**

- 4.1 Subject to and excluding any increase in the remuneration of ODP Services Employees permitted under paragraph 2.1, the ODP shall not, and shall secure that each other relevant employer shall not, without the prior written consent of the Authority (which shall not be unreasonably withheld) increase or decrease in the last twelve (12) months of the ODP Grant Agreement Term the number of ODP Services Employees such that:

- (a) the total number of ODP Services Employees or the total cost per annum to the ODP and each other relevant employer of employing all ODP Services Employees is increased; or
- (b) the total number of ODP Services Employees is decreased,

in each case, by more than five percent (5%) during such period of twelve (12) months provided that:

- (i) where the last twelve (12) or thirteen (13) months of the ODP Grant Agreement Term; or



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- (ii) in respect of a service terminated following a Partial Termination Notice or Infrastructure Manager Notice, the last twelve (12) months or thirteen (13) months before the date on which such services are terminated, has been deemed to have commenced under paragraph 1.1 and the period of the restriction contemplated by this paragraph 4 lasts longer than twelve (12) months such restriction shall apply in respect of the longer period.

## **5 FARES**

### **5.1 Reduction in Prices of Fares**

- (a) During the last thirteen (13) months of the ODP Grant Agreement Term or, in respect of a service terminated following a Partial Termination Notice or Infrastructure Manager Notice, in the last twelve (12) months or thirteen (13) months before the date on which such services are terminated the ODP shall not, without the prior written consent of the Authority (not to be unreasonably withheld), set the Price or Child Price of or sell (except to the extent required to do so under the terms of the Ticketing and Settlement Agreement as a result of the Price or Child Price of a Fare being set by another person) any Fare which would entitle the purchaser of such Fare to travel on all or any of the Passenger Services after the Rail Services Term or, in respect of a service terminated following a Partial Termination Notice or Infrastructure Manager Notice, in the last twelve (12) months or thirteen (13) months before the date on which such services are terminated for an amount which is less than the Price or the Child Price of that Fare immediately before the commencement of such thirteen (13) month period or, in the case of a new Fare, the Price of its nearest equivalent immediately before the commencement of such period.
- (b) Paragraph 5.1(a) shall not prevent the ODP from giving any discount or reduction to which the purchaser of a Fare may be entitled by virtue of:
  - (i) presenting a Discount Card (or any equivalent replacement thereof) issued by the ODP before the commencement of such thirteen (13) month period and to which the purchaser would have been entitled before the commencement of such period;
  - (ii) presenting a Discount Card issued by another train operator;
  - (iii) the Passenger's Charter or the passenger's charter of any other train operator; or
  - (iv) any relevant conditions of carriage.

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- (c) The ODP shall procure that persons acting as its agent (except persons acting in such capacity by virtue of having been appointed under Parts II to VI of Chapter 9 of the Ticketing and Settlement Agreement or by being party to the Ticketing and Settlement Agreement) shall comply with the provisions of paragraph 5.1(a) to the extent that such provisions apply to the selling of Fares by the ODP.

## 5.2 **Percentage Allocations**

- (a) Except to the extent that the Authority may consent from time to time (such consent not to be unreasonably withheld), the ODP shall not, in the last thirteen (13) Reporting Periods of the Rail Services Term or, in respect of a service terminated following a Partial Termination Notice or Infrastructure Manager Notice, in the last (13) Reporting Periods before the date on which such services are terminated take any action or step which may result in its Percentage Allocation (as defined in the Ticketing and Settlement Agreement) in respect of any Rail Product (as defined in the Ticketing and Settlement Agreement) being reduced.
- (b) The ODP shall notify the Authority before taking any such action or step in the last thirteen (13) Reporting Periods of the Rail Services Term or, in respect of a service terminated following a Partial Termination Notice or Infrastructure Manager Notice, in the last (13) Reporting Periods before the date on which such services are terminated and upon becoming aware of any other person proposing to take any action or step which may have the same effect. The ODP shall take such action as the Authority may reasonably request in order to prevent any such reduction, including submitting any dispute to any relevant dispute resolution procedures.

## 5.3 **Restrictions in respect of Sale of Advance Purchase Train-specific Fares**

- (a) It is acknowledged that the ODP will make available for sale prior to the end of the ODP Grant Agreement Term, Advance Purchase Train-specific Fares which are valid for travel after the end of the ODP Grant Agreement Term.
- (b) In making such Advance Purchase Train-specific Fares available for purchase the ODP shall not change its commercial practice in terms of the number of such Advance Purchase Train-specific Fares made available or the Passenger Services on which they are valid for use when compared with its previous commercial practice in respect of Advance Purchase Train-specific Fares valid for travel prior to the end of the ODP Grant Agreement Term.
- (c) The ODP will be permitted to take into account reasonable seasonal factors in determining its previous commercial practice. In assessing reasonableness, account will be taken of the ODP's practice in addressing such seasonal factors in the corresponding period in the previous year.

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## **6 VOTING ON SCHEME COUNCILS**

6.1 Subject to paragraph 7.4, during the last twelve (12) months of the ODP Grant Agreement Term or, in respect of a service terminated following a Partial Termination Notice or Infrastructure Manager Notice, in the twelve (12) months before the date on which such services are terminated the ODP shall give the Authority reasonable notice of:

- (a) any meeting of:
  - (i) a scheme council of an Inter-Operator Scheme on which the ODP is represented; or
  - (ii) a scheme management group of any Inter-Operator Scheme:
    - (A) in which the ODP has a permanent position; or
    - (B) where the ODP employs a member of such group;
- (b) the resolutions to be voted upon at any such meeting; and
- (c) the ODP's voting intentions.

6.2 Subject to paragraph 7, the ODP shall vote at any such meeting in the manner required by the Authority.

## **7 SUCCESSOR OPERATOR**

7.1 Where the ODP has been notified by the Authority that a Successor Operator has been selected (whether or not such selection is conditional), the ODP shall give such Successor Operator reasonable notice of:

- (a) any meeting referred to in paragraph 6.1(a);
- (b) any resolutions to be voted upon at any such meeting where such resolutions might reasonably be considered to affect the interests of such Successor Operator; and
- (c) the ODP's voting intentions.

7.2 The ODP shall discuss with the Successor Operator in good faith with a view to agreeing the way the ODP should vote on the resolutions referred to in paragraph 7.1(b). In the absence of any agreement, the ODP shall, as soon as reasonably practicable thereafter, having regard to the deadline for voting on such resolutions, refer the matter to the Authority for determination.

7.3 The Authority shall reasonably determine the way the ODP should vote on any resolutions referred to the ODP in accordance with paragraph 7.2, having regard to the transfer of the ODP Services as a going concern at the end of the ODP Grant Agreement Term or,

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in respect of a service terminated following a Partial Termination Notice or Infrastructure Manager Notice, by the date on which such services are terminated.

- 7.4 Where paragraph 7 applies, the ODP shall vote at any meeting referred to in paragraph 6.1(a) in accordance with any agreement pursuant to paragraph 7.2 or determination pursuant paragraph 7.3.

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### **Schedule 15.3 - Handover Package**

#### **1 HANDOVER PACKAGE STATUS**

1.1 The ODP shall:

- (a) on or before the Start Date, provide to the Authority:
  - (i) the Handover Package in the form set out in Appendix 1 to this Schedule 15.3; and
  - (ii) a letter in a form approved by and addressed to the Authority confirming the details of any insurer providing insurance to the ODP and authorising the insurer (and any relevant broker) to release any insurance-related information to any of the Authority, a Successor Operator or its agent on demand;
- (b) maintain the Handover Package and update it at least every three (3) Reporting Periods; and
- (c) in respect of the information required pursuant to paragraph 1.1(a)(ii), supply revised information and/or letters to the Authority as and when required in order to ensure that such information and letters remain accurate and up to date.

1.2 The ODP shall ensure that any Successor Operator will have immediate access to:

- (a) the Handover Package on the expiry of the ODP Grant Agreement Term; or
- (b) the relevant Handover Package part in the event of Partial Termination or Infrastructure Manager Notice,

on the date of the cessation of the relevant ODP Services following a Partial Termination or Infrastructure Manager Notice.

1.3 The ODP shall also ensure that the Key Contacts List is provided to the Authority within twenty four (24) hours of the receipt of any Termination Notice.

1.4 From the date that the Station Asset Management Plan is created pursuant to paragraph 1 of Schedule 1.7 (Stations) the ODP shall update the Handover Package to include the Station Asset Management Plan (and a copy of all previous Station Asset Management Plans) and shall supply updated versions of the Station Asset Management Plan whenever such plan is updated in accordance with paragraph 1 (Station Asset Management) of Schedule 1.7 (Stations).

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## **2 DIRECTOR'S CERTIFICATE**

Within one (1) month of the start of each ODP Year, the ODP shall provide to the Authority a certificate signed by a nominated and duly authorised director of the ODP, addressed to the Authority, which confirms that the Handover Package contains the information and objects specified in Appendix 1 (Form of Handover Package) to this Schedule 15.3 and that such information is accurate as at the date of the certificate.

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**Appendix 1 to Schedule 15.3 - Form of Handover Package**

**1 Property**

- 1.1 A list of all property owned, leased, operated or occupied by the ODP which shall include the address and contact telephone number of each property. Where applicable, the list will also include the name, address and telephone number of the lessor and/or the party which has granted authority to use or occupy the property, and any relevant reference numbers applicable to that lease or occupation.

**2 Contracts**

- 2.1 A printed or electronic list (in a format acceptable to the Authority) of all contracts (sales, purchases or otherwise including leases and licences) between the ODP and the counterparty or counterparties to each such contract, showing the name, address and telephone number of each counterparty; the contract reference number of the ODP and each counterparty (if any); and the contract price/value, term and expiry date. This requirement shall apply to all contracts unless otherwise agreed by the Authority.

**3 Systems**

- 3.1 A list of the electronic systems in use by the ODP, together with the name, office address and telephone number of the ODP's Information Technology Manager (or the holder of any equivalent post) who is responsible for administration of each such system.

**4 Daily Operations**

- 4.1 A printed or electronic list (in a format acceptable to the Authority) of all assets owned or operated by the ODP, together with their location.

**5 Insurance**

- 5.1 A list of the names, addresses and telephone numbers of all insurers and any relevant broker providing insurance to the ODP, together with the relevant policy numbers and other references and details of any outstanding claims or unresolved disputes.

**6 Safety Certificate**

- 6.1 A complete copy of the Safety Certificate, an electronic copy of the ODP's application for the Safety Certificate (in Microsoft Word format or such other format as is acceptable to the Authority) and full details of the ODP's safety management system in place to support the Safety Certificate.

**7 Structure**

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7.1 The form of Handover Package shall be structured by the ODP in separate parts to reflect the different elements of the services to be delivered as part of the ODP Services including:

- (a) Infrastructure Services;
- (b) WCB Services;
- (c) CVL Services; and
- (d) Infrastructure Manager Services.



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**Schedule 15.4 - Provisions Applying on and after Termination**

**1 NOVATION OF ACCESS AGREEMENTS ON TERMINATION OF THE ODP GRANT AGREEMENT**

1.1 The ODP shall, to the extent so requested by the Authority on termination of the ODP Grant Agreement or in respect of termination of certain ODP Services, in relation to any Access Agreement to which it is a party, novate its interest under any relevant Access Agreement (and any related Collateral Agreement) to the Authority or as the Authority may direct.

1.2 Such obligation to novate shall be subject to the agreement of any counterparty to such Access Agreement or Collateral Agreement and, to the extent applicable, the ORR.

1.3 Such novation shall be on such terms as the Authority may reasonably require, including:

(a) that the ODP shall not be released from any accrued but unperformed obligation, the consequences of any breach of the relevant agreement which is the subject of arbitration or litigation between the Parties or any liability in respect of any act or omission under or in relation to the relevant agreement prior to, or as at the date of, any such novation (except to the extent that the Authority or its nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant novation); and

(b) that neither the Authority nor its nominee shall be obliged, in connection with such novation, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 1.3(a),

but shall not, unless the ODP otherwise agrees, be on terms which release any counterparty to the relevant agreement from any liability to the ODP arising prior to the date of such novation.

1.4 The ODP shall, on the occurrence of the circumstances specified in paragraph 1.1 in relation to any other Train Operator who is a party to an Access Agreement to which the ODP is also party, agree to the novation of the relevant Train Operator's interest under the relevant Access Agreement to the Authority or as the Authority may direct, subject, to the extent applicable, to the consent of the ORR. The provisions of paragraph 1.3 shall apply to any such novation.

1.5 The ODP shall notify the Authority on becoming aware of any circumstances which might lead to the Authority being able to require the ODP to novate its interest or agree to the novation of another Train Operator's interest under this paragraph 1.

**2 CO-OPERATION WITH SUCCESSOR OPERATOR**

2.1 In order to ensure the continuity of, and an orderly handover of control over, the ODP Services, the ODP shall co-operate with:

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- (a) where a Successor Operator has been appointed, such Successor Operator; or
- (b) where a Successor Operator has not been so appointed, the Authority,
- and shall take such steps as may be reasonably requested by the Authority in connection therewith.
- 2.2 In satisfaction of its obligations under paragraph 2.1, the ODP shall make appropriately skilled and qualified ODP Services Employees reasonably available to attend such meetings with the Authority, the Successor Operator, Network Rail, any rolling stock lessor and/or and other relevant third party as are reasonably required in order to determine:
- (a) those actions that are required in order to facilitate such continuity and orderly handover, in particular those actions arising under, but not limited to, the following agreements:
- (i) Access Agreements;
  - (ii) Property Leases;
  - (iii) agreements in relation to Shared Facilities;
  - (iv) Rolling Stock Leases;
  - (v) Rolling Stock Related Contracts;
  - (vi) any other Key Contract; and
- (b) without prejudice to the Authority's rights under this Schedule 15.4, those rights and liabilities as may be specified in any Transfer Scheme.

### **3 TRANSFER OF PRIMARY RAIL SERVICES ASSETS**

#### **3.1 Option Arrangements**

- (a) The Authority hereby grants to the ODP the right to require the Authority to make, and the ODP hereby grants to the Authority the right to make, a Transfer Scheme in accordance with Section 12 and Schedule 2 of the Railways Act 2005 for the transfer of any or all Primary Rail Services Assets on the expiry of the Rail Services Term.
- (b) On or within fourteen (14) days before the expiry of the Rail Services Term:
- (i) either Party may serve notice on the other Party specifying the Primary Rail Services Assets to be transferred; and
  - (ii) the other Party may (within such timescale) serve a subsequent notice specifying any additional Primary Rail Services Assets to be transferred.

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- (c) The Authority may (and shall if required by the ODP) make one or more such Transfer Schemes for the transfer of the Primary Rail Services Assets specified in any such notice within fourteen (14) days after service of such notice (except in relation to any such Primary Rail Services Assets which are, in accordance with Schedule 14.4 (Designation of Rail Services Assets), de designated as such prior to the end of the ODP Grant Agreement Term).
  - (d) Any Rail Services Assets or Primary Rail Services Assets which are not so transferred shall cease to be designated as such fourteen (14) days after service of such notice.
  - (e) Any RV Assets, as specified in Column 1 of the table in Appendix 1 (List of the RV Assets) to Schedule 14.6 (Residual Value Mechanism) of the ODP Grant Agreement, which have been designated as Rail Services Assets or Primary Rail Services Assets, and that have been financed by a third party will, if the Authority so elects, be transferred to the Authority or such other party as the Authority may designate in the event of an ODP insolvency (as defined in paragraph 1.1 of Schedule 10.2 (Events of Default and Termination Events)).
  - (f) The Authority, may at its discretion, elect to make payments of any residual value, relating to any third party financed RV Assets, directly to the third party financier. Such payment will be capped at the minimum of the outstanding finance value or the outstanding RV Asset balance relating to each individual RV Asset, at the point of the ODP insolvency (as defined in paragraph 1.1 of Schedule 10.2 (Events of Default and Termination Events)). If the outstanding RV Asset balance is less than the residual value of the relevant RV Asset, the Authority shall adjust the RV Transfer value to reflect the remaining residual value of the RV Asset.

### 3.2 **Supplemental Agreement**

Without prejudice to the duties, powers, rights and obligations of the Authority under the Railways Act 2005 in respect of any Transfer Scheme, any Transfer Scheme shall impose on the ODP and the transferee an obligation to enter into an agreement substantially in the form of the Supplemental Agreement which shall provide for the determination of amounts to be paid in respect of the property, rights and liabilities which are transferred under such Transfer Scheme. The ODP shall enter into any such Supplemental Agreement and shall comply with its obligations thereunder.

### 3.3 **Payment of Estimated Transfer Price**

- (a) The Authority may require the ODP to pay to any transferee under a Transfer Scheme, or may require any such transferee to pay to the ODP, on the day on which the Transfer Scheme comes into force such sum as the Authority may determine should be so paid having regard to:
  - (i) its estimate of the sum likely to be paid under the relevant Supplemental Agreement in respect of the Primary Rail Services Assets being transferred under the relevant Transfer Scheme;

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- (ii) its estimate of any other sums likely to be paid thereunder;
  - (iii) the financial condition of the ODP and the transferee and whether any estimate so paid would be likely to be repaid, if in excess of the sums eventually payable thereunder; and
  - (iv) such other matters as the Authority may consider appropriate.
- (b) The ODP shall pay to any such transferee the sum determined by the Authority in accordance with paragraph 3.3(a) on the day on which the relevant Transfer Scheme comes into force.

### **3.4 Possession of Rail Services Assets**

On the coming into force of a Transfer Scheme, the ODP shall deliver up to the Authority (or its nominee) possession of the Primary Rail Services Assets transferred under such Transfer Scheme.

## **4 ASSOCIATED OBLIGATIONS ON TERMINATION, PARTIAL TERMINATION OR INFRASTRUCTURE MANAGER TERMINATION**

### **4.1 Assistance in Securing Continuity**

- (a) In order to facilitate the continuity of the ODP Services on expiry of the ODP Grant Agreement Term or, in respect of a service terminated following a Partial Termination Notice or Infrastructure Manager Notice, after such services are terminated, the ODP shall take such steps, both before and after the expiry of the ODP Grant Agreement Term or termination of certain ODP Services, as the Authority may reasonably require, to assist and advise any Successor Operator in providing and operating the ODP Services (or part thereof).
- (b) In particular, the ODP shall provide any Successor Operator with such records and information relating to or connected with the ODP Services as the Authority may reasonably require (other than confidential financial information but including all records relating to the ODP Services Employees).

### **4.2 Access**

On the expiry of the ODP Grant Agreement Term or, in respect of a service terminated following a Partial Termination Notice or Infrastructure Manager Notice, on the date on which such services are terminated (to the extent applicable to such terminated services), the ODP shall grant the Authority and its representatives such access as the Authority may reasonably request to any property owned, leased or operated by the ODP at such time, for the purpose of facilitating the continued provision of the ODP Services.

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#### 4.3 Key Contracts

- (a) The ODP shall provide such assistance to any Successor Operator as the Authority may reasonably require in ensuring that, pursuant to any Direct Agreements, such Successor Operator may enter into (or enjoy the benefit of) contracts equivalent to the relevant Key Contracts (or part thereof).
- (b) In satisfaction of its obligations under paragraph 4.3(a), the ODP shall terminate, surrender, cancel or undertake not to enforce its rights under any Key Contract (or part thereof) provided that nothing in this paragraph shall require the ODP to undertake not to enforce any rights under a Key Contract relating to the period prior to the expiry of the ODP Grant Agreement Term.

#### 4.4 Change of Name

The ODP shall cease to use any trade marks which are licensed to the ODP under any of the Brand Licences forthwith upon expiry of the ODP Grant Agreement Term and shall take all necessary steps to change any company name which incorporates any such marks as soon as practicable.

#### 4.5 Property Leases

- (a) The ODP shall, on the expiry of the ODP Grant Agreement Term or, in respect of a service terminated following a Partial Termination Notice or Infrastructure Manager Notice, on the date on which such services are terminated, if requested by the Authority, assign its interest under all or any Property Leases to the Authority or as the Authority may direct, subject where applicable to the agreement of any other party to such Property Lease or the ORR.
- (b) Such assignment shall be on such terms as the Authority may reasonably require, including:
  - (i) that the ODP shall not be released from any accrued but unperformed obligation, the consequences of any antecedent breach of a covenant or obligation in the Property Leases or any liability in respect of any act or omission under or in relation to the Property Lease prior to, or as at the date of, any such assignment (except to the extent that the Authority or its nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant assignment); and
  - (ii) that neither the Authority nor its nominee shall be obliged, in connection with such assignment, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 4.5(b)(i), and the ODP shall indemnify the Authority or its nominee, as the case

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may be, on demand, on an after-tax basis against any costs, losses, liabilities or expenses suffered or incurred in relation thereto.

- (iii) The ODP shall, on the occurrence of any of the circumstances specified in paragraph 4.5(a) in relation to any other Train Operator who is a party to a Property Lease to which the ODP is also party, agree to the assignment of such Train Operator's interest under the relevant Property Lease to the Authority or as the Authority may direct, subject, where applicable, to the consent of Network Rail. The provisions of paragraph 4.5(b) shall apply to any such assignment.
- (c) The ODP shall notify the Authority on becoming aware of any circumstances which might lead to the Authority being able to require the ODP to assign its interest or agree to the assignment of another Train Operator's interest under this paragraph 4.

## **5 ACTIONS REQUIRED IMMEDIATELY ON HANDOVER**

- 5.1 The ODP shall immediately on the expiry of the ODP Grant Agreement Term or, in respect of a service terminated following a Partial Termination Notice or Infrastructure Manager Notice, on the date on which such services are terminated (to the extent applicable to such terminated services) make available to the Authority:
  - (a) information as to the status of each purchase order or contract, including its award date, anticipated delivery date, confirmation of receipt of goods or services and the payment records for each purchase order, together with any matters in dispute with the appointed subcontractor and, to the extent that the ODP is a subcontractor to another Train Operator, equivalent information in respect of that Train Operator; and
  - (b) information concerning any contract necessary for the continued operation of the ODP Grant Agreement where a procurement or bidding process has been initiated.
- 5.2 The ODP agrees that the Authority or its agents may have access to and use free of charge any information contained in any Computer System or in hard copy format as the Authority sees fit (for the purposes of continuing the operation of the ODP Services).

## **6 MAINTENANCE RECORDS**

- 6.1 The ODP shall immediately on expiry of the ODP Grant Agreement Term or, in respect of a service terminated following a Partial Termination Notice or Infrastructure Manager Notice, on the date on which such services are terminated (to the extent applicable to such terminated services) provide to the Authority:
  - (a) records of the status of the maintenance of the rolling stock vehicles used in the provision of the Passenger Services;

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- (b) records of the status of the maintenance of any lifting equipment;
  - (c) a list of any deferred maintenance;
  - (d) records of the status of the maintenance of any depot or station which is a Rail Services Asset; and
  - (e) records of CVL Assets,  
including the extent of completion of examinations and the modification status of each such rolling stock vehicle.

## **7 TICKETING ARRANGEMENTS**

- 7.1 The ODP shall provide immediately on expiry of the ODP Grant Agreement or, in respect of a service terminated following a Partial Termination Notice or Infrastructure Manager Notice, on the date on which such services are terminated (to the extent applicable to such terminated services) a statement certifying:
- (a) all ticketing transactions with the public or credit card agencies that are in process and not yet complete, together with any allocations on multi-modal travel with other agencies or Local Authorities;
  - (b) the extent of any outstanding claims with ticketing settlement agencies;
  - (c) refund arrangements (whether under the Passenger's Charter or not) with members of the public or other Train Operators or ticketing settlement agencies that are in process and not yet complete; and
  - (d) commissions owed and/or due.

## **8 ODP'S INTELLECTUAL PROPERTY**

- 8.1 On the expiry of the ODP Grant Agreement Term or, in respect of a service terminated following a Partial Termination Notice or Infrastructure Manager Notice, on the date on which such services are terminated (to the extent applicable to such terminated services) the ODP will grant to any Successor Operator licences of any Intellectual Property Rights which:
- (a) is owned by or licensed to the ODP;
  - (b) was not owned by or licensed to it immediately prior to the Start Date;
  - (c) has not been designated as a Primary Rail Services Asset;
  - (d) does not represent or constitute a Mark; and

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(e) may, in the reasonable opinion of the Authority, be necessary for any Successor Operator to operate the ODP Services on an efficient and economic basis after the expiry of the ODP Grant Agreement Term or termination of certain ODP Services.

8.2 When agreeing the terms on which Intellectual Property Rights is to be licensed to it, the ODP shall use all reasonable endeavours to ensure that such terms include the right to sub-license such Intellectual Property Rights in accordance with this paragraph 8. The ODP shall not enter into a licence that does not include such a provision without first obtaining the Authority's prior written consent (such consent not to be unreasonably withheld).

8.3 Any such licence shall be granted to the relevant Successor Operator for such period as the Authority may determine to be reasonably necessary for the purpose of securing continuity of the provision of the ODP Services and shall be free of charge and royalty-free for a period of one (1) month or less.

8.4 If such licence is for a period in excess of one month, the grant of the licence shall be subject to payment of a reasonable royalty (backdated to the expiry of the ODP Grant Agreement Term) on the basis of a willing licensor and licensee entering into a licence on comparable terms to similar licences of such Intellectual Property Rights. If the ODP and the relevant Successor Operator are unable to agree such royalty, the ODP shall submit such dispute for resolution in accordance with such dispute resolution rules as the Authority may require.

8.5 Any such licence shall be in such form as the Authority shall reasonably determine and shall:

(a) be non-exclusive and limited to use solely for the purposes of the provision and operation of the ODP Services and will not provide for any right to use such Intellectual Property Rights for any other purpose (including its marketing or exploitation for any other purpose);

(b) be terminable on material breach by the Successor Operator;

(c) contain an indemnity from the ODP to the effect that to the best of its knowledge and belief it owns the relevant Intellectual Property Rights or has the right to license it and the licensing of it and the subsequent use of the Intellectual Property Rights will not infringe any third party Intellectual Property Rights; and

(d) require the Successor Operator, to the extent that it relates to any trade marks, to use such trade marks in such manner as may reasonably be required by the ODP provided that it shall not be reasonable for the ODP to require any such trade mark to be used in a manner materially different from its use during the ODP Grant Agreement Term.

## **9 INFORMATION ABOUT PASSENGERS**

9.1 The ODP shall immediately on the expiry of the ODP Grant Agreement Term or, in respect of a service terminated following a Partial Termination Notice or Infrastructure Manager Notice,



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on the date on which such services are terminated (to the extent applicable to such terminated services) make available to the Authority and/or its nominee:

- (a) passenger numbers information specified in paragraph 1 of Schedule 1.5 (Information about Passengers), in such format and to such level of disaggregation as the Authority and/or its nominee may reasonably require;
- (b) the CRM Data and Yield Management Data.

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**Appendix 1 to Schedule 15.4 - Form of Transfer Scheme**

Dated [INSERT DATE]

**TRANSFER SCHEME**

**OF**

**THE AUTHORITY**

**MADE PURSUANT TO SCHEDULE 2 OF THE RAILWAYS ACT 2005**

**IN FAVOUR OF**

[INSERT NAME OF SUCCESSOR OPERATOR]

**IN RESPECT OF**

**CERTAIN PROPERTY, RIGHTS AND LIABILITIES**

**OF**

[INSERT NAME OF ODP]

[Insert the address details for the Authority]

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## TRANSFER SCHEME

### Whereas:

- (A) [INSERT NAME OF ODP] (the “**Transferor**”) has been providing certain services for the carriage of passengers by railway and operating certain stations and light maintenance depots pursuant to an ODP Grant Agreement with the Authority (the “**Authority**”) dated [INSERT DATE] (the “**ODP Grant Agreement**”).
- (B) The ODP Grant Agreement terminated or is to terminate on [INSERT DATE] and [INSERT NAME OF SUCCESSOR OPERATOR] (the “**Transferee**”) is to continue the provision of all or part of such services or the operation of all or some of such stations and light maintenance depots under a Successor Agreement or in connection with the performance or exercise of the duties and powers of the Authority to secure the provision of such services or the operation of such stations or light maintenance depots.
- (C) Certain property, rights and liabilities of the Transferor which were designated as Rail Services Assets for the purpose of the ODP Grant Agreement are to be transferred to the Transferee under a transfer scheme made by the Authority under Section 12 and Schedule 2 of the Railways Act 2005.

The Authority, in exercise of the powers conferred on it by Schedule 2 of the Railways Act 2005, hereby makes the following scheme:

### **1 Definitions and Interpretation**

In this Transfer Scheme functions has the meaning ascribed to it in the Railways Act 2005 and relevant enactment has the meaning ascribed to it in paragraph 6 of Schedule 2 of the Railways Act 2005.

### **2 Transfer of Property, Rights and Liabilities**

With effect from [INSERT DATE] the property, rights and liabilities of the Transferor specified or described in the Schedule shall be transferred to, and vest in, the Transferee.

### **3 Statutory Functions**

Subject to any amendment to the relevant enactment which comes into force on or after the date on which this Transfer Scheme is made, there shall be transferred to the Transferee all the functions of the Transferor under any relevant enactments if and to the extent that any such relevant enactment:

- (a) relates to any property which is to be transferred by this Transfer Scheme; or
- (b) authorises the carrying out of works designed to be used in connection with any such property or the acquisition of land for the purpose of carrying out any such works.

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**4 Supplemental Agreement**

Each of the Transferor and the Transferee shall enter into the Supplemental Agreement (as defined in the ODP Grant Agreement) on the coming into force of this Transfer Scheme.

This Transfer Scheme is made by the Authority on [INSERT DATE].

**SEAL REF NO:**

THE CORPORATE SEAL OF  
THE AUTHORITY IS  
HEREUNTO AFFIXED:



.....  
Authenticated by the Authority

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**Schedule to the Transfer Scheme**

**[LIST RELEVANT RAIL SERVICES ASSETS TO BE TRANSFERRED TO SUCCESSOR  
OPERATOR]**

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**Appendix 2 to Schedule 15.4 - Form of Supplemental Agreement**

Dated [INSERT DATE]

[INSERT NAME OF OUTGOING [ODP]

and

[INSERT NAME OF SUCCESSOR OPERATOR]

**SUPPLEMENTAL AGREEMENT**

to the transfer scheme dated [INSERT DATE] made

by the Authority in respect of

certain property rights and liabilities of

[INSERT NAME OF OUTGOING [ODP]

[Insert the address details for the Authority]

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**THIS SUPPLEMENTAL AGREEMENT** is made on [INSERT DAY] [INSERT YEAR]

**BETWEEN:**

- (1) [INSERT NAME OF OUTGOING [ODP] whose registered office is at [INSERT ADDRESS OF REGISTERED OFFICE] (the “**Transferor**”); and
- (2) [INSERT NAME OF SUCCESSOR OPERATOR] whose registered office is at [INSERT ADDRESS OF REGISTERED OFFICE] (the “**Transferee**”).

**WHEREAS**

- (A) The Transferor has been providing certain services and the carriage of passengers by railway and operating certain stations and light maintenance depots pursuant to an ODP Grant Agreement with the Authority (the “**Authority**”) dated [INSERT DATE] (the “ODP Grant Agreement”).
- (B) The ODP Grant Agreement terminated or is to terminate on [INSERT DATE] and the Transferee has been selected by the Authority to continue the provision of all or part of such services pursuant either to a Successor Agreement with the Authority or arrangements made with the Authority in connection with the Authority's duties and powers.
- (C) Certain property, rights and liabilities of the Transferor are to be transferred to the Transferee pursuant to a transfer scheme made by the Authority on [INSERT DATE] under Section 12 and Schedule 2 of the Railways Act 2005 (the “**Transfer Scheme**”).
- (D) This Agreement is supplemental to the Transfer Scheme and sets out certain terms between the Transferor and the Transferee in relation to the transfer of such property, rights and liabilities under the Transfer Scheme and the transfer of certain other property, rights and liabilities at the same time.

**IT IS AGREED THAT:**

**1 DEFINITIONS AND INTERPRETATION**

**Definitions**

- 1.1 The following words and expressions shall have the following meaning:

**Business** means such of the undertaking or part of the undertaking of the Transferor prior to the Transfer Date as may be continued by the Transferee after the Transfer Date;

**Credit** has the meaning assigned to that term under the Ticketing and Settlement Agreement;

**Debit** has the meaning assigned to that term under the Ticketing and Settlement Agreement;

**Estimated Completion Payment** has the meaning ascribed to that term in Clause 2.1;

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**Net Asset Statement** means the statement to be drawn up pursuant to Clause 2.2;

**Net Asset Value** means the aggregate of the amounts of the Relevant Rail Services Assets, the Relevant Contract Liabilities, the Relevant Debits and Credits and the Relevant Employee Liabilities as shown in the Net Asset Statement agreed or determined pursuant to Clause 2.2;

**Purchase Price** has the meaning ascribed to that term in Clause 2.1;

**Relevant Contract Liabilities** means such rights and liabilities of the Transferor as may be transferred to the Transferee on the expiry of the ODP Grant Agreement Term in relation to any Licence, Access Agreement or Property Lease under paragraphs 1 and 4.5 of Schedule 15.4 (Provisions Applying on and after Termination) of the ODP Grant Agreement;

**Relevant Debits and Credits** means such Debits and Credits of the Transferor which relate to Fares sold before the Transfer Date and which may be received by the Transferee as a result of Clause 11-33 of the Ticketing and Settlement Agreement;

**Relevant Employee Liabilities** means such rights and liabilities of the Transferor (or any other relevant employer or person) under any contracts of employment relating to the Relevant Employees which have been or are to be transferred to the Transferee by virtue of the operation of Law (including the Transfer Regulations);

**Relevant Employees** means all persons employed in the Business immediately before the Transfer Date (whether employed by the Transferor or otherwise) whose contract of employment has been or is to be transferred to the Transferee by virtue of the operation of Law (including the Transfer Regulations) or any other person employed at any time in the Business in respect of whom liabilities arising from a contract of employment or employment relationship have or will be transferred by virtue of the operation of Law (including the Transfer Regulations);

**Relevant Rail Services Assets** means such of the property, rights and liabilities that are legally or beneficially owned by the Transferor and which are or are to be transferred to the Transferee under the Transfer Scheme;

**Reporting Accountants** means such firm of accountants as may be selected by agreement between the parties within four (4) weeks of the preparation of the Net Asset Statement or, in the absence of such agreement, selected by the Authority upon the request of either party;

**Season Ticket Fare** means a Fare which entitles the purchaser to make an unlimited number of journeys in any direction during the period for which, and between the stations and/or the zones for which, such Fare is valid;

**Stored Credit Balance** means any monetary amount held by the ODP which a passenger can apply at a future date to the purchase of a Fare (stored in any medium);



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**Taxation** comprises all forms of taxation, duties, contributions and levies of the United Kingdom whenever imposed and (except in so far as attributable to the unreasonable delay or default of the Transferee) all penalties and interest relating thereto;

**TOGC** has the meaning assigned to that term in Clause 6.2;

**Transfer Date** means the date and, where relevant, the time on or at which the Transfer Scheme comes into force;

**Transfer Regulations** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended, replaced or substituted from time to time);

**Transferring Assets and Liabilities** has the meaning assigned to that term in Clause 2.1; and

**Undisclosed Employee** has the meaning assigned to that term in Clause 7.1(d).

Construction and Interpretation

In this Agreement terms and expressions defined in the ODP Grant Agreement shall have the same meaning and the terms “contract of employment”, “collective agreement”, “employee representatives” and “trade union” shall have the same meanings respectively as in the Transfer Regulations.

## **2 TRANSFER PRICE**

### **2.1 Amount and Payment**

The price for the transfer of:

- (a) the Relevant Rail Services Assets;
- (b) the Relevant Contract Liabilities;
- (c) the Relevant Debits and Credits; and
- (d) the Relevant Employee Liabilities,

(together the “**Transferring Assets and Liabilities**”) shall (subject to adjustment as expressly provided in this Agreement) be an amount equal to the Net Asset Value (the “**Purchase Price**”). The sum of [£INSERT AMOUNT], as determined under paragraph 3.3 of Schedule 15.4 (Provisions Applying on and after Termination) of the ODP Grant Agreement (the “**Estimated Completion Payment**”) shall be paid in immediately available funds by the Transferor to the Transferee, or by the Transferee to the Transferor, as determined under paragraph 3.3 of Schedule 15.4 (Provisions Applying on and after Termination) of the ODP Grant Agreement, on the Transfer Date. On determination of the Purchase Price a balancing payment (if any) shall be made by the Transferor to the Transferee or the Transferee to the Transferor (as the case may be) in accordance with Clause 2.1.

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## 2.2 **Net Asset Statement**

The Transferee shall procure that, as soon as practicable and in any event not later than two (2) months following the Transfer Date, there shall be drawn up a statement showing a true and fair view of the aggregate of the amount of each separate asset and liability of the Transferring Assets and Liabilities as at the Transfer Date.

2.3 The Net Asset Statement shall be:

- (a) drawn up in the manner described in the Schedule;
- (b) prepared on such basis as would enable the Transferee's auditors, if so requested, to give an unqualified audit report thereon to the effect that it had been drawn up in accordance with the schedule; and
- (c) presented, initially as a draft, to the Transferor immediately following its preparation for review in conjunction with its auditors.

2.4 If the Transferor and the Transferee have failed to agree the Net Asset Statement within four (4) weeks following such presentation, the matter shall be referred to the Reporting Accountants who shall settle and complete the Net Asset Statement as soon as practicable and shall determine the amount of the Net Asset Value as shown by the Net Asset Statement.

## 2.5 **Adjustment of Price**

If the Purchase Price exceeds or is less than the Estimated Completion Payment, the Transferee shall pay to the Transferor or, as the case may be, the Transferor shall pay to the Transferee, in either case within fourteen (14) days of the agreement or determination of the Net Asset Value, an amount equal to such excess or deficiency together in either case with interest thereon calculated from the Transfer Date at the Interest Rate.

## 3 **REFERENCES TO THE REPORTING ACCOUNTANTS**

Whenever any matter is referred under this Agreement to the decision of the Reporting Accountants:

- (a) the Reporting Accountants shall be engaged jointly by the parties on the terms set out in this Agreement and otherwise on such terms as shall be agreed, provided that neither party shall unreasonably (having regard, amongst other things, to the provisions of this Agreement) refuse its agreement to terms proposed by the Reporting Accountants or by the other party. If the terms of engagement of the Reporting Accountants have not been settled within fourteen (14) days of their appointment having been determined (or such longer period as the parties may agree) then, unless one party is unreasonably refusing its agreement to those terms, such accountants shall be deemed never to have been appointed as Reporting Accountants, save that the accountants shall be entitled to their reasonable expenses under Clause 3(d), and

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new Reporting Accountants shall be selected in accordance with the provisions of this Agreement;

- (b) if Reporting Accountants acting or appointed to act under this Agreement resign, withdraw, refuse to act, or are disqualified for any reason from performing their duties then, except as may be agreed between the parties, the parties shall appoint a replacement in accordance with the definition of Reporting Accountants;
- (c) the Reporting Accountants shall be deemed to act as experts and not as arbitrators;
- (d) the Reporting Accountants shall have power to allocate their fees and expenses for payment in whole or in part by any party at their discretion. If not otherwise allocated they shall be paid as to half by the Transferor and as to half by the Transferee;
- (e) each of the parties shall promptly on request supply to the Reporting Accountants all such documents and information as they may require for the purpose of the reference;
- (f) the decision of the Reporting Accountants shall (in the absence of objection on the grounds of any manifest error discovered within fourteen (14) days of the issue of their decision) be conclusive and binding (and in accordance with Clause 3(g) below) and shall not be the subject of any appeal by way of legal proceeding or arbitration or otherwise; and
- (g) without prejudice to Clauses 3(a) to 3(f) above, either party may, prior to or during the course of the reference to the Reporting Accountants, seek a declaration from the court on a relevant point of law, including but not limited to a point of legal interpretation. Upon such application for a declaration being issued and served all applicable time limits relative to the reference to the Reporting Accountant shall be stayed pending the outcome of such application (including any appeal). The Reporting Accountants are bound to make their determination in a manner consistent with the findings of the Court.

#### **4 WARRANTY**

The Transferor warrants and represents to the Transferee that the Relevant Contract Liabilities and the Relevant Rail Services Assets are, to the extent they are property or rights, transferring to the Transferee free and clear of all Security Interests.

#### **5 INTEREST**

If the Transferor or the Transferee defaults in the payment when due of any sum payable under this Agreement (whether determined by agreement or pursuant to an order of a court or otherwise) the liability of the Transferor or the Transferee (as the case may be) shall be increased to include interest on such sum from the date when such payment is due until the date of actual payment (after as well as before judgement) at a rate equal to the Interest Rate. Such interest shall accrue from day to day.

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## **6 VALUE ADDED TAX**

- 6.1 All amounts under this Agreement are expressed as exclusive of Value Added Tax where Value Added Tax is applicable.
- 6.2 The Transferor and the Transferee shall use all reasonable endeavours to secure that the transfer of the Transferring Assets and Liabilities is treated for Value Added Tax purposes as the transfer of a business as a going concern ("TOGC") and accordingly as neither a supply of goods nor a supply of services for the purposes of Value Added Tax.
- 6.3 If HM Revenue & Customs direct that the transfer of the Transferring Assets and Liabilities cannot be treated as a TOGC, the Transferor shall provide the Transferee with a copy of such direction within five (5) days of receipt thereof by the Transferor.
- 6.4 The Transferee shall thereafter pay upon the receipt of a valid tax invoice the amount of any Value Added Tax which as a result of that direction may be chargeable on the transfer of the Transferring Assets and Liabilities. If the aforementioned direction was issued as a result of any action or inaction of the Transferee then the Transferee shall in addition to the Value Added Tax indemnify the Transferor for any penalties and interest that may be incurred upon receipt of such evidence from HM Revenue & Customs.
- 6.5 If the Transferee considers the direction issued by HM Revenue & Customs referred to in Clause 6.3 to be incorrect then, without prejudice to the Transferee's obligation under Clause 6.4 to pay to the Transferor the amount of any Value Added Tax which as a result such direction may be chargeable on the transfer of the Transferring Assets and Liabilities, the Transferee may, within thirty (30) days of receipt of such direction by the Transferor, give notice to the Transferor that it requires the Transferor to appeal such direction. Upon requesting such an appeal the Transferee agrees to indemnify the Transferor for all reasonable costs that the Transferor may incur in taking such action upon receipt of evidence of those costs. If such an appeal is successful the Transferor agrees to reimburse the Transferee for such reasonable costs and penalties and interest to the extent that those costs have been reimbursed by HM Revenue & Customs.
- 6.6 If any amount paid by the Transferee to the Transferor in respect of Value Added Tax pursuant to this Agreement is subsequently found to have been paid in error the Transferor shall issue a valid tax credit note for the appropriate sum to the Transferee and promptly repay such amount to the Transferee.
- 6.7 If any amount is payable by the Transferor to the Transferee in respect of the transfer of the Relevant Rail Services Assets, Relevant Contract Liabilities, Relevant Debits and Credits and Relevant Employee Liabilities pursuant to this Agreement, Clauses 6.3 to 6.6 inclusive shall apply mutatis mutandis to such payment substituting Transferor for Transferee and vice versa.

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6.8 All of the records referred to in Section 49 of the Value Added Tax Act 1994 relating to the Business (being the purchase records) shall be retained by the Transferor and the Transferor shall undertake to the Transferee to:

- (a) preserve those records in such manner and for such periods as may be required by law; and
- (b) give the Transferee as from the Transfer Date reasonable access during normal business hours to such records and to take copies of such records.

## **7 EMPLOYEES**

### **7.1 Transfer Regulations**

The parties accept that, to the extent that the undertaking or part of the undertaking of the Transferor is continued by the Transferee after the Transfer Date, this Agreement and the transfer of the Business which is effected in connection with the Transfer Scheme are governed by the Transfer Regulations and the following provisions shall apply in connection therewith:

- (a) the contract of employment of each of the Relevant Employees (save, to the extent provided by the Transfer Regulations, insofar as such contract relates to any occupational pension scheme) shall be transferred to the Transferee with effect from the Transfer Date which shall be the “**time of transfer**” under the Transfer Regulations and the Transferee shall employ each such Relevant Employee on the terms of those contracts of employment (save, to the extent provided by the Transfer Regulations, insofar as such contract relates to any occupational pension scheme) with effect from the Transfer Date;
- (b) the Transferor shall perform and discharge all its obligations in respect of all the Relevant Employees for its own account up to and including the Transfer Date including, without limitation, discharging all wages and salaries of the Relevant Employees, all employer's contributions to any relevant occupational pension scheme and all other costs and expenses related to their employment (including, without limitation, any Taxation, accrued holiday pay, accrued bonus, commission or other sums payable in respect of service prior to the close of business on the Transfer Date) and shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, liability (including, without limitation, any Taxation), cost, claim, expense (including, without limitation, reasonable legal fees) or demand arising from the Transferor's failure so to discharge;
- (c) the Transferor shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, cost, claim, liability (including, without limitation, any Taxation), expense (including, without limitation, reasonable legal fees) or demand which relates to or arises out of any act or omission by the Transferor or any other event or occurrence prior to the Transfer Date and which the Transferee may incur in relation to any contract of employment or collective agreement concerning one or more of the Relevant

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Employees pursuant to the provisions of the Transfer Regulations or otherwise including, without limitation, any such matter relating to or arising out of:

- (i) the Transferor's rights, powers, duties and/or liabilities (including, without limitation, any Taxation) under or in connection with any such contract of employment or collective agreement, which rights, powers, duties and/or liabilities (as the case may be) are or will be transferred to the Transferee in accordance with the Transfer Regulations; or
  - (ii) anything done or omitted before the Transfer Date by or in relation to the Transferor in respect of any such contract of employment or collective agreement or any Relevant Employee, which is deemed by the Transfer Regulations to have been done or omitted by or in relation to the Transferee save where the thing done or omitted to be done before the Transfer Date relates to the Transferee's failure to comply with its obligations referred to in Clause 7.4;
- (d) if any contract of employment or collective agreement which is neither disclosed in writing to the Transferee by the Transferor prior to the Transfer Date nor made available to the Authority under Schedule 15.3 (Handover Package) of the ODP Grant Agreement prior to the Transfer Date shall have effect as if originally made between the Transferee and any employee (the "**Undisclosed Employee**") or a trade union or employee representatives as a result of the provisions of the Transfer Regulations (without prejudice to any other right or remedy which may be available to the Transferee):
  - (i) the Transferee may, upon becoming aware of the application of the Transfer Regulations to any such contract of employment or collective agreement terminate such contract or agreement forthwith;
  - (ii) the Transferor shall indemnify the Transferee against each and every action, proceeding, cost, claim, liability (including, without limitation, any Taxation), expense (including, without limitation, reasonable legal fees) or demand relating to or arising out of such termination and reimburse the Transferee for all costs and expenses (including, without limitation, any Taxation) incurred in employing such employee in respect of his or her employment following the Transfer Date; and
  - (iii) the Transferor shall indemnify the Transferee in respect of any Undisclosed Employee on the same terms mutatis mutandis as the Transferor has indemnified the Transferee in respect of a Relevant Employee pursuant to the terms of Clauses 7.1(b) and 7.1(c); and

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- (e) the Transferor shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, cost, claim, liability (including without limitation, any Taxation) expense (including, without limitation, reasonable legal fees) or demand which relates to or arises out of any dismissal (including, without limitation, constructive dismissal) by the Transferor of any employee (not being a Relevant Employee) and which the Transferee may incur pursuant to the provisions of the Transfer Regulations.

## 7.2 Transferee's Indemnities

The Transferee shall indemnify the Transferor and keep the Transferor indemnified against each and every action, proceeding, liability (including, without limitation, any Taxation), cost, claim, loss, expense (including reasonable legal fees) and demand arising out of or in connection with:

- (a) any substantial change in the working conditions of the Relevant Employees to his or her detriment or any of them occurring on or after the Transfer Date;
- (b) the change of employer occurring by virtue of the Transfer Regulations and/or the ODP Grant Agreement being significant and detrimental to any of the Relevant Employees;
- (c) the employment by the Transferee on or after the Transfer Date of any of the Relevant Employees other than on terms (including terms relating to any occupational pension scheme) at least as good as those enjoyed prior to the Transfer Date or the termination of the employment of any of them on or after the Transfer Date; or
- (d) any claim by any Relevant Employee (whether in contract or in tort or under statute (including the Treaty of the European Community or European Union and any Directives made under the Authority of any such Treaty or any successor thereof)) for any remedy (including, without limitation, for unfair dismissal, redundancy, statutory redundancy, equal pay, sex or race discrimination) as a result of any act or omission by the Transferee after the Transfer Date.

- 7.3 The Transferee shall indemnify the Transferor and keep the Transferor indemnified against each and every action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees) and demand which arises as a result of it not providing or not having provided, in accordance with its obligations under the Transfer Regulations, the Transferor in writing with such information and at such time as will enable the Transferor to carry out its duties under Regulation 13(2)(d) and 13(6) of the Transfer Regulations concerning measures envisaged by the Transferee in relation to the Relevant Employees.

## 7.4 Details of Relevant Employees

Without prejudice to the Transferor's duties under the Transfer Regulations, the Transferor warrants to the Transferee that it has (to the extent not made available to the Authority under Schedule 15.4 (Provisions Applying on and after Termination) of the ODP Grant Agreement

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prior to the Transfer Date) provided the Transferee prior to the Transfer Date with full particulars of:

- (a) each Relevant Employee, including name, sex, and the date on which continuity of employment began for each Relevant Employee for statutory purposes;
- (b) terms and conditions of employment of each such person;
- (c) all payments, benefits or changes to terms and conditions of employment promised to any such person;
- (d) dismissals of Relevant Employees or termination of employment effected within twelve (12) months prior to the Transfer Date including the Transfer Date;
- (e) all agreements or arrangements entered into in relation to the Relevant Employees between the Transferor, any Affiliate of the Transferor or any other relevant employer and any trade union or association of trade unions or organisation or body of employees including employee representatives and elected representatives; and
- (f) all strikes or other Industrial Action taken by any Relevant Employee within twelve (12) months prior to the Transfer Date including the Transfer Date.

7.5 The Transferor and Transferee shall deliver to each of the Relevant Employees letters in an agreed form from the Transferor and Transferee as soon as is practicable after the execution of this Agreement (to the extent not already delivered prior to the Transfer Date).

## **8 MISCELLANEOUS PROVISIONS**

### **8.1 Variations in Writing**

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

### **8.2 Partial Invalidity**

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

### **8.3 Further Assurance**

Each of the parties agrees to execute and deliver all such further instruments and do and perform all such further acts and things as shall be necessary or expedient for the carrying out of the provisions of this Agreement.



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#### 8.4 Notices

Any notice or other communication requiring to be given or served under or in connection with this Agreement shall be in writing and shall be sufficiently given or served if delivered or sent to the registered office of the recipient or:

- (a) in the case of the Transferor to [INSERT NAME OF TRANSFEROR] at:

[INSERT ADDRESS]

[INSERT FAX]

Attention: [INSERT NAME]

- (b) in the case of the Transferee to [INSERT NAME OF TRANSFEREE] at:

[INSERT ADDRESS]

[INSERT FAX]

Attention: [INSERT NAME]

Any such notice or other communication shall be delivered by hand or sent by courier, fax or prepaid first class post. If sent by courier or fax such notice or communication shall conclusively be deemed to have been given or served at the time of despatch. If sent by post such notice or communication shall conclusively be deemed to have been received two (2) Weekdays from the time of posting.

#### 8.5 Counterparts

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

#### 8.6 Third Parties

This Agreement does not create any rights under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not a party to it.

#### 8.7 Governing Law

This Agreement (and any non-contractual obligations arising out of or in connection with it) shall be governed by and construed in accordance with the laws of England and Wales and the parties irrevocably agree that the courts of England and Wales are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

**IN WITNESS** whereof the parties hereto have executed this Agreement the day and year first before written.

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SIGNED FOR AND ON BEHALF  
OF THE **[INSERT NAME OF  
TRANSFEROR]**:



DIRECTOR:

DIRECTOR/SECRETARY:

SIGNED FOR AND ON  
BEHALF OF THE **[INSERT  
NAME OF TRANSFEREE]**:



DIRECTOR:

DIRECTOR/SECRETARY:

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**Schedule to the Supplemental Agreement**

**Net Asset Statement**

The Net Asset Statement shall be drawn up (except to the extent otherwise agreed by the Transferor and the Transferee) in accordance with accounting principles generally accepted in the United Kingdom and such that the Transferring Assets and Liabilities are valued on the following basis:

- 1 Rights and liabilities relating to an obligation of carriage under the terms of any Fare shall be valued in accordance with the following formula:

$$(C - D) \times \frac{A}{B} + E$$

**Where:**

|          |   |
|----------|---|
| <b>C</b> | equals the Credit (exclusive of any Valued Added Tax) received by the Transferor in respect of the Fare provided that:  |
|          | such Credit shall be deemed not to include any reduction in respect of a discount allowed to the purchaser of the Fare pursuant to the Passenger's Charter or any other passenger's charter of the Transferor;  |
|          | if the Fare is a Season Ticket Fare, such Credit shall be the New Credit (as defined in the Ticketing and Settlement Agreement) relating to that Season Ticket Fare on the Transfer Date if different to the Credit that was in fact received by the Transferor in respect of such Season Ticket Fare;  |
|          | such Credit shall be net of any Private Settlement Credit (as defined in the Ticketing and Settlement Agreement) arising in respect of that Fare; and   |
|          | such Credit shall be deemed to exclude any Credit received by the Transferor in respect of any commission due to it in respect of the sale of such Fare (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Fare); |
| <b>D</b> | equals the Debit (exclusive of any Value Added Tax) received by the Transferor in respect of the commission due in respect of the sale of the Fare (provided that for these purposes the  |

|                       |   |
|-----------------------|---|
|                       | amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Fare);   |
| $\frac{A}{B}$ equals: | in the case of a Season Ticket Fare, the number of journeys which the purchaser of the Fare is estimated to make from (and including) the Transfer Date to (and including) the last day on which the Fare is valid (including any extensions to its original period of validity) divided by the total number of journeys which the purchaser of the Fare is estimated to make with that Fare (as determined in each case in accordance with Schedule 28 of the Ticketing and Settlement Agreement);               |
|                       | in the case of any other Fare which entitles the holder thereof to make more than two journeys, the number of days for which the Fare continues to be valid after the Transfer Date (including any extensions to its original period of validity) divided by the total number of days for which such Fare is valid on issue (except to the extent that it can reasonably be estimated what proportion of the journeys which could be made on issue of the Fare have not been made prior to the Transfer Date); or |
|                       | in the case of any other Fare, zero; and  |
| <b>E</b>              | $\frac{A}{B}$<br>equals, if $\frac{A}{B}$ is greater than zero:<br><br>the amount of any discount to which it can be reasonably estimated that the purchaser of the Fare would be entitled pursuant to the Passenger's Charter or any other passenger's charter of the Transferor on purchasing an equivalent Fare on the expiry of the relevant Fare,  |

and for these purposes a Credit or Debit shall be deemed to be received when the relevant Fare is Accepted for Clearing (as defined in the Ticketing and Settlement Agreement).

- 2** Rights and liabilities relating to an Excess Fare, Reservation or Upgrade (as such terms are defined in the Ticketing and Settlement Agreement) shall be valued at zero unless such Excess Fare, Reservation or Upgrade involves more than two journeys, in which case they shall be

valued in accordance with paragraph 1 and references to Fare in paragraph 1 shall be construed accordingly.

- 3** Rights and liabilities under a Discount Card shall be valued in accordance with the following formula:

$$(C - D) \times \frac{A}{B}$$

**Where:**

|  |   |
|--|---|
| <b>C</b>   | equals the Credit (exclusive of any Value Added Tax) received by the Transferor in respect of the Discount Card;  |
| <b>D</b>   | equals the Debit (exclusive of any Value Added Tax) received by the Transferor in respect of the commission due in respect of the sale of the Discount Card (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Discount Card); and        |
| $\frac{\mathbf{A}}{\mathbf{B}}$  | equals the number of days for which the Discount Card continues to be valid after the Transfer Date (including any extensions to its original period of validity) divided by the total number of days for which such Discount Card is valid on issue, or in the case of any Discount Card listed in Schedules 12 or 39 of the Ticketing and Settlement Agreement on the Start Date, zero, |
| and for these purposes a Credit or Debit shall be deemed to be received when the relevant Discount Card is Accepted for Clearing (as defined in the Ticketing and Settlement Agreement). |   |

- 4** Relevant Debits and Credits shall be valued at the full amount of such Debits and Credits (inclusive of any Value Added Tax) but excluding any Debits and Credits arising in respect of Adjustment Amounts (as defined in the Ticketing and Settlement Agreement) which are received by the Transferee in respect of a change to the Credit which is used to value any relevant Season Ticket Fare under paragraph 1 of this Schedule to the extent such Adjustment Amounts (as defined in the Ticketing and Settlement Agreement) relate to a period after the Transfer Date.
- 5** Rights and liabilities in respect of any contract, lease, licence or other equivalent arrangement (excluding rights and liabilities valued under paragraphs 1 to 4) shall be valued at nil except to the extent that the relevant rights and liabilities include matters specified in the left hand Column of the following table, which shall be valued on the basis specified in the right hand Column of the following table:

| Rights and Liabilities   | Value  |
|--|--|
| Any accrued rights to receive payment  | Monetary amounts so accrued, subject to any provision being made for payment not being received from any other person  |
| Any right to receive payment in respect of goods and/or services provided by the Transferor prior to the Transfer Date where the due date for such payment is after the Transfer Date  | Amount payable under such contract, lease, licence or other equivalent arrangement for the goods and/or services so provided by the Transferor, subject to any provision being made for payment not being received from any other person |
| Any accrued liabilities to make payment  | Monetary amounts so accrued  |
| Any liability to make payment in respect of goods and/or services provided to the Transferor prior to the Transfer Date where the due date for such payment is after the Transfer Date | Amount payable under such contract, lease, licence or other equivalent arrangement for the goods and/or services provided to the Transferor  |
| Any rights in respect of which payment has already been made by the Transferor   | Monetary amounts so paid, subject to any provision being made for such rights not being exercisable against any other person   |
| Any liabilities in respect of which payment has already been received by the Transferor  | Monetary amounts so received   |
| Any liability resulting from any breach of or failure by the Transferor to comply with the terms of any such contract, lease, licence or other equivalent arrangement                  | Amount of such liability or, to the extent that such amount is not ascertained, the parties reasonable estimate of the amount of such liability  |

- 6 CRM Data, Yield Management Data and Actual Passenger Demand information (and all Intellectual Property Rights in respect of the same) shall be valued at nil.
- 7 The Stored Credit Balance held by the ODP at the Transfer Date shall be valued at the monetary amount so held.
- 8 Any asset arising as a result of an Approved CCI Scheme shall be valued at nil.
- 9 Any ITSO equipment (including smartcard and ITSO Certified Smartmedia readers and ITSO database) and any Intellectual Property Rights associated with that ITSO equipment transferred from the Transferor to the Transferee pursuant to the Transfer Scheme shall be valued at nil.

- 
- 10** Any RV Asset shall be valued at an amount that is equivalent to the RV Asset Transfer Value of such RV Asset as specified in Column 2 of the table in Appendix 1 (List of the RV Assets) to Schedule 14.6 (Residual Value Mechanism) of the ODP Grant Agreement, as such RV Asset Transfer Value may be adjusted or deemed to have been adjusted pursuant to paragraphs 1.4 or 2.2 of Schedule 14.6 (Residual Value Mechanism) of the ODP Grant Agreement.
- 11** Any other property, rights or liabilities shall be valued on the basis of a willing vendor and purchaser and ongoing usage within the railway industry.
- 12** Any assets defined as part of the Station Improvement Plan by the ODP shall be (unless otherwise agreed by the Parties) following termination of this Agreement prior to the Expiry Date, by depreciation on a straight line basis provided always that termination on or after the Expiry Date the value shall be nil.

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**Schedule 16**

Pensions and TUPE

|                |  |
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| Schedule 16.1: | Pensions   |
|                | Appendix 1: List of Shared Costs Sections                            |
| Schedule 16.2: | Transfer of Undertakings (Protection of Employment) Regulations 2006 |



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## Schedule 16.1 – Pensions

### 1 DEFINITIONS

Unless otherwise defined in the ODP Grant Agreement, terms used in this Schedule 16.1 shall have the meanings given to them in the Railways Pension Scheme.

### 2 ODP SERVICES SECTIONS

The ODP shall procure that the OpCo will participate in and become the Designated Employer in relation to the Shared Cost Sections of the Railway Pension Scheme as specified in Appendix 1 to this Schedule 16.1 (together the “**ODP Services Sections**”) in respect of the ODP Services Sections. Subject to paragraphs 3 and 4.2(d) membership of the ODP Services Section will be offered to each employee of the OpCo only.

### 3 CLOSED SCHEMES

- 3.1 Subject to any requirements of Her Majesty's Revenue and Customs, the ODP shall shall procure that the OpCo will take any necessary steps (including entering into any relevant deed of participation) to allow Closed Scheme Employees to continue in membership of the British Railways Superannuation Fund or the BR (1974) Pension Fund in accordance with their terms during the Rail Services Term.
- 3.2 For the purposes of this paragraph 3, “**Closed Scheme Employees**” means such of the employees of the OpCo who were, immediately prior to the commencement of their employment with the OpCo, members of either of the British Railways Superannuation Fund or the BR (1974) Pension Fund.

### 4 VARIATIONS IN BENEFITS, CONTRIBUTIONS AND INVESTMENT

- 4.1 If the OpCo is considering making a proposal that falls within the scope of paragraphs 4.2(a) to 4.2(g) inclusive, the ODP shall promptly consult with the Authority in relation to that proposal prior to putting such a proposal to the Pensions Committee of any ODP Services Section, the Trustee of the Railways Pension Scheme (the “**Trustee**”), or to any trade union. The ODP must procure that the OpCo otherwise consults in good time with the Authority in relation to any proposal falling within the scope of paragraphs 4.2(a) to 4.2(g) inclusive.
- 4.2 Separately and in addition to complying with its obligations under paragraph 4.1, the ODP shall not, and shall procure that the OpCo shall not, without the prior written consent of the Authority (which may be given on such terms and subject to such conditions as the Authority thinks fit):

- 
- (a) restructure or change the composition of the earnings of employees of the OpCo in such a way as to increase the part of those earnings which qualifies as pensionable earnings under the rules of the Railways Pension Scheme applicable to any ODP Services Section (the “**ODP Services Section Rules**”) or take any action (or consent to the taking of any action) which could detrimentally affect the funding of any ODP Services Section, including varying or providing different or additional benefits under that ODP Services Section or promising to do so, unless this change:
- (i) is required by Law; or
  - (ii) only affects benefits payable in respect of past service of members of that ODP Services Section and on or prior to the effective date of the change the ODP procures that the OpCo pays an additional cash payment to the Trustee which, in the opinion of the Actuary, meets in full the additional funding cost imposed on that ODP Services Section; or
  - (iii) would not lead to substantial changes in the funding of any ODP Services Section and is the result of the normal application of the ODP Services Section Rules in the ordinary day to day running of the business of the ODP Services, for example, where individual employees are, from time to time promoted or transferred to higher paid or different employment which has a different composition of earnings;
- (b) make or consent to any proposal to change any of the provisions of the Pension Trust in respect of the ODP Services Sections unless the change is required by Law;
- (c) provide retirement, death or life assurance benefits in respect of any of its employees other than under any ODP Services Section or as provided in paragraph 3;
- (d) omit to provide the above-mentioned benefits in respect of its employees save that, without prejudice to any rights which any such employee may otherwise have, the ODP shall not under this Schedule 16.1 be obliged for the purposes of the ODP Grant Agreement to procure that the OpCo offers such benefits to any employee employed on a fixed term contract of twelve (12) months or less;
- (e) take any action (or consent to the taking of any action) which could affect the contributions payable by Participating Employers under any ODP Services Section, including exercising any discretion allowed to the OpCo as Designated Employer arising out of any actuarial valuation of a ODP Services Section, and varying or providing different or additional benefits under the ODP Services Sections in respect of future service, unless such action is required by Law;
- (f) close a ODP Services Section to new members; or

- 
- (g) take (or omit to take) any action which could result in any ODP Services Section being wound up, in whole or in part.

4.3 The ODP procure that the OpCo shall consult with the Authority on:

- (a) any proposal made by the Trustee to change the statement of investment principles applicable to any ODP Services Section; and
- (b) any proposal to alter the rate of contributions payable by the OpCo or its employees under a new schedule of contributions for the ODP Services Section.

4.4 With respect to any proposal falling within the scope of paragraph 4.3(a) or 4.3(b), the ODP shall also procure that the OpCo shall consult with the Trustee on the basis of any response it receives from the Authority in relation to any such proposal.

## **5 FUNDING LIABILITIES**

5.1 The ODP shall procure that the OpCo shall pay the RPS Contributions to each ODP Services Section (or either of the British Railways Superannuation Fund or the BR (1974) Pension Fund in which it participates in relation to the Rail Services) in respect of the Rail Services Term subject to the provisions of paragraph 5.2 below.

5.2 Where, during the Rail Services Term, ODP Services Section are aggregated or disaggregated by the Authority (for example, as a result of remapping) and, as a consequence, an ODP Services Section of which the OpCo is the Designated Employer is required to accept a transfer in or to make a transfer out of members, the Authority shall ensure that neither the OpCo nor the ODP has any liability for any resulting deterioration immediately arising in the funding level of the ODP Services Section measured in accordance with the ODP Services Sections' technical provisions in Part 3 of the Pensions Act 2004, or for any amount arising under Article 7(4) of the Railway Pensions (Protection and Designation of Schemes) Order 1994. Notwithstanding the above the Authority shall have no liability for any future deterioration in the funding levels of the ODP Services Section linked to such transfer in or out of members.

5.3 Where employees [REDACTED] transfer to the OpCo, and those employees are required to be admitted to the ODP Services Section pursuant to the Railway Pensions (Protection and Designation of Schemes) Order 1994 and the ODP Services Section of which the ODP is the Designated Employer is required to accept a transfer in or to make a transfer out of members, the Authority shall ensure that neither the OpCo nor the ODP has any liability for any resulting deterioration immediately arising in the funding level of the ODP Services Section measured in accordance with the ODP Services Sections' technical provisions in Part 3 of the Pensions Act 2004, or for any amount arising under Article 7(4) of the Railway Pensions (Protection and Designation of Schemes) Order 1994. Notwithstanding the above the Authority shall have no liability for any future deterioration

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in the funding levels of the ODP Services Section linked to such transfer in or out of members.

## **6 DISCHARGE OF OBLIGATIONS**

6.1 The Authority may at any time during the Rail Services Term seek information from the Trustee with a view to satisfying itself that the OpCo and the other Participating Employers (if any) have fully discharged their respective obligations under the Railways Pension Scheme, including their obligations in respect of the payment of contributions to any ODP Services Section.

6.2 The ODP shall procure that the OpCo shall, at its expense, promptly provide such information in relation to any ODP Services Section, including actuarial advice and information, as the Authority may from time to time request and shall authorise and consent to the Trustee doing so.

6.3 The ODP shall procure that the OpCo shall, in respect of the Rail Services Term, use all reasonable endeavours to provide to the Authority:

- (a) within one (1) month of the expiry of each ODP Year; and
- (b) at other times as soon as practicable following a request by the Authority,

a certificate signed by the Trustee in relation to the ODP Services Sections stating either that the OpCo has fully complied with its obligations under the Railways Pensions Scheme, including its obligation to contribute to the ODP Services Sections or, if it has not so complied, stating the extent to which it has not done so. Where the certificate is given pursuant to paragraph 6.3(a), it shall cover the relevant ODP Year. Where the certificate has been given pursuant to paragraph 6.3(b), it shall cover such period as the Authority shall specify.

6.4 If the Trustee does not certify under paragraph 6.3 in relation to the ODP Services Sections that the OpCo has fully complied with its obligations under the Railways Pension Scheme or if the Authority otherwise reasonably considers that the OpCo has not complied with such obligations, the Authority may adjust the Rail Services Payments payable under Schedule 8 (Payments) by an amount which is, in its opinion, no greater than the amount of any contribution that the OpCo has thereby failed to make or avoided making.

6.5 The Authority may, under paragraph 6.4, continue to make such adjustments to the Rail Services Payments payable under Schedule 8 (Payments) until such time as it reasonably determines that the relevant contributions have been made in full by the OpCo. Following that determination, any amounts so withheld by the Authority shall become payable (without interest) on the next day on which a Rail Services Payment

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becomes payable under Schedule 8 (Payments), being a day which falls no less than seven (7) days after such determination or, if there is no such day, fourteen (14) days after the date of such determination. To the extent that the Authority has not so determined within four (4) weeks after the expiry of the Rail Services Term, the ODP's right to receive the amount so withheld under the ODP Grant Agreement shall lapse and the Authority shall not be obliged to pay such amount.

## **7 TERMINATION OF THE ODP GRANT AGREEMENT**

The Authority shall at the end of the ODP Grant Agreement Term ensure that neither the OpCo nor the ODP has any liability for any deficit in the ODP Services Sections (other than for contributions due and payable by the OpCo to the ODP Services Sections for any period prior to the end of the ODP Grant Agreement Term) and that neither the OpCo nor the ODP shall have any right to benefit from any surplus which may exist in the ODP Services Sections. For the avoidance of doubt, this paragraph 7 shall apply where the ODP Services Sections are either aggregated or disaggregated (for example, as a result of remapping).

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**Appendix 1 to Schedule 16.1 - List of Shared Costs Sections**

| <b>Shared Costs Sections</b> |   |
|------------------------------|---|
| <b>Section</b>               | <b>Employer</b>                             |
| Arriva Trains Wales          | Arriva Trains Wales/Trenau Arriva Cymru Ltd |

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[REDACTED]

## **Schedule 17**

### **Confidentiality and Freedom of Information**

#### **1 CONFIDENTIALITY**

Subject to the provisions of the Act, the Transport Act, the Railways Act 2005, the Environmental Information Regulations, the Freedom of Information Act (and any code of practice or other guidance related to the same) and paragraphs 2 to 8 of this Schedule 17 inclusive, each Party shall hold in confidence all documents, materials and other information, whether technical or commercial, supplied by or on behalf of the other Party (including all documents and information supplied in the course of proceedings under the Dispute Resolution Rules or the rules of any other dispute resolution procedures to which a dispute is referred in accordance with the ODP Grant Agreement) (all together the “**Confidential Information**”) and shall not, except with the other Party’s prior written authority, publish or otherwise disclose any Confidential Information otherwise than as expressly provided for in the ODP Grant Agreement unless or until the recipient Party can demonstrate that any such document, material or information is in the public domain through no fault of its own and through no contravention of the ODP Grant Agreement, whereupon to the extent that it is in the public domain this obligation shall cease.

#### **2 DISCLOSURE OF CONFIDENTIAL INFORMATION**

2.1 Each Party may disclose any data or information acquired by it under or pursuant to the ODP Grant Agreement or information relating to a dispute arising under the ODP Grant Agreement without the prior written consent of the other Party if such disclosure is made in good faith:

- (a) to any Affiliate of such Party or outside consultants or advisers of such Affiliate, upon obtaining from such Affiliate and/or such outside consultants or advisers of such Affiliate an undertaking of confidentiality equivalent to that contained in paragraph 1;
- (b) to any outside consultants or advisers engaged by or on behalf of such Party and acting in that capacity, upon obtaining from such consultants or advisers an undertaking of confidentiality equivalent to that contained in paragraph 1;
- (c) to any lenders, security trustee, bank or other financial institution (and its or their advisers) from which such Party is seeking or obtaining finance, upon obtaining from any such person an undertaking of confidentiality equivalent to that contained in paragraph 1;
- (d) to the extent required by Law or pursuant to an order of any court of competent jurisdiction or under the Dispute Resolution Rules or the rules of any other dispute

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resolution procedures to which a dispute is referred in accordance with the ODP Grant Agreement or the rules of a recognised stock exchange or a formal or informal request of any taxation authority;

- (e) to any insurer, upon obtaining from such insurer an undertaking of confidentiality equivalent to that contained in paragraph 1;
- (f) to any director, employee or officer of such Party, to the extent necessary to enable such Party to perform its obligations under the ODP Grant Agreement or to protect or enforce its rights under the ODP Grant Agreement;
- (g) by the Authority to the Secretary of State or any other Public Authority who will have the same obligations of non-disclosure as the Authority in respect of such information in accordance with paragraph 2 of this Schedule 17; or
- (h) by the ODP or an Affiliate, to the ORR, the Passengers' Council or a Local Authority.

2.2 The Authority may disclose the Confidential Information of the ODP:

- (a) on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;
- (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- (c) on a confidential basis to any Public Authority including devolved governments;
- (d) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (e) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in paragraph 2.2(a) of this Schedule 17 (including any benchmarking organisation) for any purpose relating to or connected with the ODP Services;
- (f) on a confidential basis for the purpose of the exercise of its rights under this Agreement, including but not limited to its right of audit, assessment or inspection pursuant to paragraph 6 of Schedule 11.2 (Management Information) and its rights pursuant to Schedule 15.1 (Reletting Provisions);
- (g) on a confidential basis to a Local Authority or other relevant Stakeholder to the extent that the Authority (acting reasonably) deems such disclosure necessary or appropriate for the purposes of the development and/or implementation of any proposal promoted by (or on behalf of) such Local Authority or other relevant Stakeholder in relation to the provision of additional, varied and/or extended Passenger Services, introduction of new



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stations or enhancements to Stations or other infrastructure schemes which impact on the ODP Services; or

- (h) on a confidential basis to a proposed successor, transferee or assignee of the Authority in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this paragraph 2.2 of this Schedule 17.

### **3 PUBLICATION OF CERTAIN INFORMATION**

3.1 Notwithstanding the provisions of paragraph 1, the Authority may publish (whether to the press, the public or to one or more individuals, companies or other bodies, including to any prospective Successor Operator) in such form and at such times as it sees fit, the following (irrespective of whether the same was provided to the Authority by the ODP or a third party):

- (a) any or all of the ODP Services Documents provided that the Authority will, prior to publishing the same, redact from any ODP Services Document any information contained therein which the Authority and the ODP agree or failing which the Authority determines, in its absolute discretion, is exempt from disclosure in accordance with the provisions of the Freedom of Information Act and/or the Environmental Information Regulations;
- (b) the amount of any ODP Services Payments payable under the ODP Grant Agreement and the aggregate amount of ODP Services Payments paid in each year under the ODP Grant Agreement;
- (c) such information as the Authority may consider reasonably necessary to publish in connection with the performance of its functions in relation to any Closure or proposed Closure;
- (d) the amount of any payments by the ODP under the Passenger's Charter;
- (e) such information (including CRM Data and Yield Management Data) as may reasonably be required in connection with any Tendering/Reletting Process or the retendering or reletting of any other railway passenger services, provided that such information may only be published during the period of, or during the period leading up to, such retendering or reletting;

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- (f) any reports and accounts delivered to the Authority under Schedule 13 (Rail Industry Initiatives, Innovation Obligations and Sustainability and Ethical Procurement) including any analyses, statistics and other information derived from such reports and accounts;
  - (g) the results of any monitoring or measurement of the performance of the ODP in the provision of the ODP Services (including any information provided under Schedule 11 (ODP Services Performance Meetings and Management Information));
  - (h) the results, on a Service Group, Route, station or other comparable basis, of any calculation of passenger numbers under Schedule 1.5 (Information about Passengers);
  - (i) the results of any survey under Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCI Scheme);
  - (j) the results of any assessment or inspection under Schedule 11.2 (Management Information);
  - (k) details of the ODP's plans and performance in respect of safety;
  - (l) such information as the Authority may reasonably require to include in its annual report in respect of the ODP provided that, in preparing that report, the Authority shall have regard to the need for excluding, so far as is practicable, the matters specified in paragraphs (a) and (b) of Section 71(2) of the Act for this purpose, taking references in those paragraphs to the ORR as references to the Authority;
  - (m) information defined as Open Travel Data; and
  - (n) such information as the Authority may reasonably require to publish at or around the expiry or possible termination of the ODP Grant Agreement Term in order to secure continuity of the provision and operation of the ODP Services.

3.2 Without prejudice to any other provision of this Schedule 17, the Authority may publish any other information relating to the ODP if it has previously notified the ODP and the ODP does not demonstrate to the reasonable satisfaction of the Authority within fourteen (14) days of such notification that the publication of such information would, in the reasonable opinion of the ODP, have a material adverse effect on its business. If the ODP attempts so to demonstrate to the Authority but it is not so satisfied, the Authority shall allow seven (7) more days before publishing the relevant information.

#### **4 SERVICE DEVELOPMENT INFORMATION**

Nothing in this Schedule 17 shall be deemed to prohibit, prevent or hinder, or render either Party liable for, the disclosure by either Party to Network Rail, the ORR, other Train Operators, any operators of services for the carriage of goods by rail, the Passengers' Council and/or any Local Authority of any information relating to the development of the

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Train Service Requirement in accordance with Schedule 1.1 (ODP Services and Service Development).

**5 PUBLICATION BY AUTHORITY**

Nothing in this Schedule 17 shall be deemed to prohibit, prevent or hinder, or render the Authority liable for, the disclosure of any information by the Authority to the ORR, the Parliamentary Commissioner for Administration, a Minister of the Crown, any department of the government of the United Kingdom, the Scottish Parliament, the National Assembly of Wales, the Mayor of London, the Greater London Authority or any department or officer of any of them or of information which is otherwise disclosed for the purpose of facilitating the carrying out of their functions.

**6 PROVISION OF INFORMATION TO THE ORR**

The ODP hereby authorises the Authority to provide to the ORR, to the extent so requested by the ORR, such information as may be provided to the Authority in relation to the ODP under the ODP Grant Agreement.

**7 DISCLOSURE BY COMPTROLLER AND AUDITOR GENERAL**

The parties recognise that the Comptroller and Auditor General may, in pursuance of their functions under the Exchequer and Audit Department Act 1921, the National Audit Act 1983 and the Government Resources and Accounts Act 2000, disclose information which he has obtained pursuant to those Acts and which a Party to the ODP Grant Agreement would not be able to disclose otherwise than under this Schedule 17.

**8 CONTINUING OBLIGATION**

This Schedule 17 (and any other provisions necessary to give effect hereto) shall survive the termination of the ODP Grant Agreement, irrespective of the reason for termination.

**9 FREEDOM OF INFORMATION - GENERAL PROVISIONS**

9.1 The ODP acknowledges and shall procure that its agents and subcontractors acknowledge that the Authority and the Secretary of State are subject to the requirements of the Freedom of Information Act and the Environmental Information Regulations and accordingly the ODP shall and shall procure that its agents and subcontractors shall assist and co-operate with the Authority and/or the Secretary of State to enable the Authority and/or the Secretary of State to comply with their information disclosure obligations under the Freedom of Information Act and/or the Environmental Information Regulations.

9.2 Notwithstanding paragraph 10 (Redactions), the ODP shall and shall procure that its agents and subcontractors shall:

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- (a) transfer to the Authority any Requests for Information received by the ODP (or its agents or subcontractors) as soon as practicable and in any event within two (2) Weekdays of receiving any such Request for Information;
  - (b) provide the Authority with a copy of all information in its (or their) possession or power in the form that the Authority and/or the Secretary of State requires within five (5) Weekdays of the Authority's and/or the Secretary of State's request (or within such other period as the Authority or the Secretary of State may specify); and
  - (c) provide all necessary assistance as reasonably requested by the Authority and/or the Secretary of State to enable them to respond to any Request for Information within the time for compliance set out in Section 10 of the Freedom of Information Act or Regulation 5 of the Environmental Information Regulations as applicable.

9.3 The Authority and/or the Secretary of State shall be responsible for determining in their absolute discretion, and notwithstanding any other provision in the ODP Grant Agreement or any other agreement, whether Confidential Information (as such term is defined in paragraph 1 of this Schedule 17) and/or any other information is exempt from disclosure in accordance with the provisions of the Freedom of Information Act and/or the Environmental Information Regulations.

9.4 The ODP shall not and shall procure that its agents and subcontractors shall not respond directly to any Request for Information unless expressly authorised to do so by the Authority and/or the Secretary of State.

9.5 The ODP acknowledges and shall procure that its agents and subcontractors acknowledge that notwithstanding any provision to the contrary in the ODP Grant Agreement the Authority may be obliged under the Freedom of Information Act and/or the Environmental Information Regulations and any related Code of Practice or other guidance to disclose information concerning the ODP and/or its agents and subcontractors:

- (a) in certain circumstances without consulting the ODP (or its agents and/or subcontractors where applicable); or
- (b) following consultation with the ODP and having taken its views into account (and the views of its agents and/or subcontractors where applicable),

provided always that where applicable the Authority and/or the Secretary of State shall in accordance with the provisions of the Freedom of Information Act and/or the Environmental Information Regulations take reasonable steps where appropriate to give the ODP advance notice or failing that to draw the disclosure to the ODP's attention after any such disclosure.

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## 10 REDACTIONS

10.1 Subject to paragraph 9 (Freedom of Information - General Provisions), by no later than the date which is:

- (a) four (4) weeks after the date of this Agreement (in respect of the ODP Services Documents referred to in paragraph (a) of the definition thereof);
- (b) thirty (30) days after the date of notification by the Authority and/or the Secretary of State to the ODP of another agreement that is required for publication (in respect of the ODP Services Documents referred to in paragraph (b) of the definition thereof); and
- (c) thirty (30) days after the date of any document varying the terms of any ODP Services Document,

the ODP will provide to the Authority and/or the Secretary of State details of any provisions of the ODP Services Documents or any such variation which the ODP believes are exempt from disclosure in accordance with the provisions of the Freedom of Information Act, the Environmental Information Regulations and/or Section 73(3) of the Act (the “**Redactions**”).

10.2 For each such Redaction the ODP should specify:

- (a) the exact text of the ODP Services Document or variation that the ODP proposes is redacted;
- (b) whether the ODP proposes that the Redaction applies in relation to the publication of the relevant ODP Services Document or variation on the website of the Department for Transport, on the register required to be maintained by the Authority pursuant to Section 73 of the Act or on both such website and such register;
- (c) the reasons why the ODP believes that the proposed Redaction is justified in accordance with the Freedom of Information Act, the Environmental Information Regulations and/or Section 73(3) of the Act.

10.3 The Authority and/or the Secretary of State shall consult with the ODP in relation to the ODP's proposed Redactions (provided that the same are provided to the Authority in accordance with paragraph 10.1). If the Authority and/or the Secretary of State and the ODP are unable to agree upon any proposed Redaction, the Authority and/or the Secretary of State shall be entitled to determine, in their absolute discretion, whether or not to make such proposed Redaction. If the ODP does not provide its proposed Redactions to the Authority and/or the Secretary of State in accordance with paragraph 10.1, the ODP shall be deemed to have consented to publication of the relevant document without any Redactions.



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**Schedule 18**

**Implementation and Rail Services Milestones**

|                |   |
|----------------|---|
| Schedule 18.1: | Implementation  |
|                | Appendix 1: Draft Implementation Plan                           |
| Schedule 18.2: | Rail Services Milestones  |
|                | Appendix 1: Authority Dependencies                              |
|                | Appendix 2: Exceptional Items                                   |
|                | Appendix 3: Rail Services Milestone Tables                      |
| Schedule 18.3: | Rail Services Milestone Acceptance                              |
|                | Appendix 1: Process for the Acceptance of Document Deliverables |
| Schedule 18.4: | Rail Services Milestone Delay Payments                          |
|                | Appendix 1: Table of Rail Services Milestone Delay Payments     |

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## **Schedule 18.1 - Implementation Plan**

### **1 DRAFT IMPLEMENTATION PLAN**

1.1 A Draft Implementation Plan is set out at Appendix 1 to this Schedule 18.1.

### **2 DEVELOPMENT OF THE IMPLEMENTATION PLAN**

2.1 Within three (3) months of the date of this Agreement the ODP shall, in accordance with the Process for the Acceptance of Document Deliverables, develop the Draft Implementation Plan into an Implementation Plan.

2.2 The Implementation Plan shall include (but not be limited to) detailed information on:

- (a) the timing and duration of critical activities required to be carried out by the ODP and its sub-contractors to Achieve each Rail Services Milestone and Rail Services Milestone Deliverable by the relevant Planned Rail Services Milestone Delivery Date;
- (b) the process for monitoring ODP progress against the Implementation Plan and the format of reporting such information to the Authority at the monthly ODP Services Performance Meetings in accordance with Schedule 11.1 (*ODP Services Performance Meetings*); and
- (c) the timing of any required Authority Dependencies and/or Exceptional Items required to allow the ODP to meet certain Rail Services Milestones including any preparation and/or planning activities between the ODP, the Authority and any third parties as required to assist the Authority to deliver the Authority Dependencies.

2.3 Following the date upon which the Implementation Plan has been:

- (a) accepted by the Authority; or
- (b) determined in accordance with the Dispute Resolution Procedure,

in accordance with the Process for the Acceptance of Document Deliverables, the ODP shall use all reasonable endeavours to comply with the Implementation Plan.

### **3 MAINTAINING THE IMPLEMENTATION PLAN**

3.1 The ODP shall maintain and keep up to date the Implementation Plan throughout the ODP Grant Agreement Term provided always that any changes to the Implementation Plan which the ODP expects, or may reasonably expect, will result in an actual or likely Delay shall be promptly notified by the ODP to the Authority.

3.2 The ODP shall co-operate with the Authority and provide all such reasonable assistance as the Authority may request in relation to:

- (a) any review by the Authority of the Implementation Plan; or



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- (b) monitoring by the Authority of the ODP against its compliance with its obligations under this Schedule 18.

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**Appendix 1 to Schedule 18.1**

Draft Implementation Plan

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## **Schedule 18.2 – Rail Services Milestones**

### **1 RAIL SERVICES MILESTONES**

- 1.1 The ODP shall perform its obligations under this Agreement so as to Achieve each Rail Services Milestone by the applicable Planned Rail Services Milestone Delivery Date.

### **2 RAIL SERVICES MILESTONE ACHIEVEMENT**

- 2.1 Subject to paragraph 2.3, a Rail Services Milestone Achievement Certificate shall be issued by the Authority when all Rail Services Milestone Deliverables within the Rail Services Milestone have met the relevant Rail Services Milestone Criteria.
- 2.2 The Authority's certification of any Rail Services Milestones shall not indicate or imply that the Authority agrees or is satisfied that the requirements of the ODP to deliver the ODP Services under this Agreement are fully complied with.
- 2.3 Where any Rail Services Milestone is Achieved earlier than the Planned Rail Services Milestone Delivery Date and the date when the Rail Services Milestone is Achieved is within the same ODP Year as the Planned Rail Services Milestone Delivery Date the Authority shall issue a Rail Services Milestone Achievement Certificate, otherwise any decision to issue a Rail Services Milestone Achievement Certificate in advance of the Planned Rail Services Milestone Delivery Date shall be at the Authority's sole discretion. If the Authority chooses not to issue a Rail Services Milestone Achievement Certificate in advance of the Planned Rail Services Milestone Delivery Date it shall issue the Rail Services Milestone Achievement Certificate on the Planned Rail Services Milestone Delivery Date.
- 2.4 All conditions affecting the Achievement of Rail Services Milestones are at the ODP's risk subject to any Exceptional Items or Authority Dependencies and the operation of the Change mechanism.
- 2.5 Any changes to the Rail Services Milestones, Rail Services Milestone Deliverables, Planned Rail Services Milestone Delivery Dates or Rail Services Milestone Payments proposed by the ODP and agreed or determined in accordance with this Schedule 18 (*Implementation and Rail Services Milestones*) shall be dealt with in accordance with the procedure outlined in Schedule 9 (Changes and Variations).

### **3 RAIL SERVICES MILESTONE DELAYS - NOTIFICATION**

- 3.1 If, at any time, the ODP becomes aware that it will not, or is unlikely to, Achieve any Rail Services Milestone by the applicable Rail Services Planned Rail Services Milestone Delivery Date it shall promptly notify the Authority in writing of such actual or likely Delay summarising the reasons for such actual or likely Delay.

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3.2 The ODP shall, as soon as practicable, and in any event not later than ten (10) Weekdays after notifying the Authority of such actual or likely Delay in accordance with paragraph 3.1, provide the Authority with full details of:

- (a) the reasons for the actual or likely Delay including whether, and to what extent, the actual or likely Delay is the result of an Exceptional Item or a failure of the Authority to provide, or procure, an Authority Dependency; and
- (b) the consequences of the actual or likely Delay including any required changes, or potential changes, to the Implementation Plan.

#### **4 RAIL SERVICES MILESTONE DELAYS**

4.1 Subject to paragraph 4.2, in the event a Rail Services Milestone is not Achieved by the ODP by the Planned Rail Services Milestone Delivery Date, the Authority:

- (a) shall, within ten (10) Weekdays, issue a non-conformance report setting out the reasons for the Rail Services Milestone not being Achieved; and
- (b) may, at its sole discretion and without waiving any other rights or remedies available to it under this Agreement:
  - (i) exercise its rights to require a Remedial Plan in accordance with Schedule 10 (*Remedies, Events of Default and Termination Events*); and/or
  - (ii) issue a Rail Services Milestone Achievement Certificate conditional on the ODP remediating the outstanding matters, in accordance with the relevant Remedial Agreement in which case any Rail Services Milestone Delay Payments will not be incurred during the period of the remediation under the Remedial Agreement; and/or
  - (iii) issue a Warning Notice; and/or
  - (iv) require the payment of Rail Services Milestone Delay Payments in accordance with Schedule 18.4.

4.2 In the event that and to the extent that:

- (a) an Exceptional Item; or
- (b) a failure of the Authority to provide, or procure, an Authority Dependency by the date specified in respect of such an Authority Dependency under Appendix 1 to Schedule 18.2,

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is the direct cause (whether in whole or in part) of an actual or likely Delay, or, where the ODP reasonably considers, is likely to cause an actual or likely Delay, then the ODP shall be entitled to apply for a postponement of the relevant Planned Rail Services Milestone Delivery Date(s).

4.3 To obtain a postponement of the Planned Rail Services Milestone Delivery Date, the ODP must demonstrate to the reasonable satisfaction of the Authority that:

- (a) the Exceptional Item or failure of the Authority to provide, or procure, the Authority Dependency directly caused (whether in whole or in part) the actual or likely Delay to the Planned Rail Services Milestone Delivery Date;
- (b) the actual or likely Delay could not reasonably be expected to be recovered by the ODP or its sub-contractors acting in accordance with Good Industry Practice;
- (c) the ODP is using all reasonable endeavours and shall procure that its sub-contractors use all reasonable endeavours to mitigate the consequences of the actual or likely Delay; and
- (d) in seeking a postponement, the ODP is not seeking any postponement of any Planned Rail Services Milestone Delivery Date which is not directly attributable to an Exceptional Item or failure to provide or procure an Authority Dependency or arises out of any failure by the ODP to fulfil its obligations under this Agreement.

4.4 In the event that the ODP has complied with its obligations under paragraph 4.3 then the affected Planned Rail Services Milestone Delivery Date(s) shall be postponed by such time as the Authority considers reasonable taking into account:

- (a) the likely effect of the actual or likely Delay caused by the Exceptional Item or the failure of the Authority to provide, or procure, an Authority Dependency and the revised Planned Rail Services Milestone Delivery Date(s) shall be the Planned Rail Services Milestone Delivery Date for the purposes of this Agreement; and
- (b) any contributory, additional or continuing cause of the actual or likely Delay caused by the failure of the ODP to carry out its obligations under this Agreement.

## **5 MITIGATION**

5.1 The ODP shall use all reasonable endeavours to mitigate the consequences of the actual or likely Delay.

## **6 DISPUTE**

6.1 Any disputes about or arising out of actual or likely Delays shall be resolved through the dispute resolution procedure in accordance with Clause 11. Pending the resolution of the

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dispute both parties shall continue to work to resolve the causes of, and mitigate the effects of, the actual or likely Delay.

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**Appendix 1 to Schedule 18.2 - Authority Dependencies**

**1 AUTHORITY DEPENDENCIES**

1.1 The Authority shall provide or procure the provision, as appropriate, of the Authority Dependencies as set out below:

- (a) provision of Framework Agreement(s) with IDPs by no later than 1st July 2018; and
- (b) the appointment of an the Independent Reporter in accordance with Schedule 3A.

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**Appendix 2 to Schedule 18.2 - Exceptional Items**

**1**

1.1 The following matters are identified as Exceptional Items:

- (a) Force Majeure Events;
- (b) Delay in planning or Land acquisition rights for the CVL (including the TWAO) to the extent that the Authority has directly caused such delay;
- (c) Delay in the effective issue of a TWAO within the planned date, always provided:
  - (i) the requirement for such TWAO is clearly set out in the Infrastructure Works Plan including a planned period for progression of the TWAO which a skilled and competent delivery partner or rail operator would reasonably allow for such progression; and
  - (ii) the ODP has carried out all its obligations in relation to the relevant deliverables including the provision of information, properly completed documentation and any other activities which a skilled and competent delivery partner or rail operator would undertake;
- (d) Material delay in gaining planning consent for CVL Transformation because the Authority:
  - (i) or any other relevant planning authority has not responded in statutory timescales;
  - (ii) or any other relevant planning authority has not applied planning policy appropriately;
  - (iii) has breached procedural requirements; or
  - (iv) has acted or made a decision which is ultra vires;
- (e) The Authority requirements for CVL Transformation materially changes which result in a change or variation in this Agreement including Schedule 3B and/or any Package Orders instructed thereunder provided that the ODP has provided prior notification to the Authority that such consequential change or variation to such contracts would be required as a result of the Authority requirements for CVL Transformation materially changing;
- (f) Delay in transfer of the CVL Assets from Network Rail to the Authority beyond the CVL Asset Transfer Longstop Date where the Authority has not issued a Deferral Notice or CVL Asset Notice;



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- (g) Material delays arising as a result of any necessary reconfiguration of utilities to enable on-street running of rolling stock on any part of the CVL where such on-street running is specified in the Concept Design and the planned date for such reconfiguration is set out in the Infrastructure Works Plan;
  - (h) A discovery, condition or event in respect of the CVL Assets for which an adjustment to either an Emerging Charge or Firm Charge is allowable in accordance with Schedule 3A (Infrastructure Manager Services) leads to material change in CVL Transformation design;
  - (i) Material delay in obtaining outline planning consent for the Taffs Well depot site and CVL integrated control centre from the planned date in the Infrastructure Works Plan;
  - (j) Material delay in the Authority serving notice to the tenant of the Taffs Well depot site from the planned date in the Infrastructure Works Plan; and
  - (k) Any other matter that the Authority in its sole discretion determines to be an Exceptional Item.
- 1.2 By no later than six (6) weeks from the date of this Agreement, the Parties shall work together using the Infrastructure Works Plan to agree all planned dates from which delay is measured in respect of the relevant Exceptional Items.

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**Appendix 3 to Schedule 18.2 - Rail Services Milestone Table**

**1 RAIL SERVICES MILESTONES (MS)**

| Rail Services Milestone | Rail Services Milestone Delivery Date | Planned Milestone Deliverable Delivery Date | Rail Service Milestone Deliverable  | Rail Service Milestone Criteria  | Committed Obligation Reference | Service Improvement Reference | Expedited in accordance with paragraph 3 of Appendix 1 to Schedule 18.3 |
|-------------------------|---------------------------------------|---|---|--|--------------------------------|-------------------------------|---|
| RS01                    |                                       |   |   |  |                                |                               |   |
| RS01                    | 05/09/2018                            | 05/09/2018                                  | Implementation Plan   | Acceptance of Implementation Plan by Authority in accordance with the Process for the Acceptance of Document Deliverables              | N/A                            | N/A                           | Yes   |
| RS01                    | 05/09/2018                            | 05/09/2018                                  | Templates for Reporting Financial Information in accordance with Schedule 11.2 in respect of:<br><br>(d) Reporting Financial Information;<br><br>(e) Quarterly Financial Information; and | Acceptance of Templates for Reporting Financial Information in accordance with the Process for the Acceptance of Document Deliverables | N/A                            | N/A                           | Yes   |

|      |            |            |   |  |     |     |     |
|------|------------|------------|---|--|-----|-----|-----|
|      |            |            | (f) Annual Financial Information.                 |  |     |     |     |
| RS01 | 05/09/2018 | 05/09/2018 | Templates for Operational Performance Information | Acceptance of Templates for Operational Performance Information in accordance with the Process for the Acceptance of Document Deliverables | N/A | N/A | Yes |
| RS02 |            |            |   |  |     |     |     |
| RS02 | 14/04/2019 | 14/10/2018 | Station Social and Commercial Development Plan    | Acceptance of Station Social and Commercial Development Plan in accordance with the Process for the Acceptance of Document Deliverables    | N/A | N/A | Yes |
| RS02 | 14/04/2019 | 31/01/2019 | Implementation of Delay Repay Scheme              | Evidence of Implementation of Delay Repay Scheme   | N/A | N/A | N/A |
| RS02 | 14/04/2019 | 31/03/2019 | Alliance Agreement with Network Rail              | Executed Alliance Agreement between Network Rail and ODP in accordance Annex C of Schedule 13.1 of this Agreement                          | N/A | N/A | N/A |

|      |            |            |   |   |      |       |     |
|------|------------|------------|---|---|------|-------|-----|
| RS02 | 14/04/2019 | 31/03/2019 | Completion of rebranding of all Class 142 and Class 143s  | Evidence of completion of rebrand of all Class 142 and Class 143 in accordance with Brand Guidelines and as agreed with the Authority.                      | CO31 | N/A   | N/A |
| RS02 | 14/04/2019 | 31/03/2019 | Establishment of Service Quality Monitoring Process and a new Service Quality Inspection Team and completion of Stations and Rolling Stock Inspections. | Evidence of data resulting from Stations and Rolling Stock Inspections undertaken in accordance with Authority approved Service Quality Monitoring process. | N/A  | SI162 | N/A |
| RS02 | 14/04/2019 | 01/04/2019 | Implementation of Smart Ticketing Scheme  | Smart Ticketing Scheme available to all passengers. All ITSO equipment tested, installed and in service. Staff training complete.                           | CO41 | N/A   | N/A |
| RS02 | 14/04/2019 | 01/04/2019 | Completion of Station Refresh Programme activities in ODP Year 1  | Evidence of completion of Station Refresh Programme activities in ODP Year 1  | CO1  | N/A   | N/A |

|      |            |            |   |   |      |       |     |
|------|------------|------------|---|---|------|-------|-----|
| RS02 | 14/04/2019 | 14/04/2019 | Station Asset Management Plan and Station Condition Survey Report | Provision for approval of Station Asset Management Plan by the Authority pursuant to paragraph 1 of Schedule 1.7 of this Agreement and issue of Station Condition Survey Report to the Authority in accordance with paragraph 2.2 of Schedule 1.7 of this Agreement | N/A  | N/A   | N/A |
| RS03 |            |            |   |   |      |       |     |
| RS03 | 01/01/2020 | 31/12/2019 | Class 142s and Class 143s removed from Train Plan                 | Implementation of Train Plan without Class 142s and Class 143s  | CO23 | N/A   | N/A |
| RS04 |            |            |   |   |      |       |     |
| RS04 | 01/01/2020 | 31/08/2019 | Install charging points on C142s and 143s                         | Evidence of installation of Charging Points (3 pin and USB or equivalent) at selected positions on Pacers.  | N/A  | SI46  | N/A |
| RS04 | 01/01/2020 | 01/09/2019 | Implementation of Design Office                                   | Evidence of operation of Design Office including number   | CO55 | SI278 | N/A |

|      |            |            |  |  |      |                  |     |
|------|------------|------------|--|--|------|------------------|-----|
|      |            |            |  | of persons located at the Design Office  |      |                  |     |
| RS04 | 01/01/2020 | 14/10/2019 | Sustainable Development Plan and Sustainable Development Strategy                    | Acceptance of Sustainable Development Plan and Sustainable Development Strategy in accordance with the Process for the Acceptance of Document Deliverables | N/A  | N/A              | No  |
| RS04 | 01/01/2020 | 31/10/2019 | Completion of the performance improvement programme for Class 153.                   | Evidence of completion of performance improvement programme for Class 153.   | CO16 | SI48, SI71, SI95 | N/A |
| RS04 | 01/01/2020 | 30/11/2019 | Launch of new website and Customer App to improve customer digital channels          | Evidence of testing and roll out of new website and Customer App   | CO47 | SI228            | N/A |
| RS04 | 01/01/2020 | 31/12/2019 | Installation of Rail head Adhesion (wheel slip protection) equipment on CI150 Fleet. | Certification of installation of Rail head Adhesion (wheel slip protection) equipment on CI150 Fleet.  | N/A  | SI48             | N/A |

|      |            |            |  |  |      |       |     |
|------|------------|------------|--|--|------|-------|-----|
| RS04 | 01/01/2020 | 31/12/2019 | Introduction of New Revenue Management System  | Evidence of completion of introduction of New Revenue Management System  | N/A  | SI140 | N/A |
| RS04 | 01/01/2020 | 31/12/2019 | Introduction of Advance Purchase Train-specific Fares Initiatives  | Availability of such Advance Purchase Train-specific Fares to passengers.  | CO60 | SI148 | N/A |
| RS04 | 01/01/2020 | 31/12/2019 | Ensure fully functioning air conditioning on the entire CL158 fleet  | Evidence of reinstatement of functioning air conditioning on the entire  | CO16 | SI48  | N/A |
| RS04 | 01/01/2020 | 31/12/2019 | Install Charging Points (3 pin and USB or equivalent) at bay seats on CI153, and every seat on CI175 and CI158.<br><br>Refurbish interior of the existing fleet handed over by the previous franchisee (CI150, CI153, CI158, CI175, CI769) | Evidence of Installation of Charging Points (3 pin and USB or equivalent) at every seat on CI153, CI175 and CI158. | N/A  | SI46  | N/A |
| RS04 | 01/01/2020 | 31/12/2019 | Introduce cascaded Mk IV rolling stock (3 x 4 coach sets with DVTs) subject to the release of the  | Evidence of introduction for Mk IV rolling stock (3 x 4 coach  | N/A  | N/A   | N/A |



|      |            |  |  |   |      |       |     |
|------|------------|--|--|---|------|-------|-----|
|      |            |  | cascaded rolling stock by the incumbent operator by the agreed lease start date and Class 230s rolling stock (5 units)               | sets with DVTs) and Class 230s (5 units).   |      |       |     |
| RS04 | 01/01/2020 | Principal Change Date in December 2019 | Implementation of TSR1   | Implementation of Timetable compliant with TSR1   | N/A  | N/A   | N/A |
| RS04 | 01/01/2020 | 01/01/2020                             | Keolis UK Headquarters located in Wales  | Keolis UK Headquarters located in Wales   | CO56 | N/A   | N/A |
| RS05 |            |  |  |   |      |       |     |
| RS05 | 31/03/2020 | 31/01/2020                             | Fares Initiatives  | Evidence of adjustments to relevant fares being made in accordance with the ODP's obligations under this Agreement. | N/A  | SI141 | N/A |
| RS05 | 31/03/2020 | 31/03/2020                             | Refurbish interior of the newly cascaded fleet (CI170 and MK IV coaches or equivalent), subject to the cascaded fleet being released | Evidence of refurbishment of interior of the newly cascaded   | N/A  | SI46  | N/A |

|      |            |            |   |  |      |       |     |
|------|------------|------------|---|--|------|-------|-----|
|      |            |            | by the incumbent operator by the agreed lease start date  | fleet (Cl170 and MK IV coaches or equivalent).   |      |       |     |
| RS05 | 31/03/2020 | 31/03/2020 | Smartphone Roll Out to ODP Services Employees and Full Training Delivery  | Demonstration and evidence of operation of Smartphone use by ODP Services Employees                          | CO49 | SI248 | N/A |
| RS05 | 31/03/2020 | 31/03/2020 | Implementation of Automated Notification and Payment of Delay Repay Entitlement in respect of advance purchase train-specific fare tickets and/or purchased via the ODP website and Communication Platforms | Demonstration of live operation of Automated Notification of Delay Replay Entitlement and successful launch. | CO60 | SI117 | N/A |
| RS05 | 31/03/2020 | 31/03/2020 | Introduce cascaded Cl170 rolling stock (12 Units) subject to the release of the cascaded rolling stock by the incumbent operator by the agreed lease start date   | Evidence of 12 x Class 170 Fleet Introduction  | N/A  | N/A   | N/A |
| RS05 | 31/03/2020 | 31/03/2020 | Establishment of Wales and Borders Innovation WBI Labs  | Establishment of Wales and Borders Innovation Labs   | CO52 | N/A   | N/A |

|      |            |            |   |  |      |              |     |
|------|------------|------------|---|--|------|--------------|-----|
| RS05 | 31/03/2020 | 31/03/2020 | Partnership with Convenience Store Retailers (Rail Ticket Sales)  | Evidence of contractual arrangements with Convenience Store Retailers in respect of rail ticket sales. Evidence that such tickets are available for customer purchase. | CO42 | SI122, SI125 | N/A |
| RS05 | 31/03/2020 | 31/03/2020 | Installation of New Ticketing Vending Machines & New Gateline Remote Video Monitoring Equipment                 | Evidence of installation and commencement of service of eighty five (85) New Ticket Vending Machines and New Gateline Remote Video Monitoring Equipment.               | CO40 | SI136, SI160 | N/A |
| RS05 | 31/03/2020 | 31/03/2020 | WCB Infrastructure and Working with NR (Access Planning Software and Alliance Performance Tasks Agreed with NR) | Evidence of procuring Cogitare (or equivalent) and evidence of relevant training for ODP Employees and Network Rail employees  | CO14 | N/A          | N/A |
| RS05 | 31/03/2020 | 31/03/2020 | Implementation of Passenger Assist App and Beacons (or equivalent)  | Demonstration of live operation and deployment of Passenger Assist App and Beacons (or equivalent)   | N/A  | SI117        | N/A |

| RS06 |            |            |  |   |      |             |     |
|------|------------|------------|--|---|------|-------------|-----|
| RS06 | 31/12/2021 | 31/12/2020 | Establishment of Keolis Global Rail Division Headquarters in Wales.  | Establishment of Keolis Global Rail Division Headquarters in Wales with appropriate staffing.   | CO57 | N/A         | N/A |
| RS06 | 31/12/2021 | 31/03/2021 | Completion of rebrand of CI150, CI153, CI158, CI175 and CI769 in accordance with the Branding Guidelines.                | Evidence of completion of rebrand of CI150, CI153, CI158, CI175 and CI769 in accordance with the Branding Guidelines.                 | CO32 | N/A         | N/A |
| RS06 | 31/12/2021 | 31/03/2021 | Establishment of Shared Service Centre   | Site visit to Shared Service Centre including demonstration of function and confirmation of employee numbers.                         | CO59 | SI282       | N/A |
| RS06 | 31/12/2021 | 31/03/2021 | Installation of seventeen (17) new gates at Stations and one hundred and seventy six (176) passenger information screens | Evidence of installation of seventeen (17) new gates at Stations and one hundred and seventy six (176) passenger information screens. | CO3  | SI30, SI236 | N/A |

|      |            |                                       |   |   |      |       |     |
|------|------------|---------------------------------------|---|---|------|-------|-----|
| RS06 | 31/12/2021 | 31/03/2021                            | Completion of Rebranding of all Hub Stations and Interchange Stations | Evidence of completion of rebranding of all Hub Stations and Interchange Stations                                 | CO33 | N/A   | N/A |
| RS06 | 31/12/2021 | 31/10/2021                            | Certification of ISO55001 Accreditation                               | Evidence of ISO55001 Accreditation  | CO27 | N/A   | N/A |
| RS06 | 31/12/2021 | December 2021 (Principal Change Date) | Changes to the timetable (Post TSR 1B WCB Service Improvements)       | Implementation of Timetable in accordance with Schedule 1.1   | N/A  | N/A   | N/A |
| RS07 |            |                                       |   |   |      |       |     |
| RS07 | 31/12/2022 | 31/03/2022                            | Smart Ticketing   | Establishment of pay as you go facility for mobile ticket users.  | CO41 | SI126 | N/A |
| RS07 | 31/12/2022 | 31/03/2022                            | Installation of New Ticketing Vending Machines                        | Evidence of installation and commencement of service of two hundred and eleven (211) New Ticket Vending Machines. | CO39 | SI160 | N/A |

|      |            |  |  |   |       |       |     |
|------|------------|--|--|---|-------|-------|-----|
| RS07 | 31/12/2022 | 31/03/2022                               | Redevelopment of ticket offices at a minimum of six (6) Stations             | Evidence of redevelopment of ticket offices at a minimum of six (6) Stations.   | CO539 | N/A   | N/A |
| RS07 | 31/12/2022 | 31/03/2022                               | Refurbishment of disused space at Stations for community and retail projects | Evidence of completion of refurbishment of disused space at Stations for community and retail projects                | N/A   | SI144 | N/A |
| RS07 | 31/12/2022 | December 2022<br>(Principal Change Date) | Changes to the Timetable   | Implementation of Timetable in accordance with Schedule 1.1   | N/A   | N/A   | N/A |
| RS07 | 31/12/2022 | 31/12/2022                               | Introduction of new DMUs into passenger revenue service                      | Evidence of testing, commissioning and introduction of new DMUs as set out in the Specified Additional Rolling Stock. | N/A   | N/A   | N/A |
| RS08 |            |  |  |   |       |       |     |

|      |            |  |  |  |      |     |     |
|------|------------|--|--|--|------|-----|-----|
| RS08 | 31/12/2023 | December 2023<br>(Principal Change Date) | CVL ERDF Services Live   | Implementation of TSR2 compliant Timetable for CVL in accordance with Schedule 1.1                   | N/A  | N/A | N/A |
| RS09 |            |  |  |  |      |     |     |
| RS09 | 31/12/2023 | 31/03/2023                               | Completion of Rebranding of all Category C Stations  | Evidence of completion of rebranding of all Category C Stations                                      | CO34 | N/A | N/A |
| RS09 | 31/12/2023 | 31/12/2023                               | Introduction of all new Metro Vehicles into passenger revenue service on the CVL                       | Evidence of testing, commissioning and introduction of new Metro Vehicles.                           | N/A  | N/A | N/A |
| RS09 | 31/12/2023 | 31/12/2023                               | Commissioning of block signal between Wrexham General and Gobowen, subject to Network Rail cooperation | Evidence of successful installation of operational block signal between Wrexham General and Gobowen. | CO44 | N/A | N/A |
| RS09 | 31/12/2023 | 31/12/2023                               | Introduction of new Tri-Mode Vehicles into passenger revenue service on the CVL                        | Evidence of testing, commissioning and   | N/A  | N/A | N/A |

|      |            |            |   |  |      |      |     |
|------|------------|------------|---|--|------|------|-----|
|      |            |            |   | introduction of new Tri-Mode Vehicles.   |      |      |     |
| RS10 |            |            |   |  |      |      |     |
| RS10 | 31/12/2024 | 31/03/2024 | Establishment of Customer Service Contact Centre in South Wales Valleys | Site visit to Customer Service Contact Centre in South Wales Valleys including demonstration of function and confirmation of employee numbers. | CO59 | N/A  | N/A |
| RS10 | 31/12/2024 | 31/03/2024 | New wheel lathe at Chester depot  | Evidence of test on and commissioning of new wheel lathe at Chester depot  | CO61 | SI95 | N/A |
| RS10 | 31/12/2024 | 31/03/2024 | Completion of Rebranding of all Category D Stations                     | Evidence of completion of rebranding of all Category D Stations  | CO35 | N/A  | N/A |
| RS10 | 31/12/2024 | 31/03/2024 | Completion of branding of all new and cascaded trains                   | Evidence of completion of rebranding of all new and cascaded trains in accordance with the Authority's branding guidelines                     | CO36 | N/A  | N/A |



|      |            |                                       |  |   |      |            |     |
|------|------------|---------------------------------------|--|---|------|------------|-----|
| RS10 | 31/12/2024 | December 2024 (Principal Change Date) | Implementation of Timetable compliant with TSR2A in accordance with Schedule 1.1   | Implementation of Timetable compliant with TSR2A in accordance with Schedule 1.1                | N/A  | N/A        | N/A |
| RS11 |            |                                       |  |   |      |            |     |
| RS11 | 30/11/2025 | 30/11/25                              | CVL Transformation Live  | Rail Services running on CVL Physical System following the completion of the CVL Transformation | N/A  | N/A        | N/A |
| RS12 |            |                                       |  |   |      |            |     |
| RS12 | 31/12/2025 | 28/02/2025                            | Testing, commissioning and introduction of seven (7) additional DMUs (Rural Lot2a) | Evidence of testing, commissioning and introduction of seven (7) additional DMUs (Rural Lot2a)  | CO63 | N/A        | N/A |
| RS12 | 31/12/2025 | 31/03/2025                            | Creation of new Spaces at Car Parks in accordance with Service Improvement Plan    | Completion of agreed number of car parking spaces as set out in the Service Improvement Plan    | CO37 | SI10, SI11 | N/A |

|      |            |            |   |   |      |      |     |
|------|------------|------------|---|---|------|------|-----|
| RS12 | 31/12/2025 | 31/10/2025 | New Treforest Estate Station or alternative proposal as set out in the relevant Committed Obligations | Evidence of timetabled Rail Services calling at the new Treforest Estate Station (compliant with the CVL design) or investment as set out in the relevant Committed Obligations | CO10 | N/A  | N/A |
| RS12 | 31/12/2025 | 31/12/2025 | Upgrades to 14 three-car DMUs to introduce a First Class area   | Evidence of upgrades to 14 three-car DMUs to introduce a First Class area   | CO22 | N/A  | N/A |
| RS13 |            |            |   |   |      |      |     |
| RS13 | 31/12/2027 | 31/03/2027 | New Gabalfa Station or alternative proposal as set out in the relevant Committed Obligations          | Evidence of timetabled Rail Services calling at the new Gabalfa Station (compliant with the CVL design) or investment as set out in the relevant Committed Obligations          | CO11 | N/A  | N/A |
| RS13 | 31/12/2027 | 31/12/2027 | Refurbishment of Class 170  | Evidence of refurbishment of C1170.   | CO24 | SI67 | N/A |
| RS14 |            |            |   |   |      |      |     |

|      |            |  |  |   |     |      |     |
|------|------------|--|--|---|-----|------|-----|
| RS14 | 31/03/2030 | Accreditation Date as per Appendix 1 to Schedule 1.7 | Secure Stations Accreditation for the Stations set out in Appendix 1 to Schedule 1.7 | Evidence of Secure Stations Accreditation achieved for the Stations set out in Appendix 1 to Schedule 1.7 | N/A | SI35 | N/A |
| RS14 | 31/03/2030 | 31/03/2030   | Station Flagship Schemes   | Evidence of completion of Station Flagship Schemes as set out in the Station Improvement Plan             | CO5 | N/A  | N/A |

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**Schedule 18.3 - Rail Services Milestone Criteria**

**1 RAIL SERVICES MILESTONE CRITERIA**

- 1.1 This Schedule 18.3 specifies the process for establishing and/or developing the Rail Services Milestone Criteria.
- 1.2 The Rail Services Milestone Criteria may apply either to a Rail Services Milestone or a Rail Services Milestone Deliverable.
- 1.3 The ODP shall develop the Rail Services Milestone Criteria applicable to each Rail Services Milestone and Rail Services Milestone Deliverable. The Process for the Acceptance of Document Deliverables shall be used to agree each Rail Services Milestone Criteria with the Authority.
- 1.4 The Rail Services Milestone Criteria shall be set out in:
- (a) the Rail Services Milestone Table; and/or
  - (b) the Implementation Plan provided always that any Rail Services Milestone Criteria included in the Implementation Plan which is not set out in the Rail Services Milestone Table or proposes a change to that which is set out in the Rail Services Milestone Table shall require prior written approval by the Authority no later than one (1) Reporting Period prior to the Planned Rail Services Milestone Delivery Date for the relevant Rail Services Milestone or Rail Services Milestone Deliverable.
- 1.5 Each Rail Services Milestone Criteria shall include (but not be limited to) the following criteria as relevant to the Rail Services Milestone or Rail Services Milestone Deliverable:
- (a) a clear description of the Rail Services Milestone or Rail Services Milestone Deliverable;
  - (b) all licences, permits, consents or other approvals required to be obtained by, or on behalf of, the ODP for the Rail Services Milestone Deliverable to be met;
  - (c) the quality and/or standards conformance relating to the Rail Services Milestone or Rail Services Milestone Deliverable;
  - (d) the procedure, testing and processes required to be carried out to demonstrate that the Rail Services Milestone Criteria is capable of being met;
  - (e) conformance to the detailed design for the Rail Services Milestone or Rail Services Milestone Deliverable;
  - (f) the passenger service improvement enabled by the Rail Services Milestone or Rail Services Milestone Deliverable;

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- (g) the efficiency improvement enabled by the Rail Services Milestone or Rail Services Milestone Deliverable; and
  - (h) any other relevant matters specified by the ODP or reasonably requested by the Authority.
- 1.6 The description of each Rail Services Milestone Criteria shall be such that each Rail Services Milestone Criteria is capable of objective confirmation of Achievement.
  - 1.7 The ODP shall demonstrate the performance of the Rail Services Milestone Criteria in respect of Achievement to the reasonable satisfaction of the Authority.
  - 1.8 Each Rail Services Milestone Criteria and its use in the Achievement of Rail Services Milestones may be subject to audit by the Authority at the Authority's sole discretion.
  - 1.9 The Authority will only issue a Rail Services Milestone Achievement Certificate for a Rail Services Milestone when each of the Rail Services Milestone Deliverables within a Rail Services Milestone have been Achieved.

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## **Appendix 1 to Schedule 18.3 – Process for the Acceptance of Document Deliverables**

### **1 PROCESS FOR THE ACCEPTANCE OF DOCUMENT DELIVERABLES**

- 1.1 The Authority and the ODP shall be required to develop, agree and maintain documents throughout the ODP Grant Agreement Term, including those documents in Appendix 2 to this Schedule 18.3. In all cases, the Authority and the ODP shall work together to develop and agree documentation that complies with Good Industry Practice.
- 1.2 Other formal documents relating to the ODP Services that are required to be agreed between the parties under this Schedule 18 shall be delivered in accordance with this Process for the Acceptance of Document Deliverables.

### **2 APPROVALS**

- 2.1 The ODP shall prepare the first draft of the relevant document, taking into account any protective security markings on such document and shall send the draft to the Authority.
- 2.2 The Authority shall issue a formal acknowledgement of receipt of the draft document within two (2) Weekdays of receiving the same. In this respect, the Authority shall not act unreasonably, capriciously or vexatiously.
- 2.3 In the event of the Authority failing to provide such acknowledgement within two (2) Weekdays of receipt of the same, the ODP shall investigate. For the avoidance of doubt, the timescales outlined below operate from issue of an acknowledgement of receipt by the Authority to the ODP and proof of issue by the ODP shall not constitute acknowledgement of receipt by the Authority. However, should the ODP be able to provide proof of issue, it shall not be in breach of its obligations under this Process for the Acceptance of Document Deliverables for the duration of any period in which the Authority has failed to issue an acknowledgement of receipt.
- 2.4 Within ten (10) Weekdays of issuing an acknowledgement of receipt, the Authority shall issue to the ODP either an Approval Notice or a Rejection Notice in writing.
- 2.5 Should the Authority fail to issue either notice within the above time period or other time period as agreed in writing, the ODP shall notify the Authority in writing of its intention to assume deemed approval, unless an Approval Notice or Rejection Notice is issued within the intervening period, and allow a further five (5) Weekdays from receipt by the Authority of such intention by the ODP before deemed approval is assumed. For the avoidance of doubt, if the procedure outlined in this paragraph is followed correctly, the deemed approval will be binding on the Authority.
- 2.6 The draft document is deemed to be formally approved from the point at which the Authority issues an Approval Notice.

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- 2.7 Where the Authority issues a Rejection Notice, it shall include in the Rejection Notice factual and evidenced feedback explaining the reasons for not granting approval. In doing so, the Authority shall not act unreasonably, capriciously or vexatiously.
- 2.8 The ODP shall amend the draft document to incorporate any and all reasonable comments of the Authority in preparing a revised draft of the document previously rejected and shall re-issue to the Authority for approval within ten (10) Weekdays of receiving a Rejection Notice.
- 2.9 After two (2) failed attempts to gain approval of the draft document, either party may refer the dispute about approval of the draft document to the dispute resolution procedure.
- 2.10 For the avoidance of doubt, once approved by the parties these processes and procedures as documented shall become binding under the Agreement.

### **3 EXPEDITED PROCESS**

- 3.1 Either Party may propose an expedited timetable (for example of five (5) Weekdays in respect of the Authority issuing an Approval Notice or a Rejection Notice in accordance with paragraph 2 of this Appendix 1 to Schedule 18.3). Any such proposal shall set out:
- (a) the benefits for the ODP Services arising from such expedited timetable; and
  - (b) the proposed change to time periods for issue and approval of the document.
- 3.2 Use of an expedited Process for the Acceptance of Document Deliverables shall be subject to:
- (a) the agreement of the Parties;
  - (b) the Authority's prior receipt of the draft documents; and
  - (c) the Authority's continued involvement in the development of the documentation in accordance with paragraph 1.1 of this Appendix 1 to Schedule 18.3.

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**Schedule 18.4 – Rail Services Milestone Delay Payments**

**1 RAIL SERVICES MILESTONE DELAY PAYMENTS**

- 1.1 In the event that the ODP fails to Achieve any of the Rail Services Milestone(s) specified in the Table of Rail Services Milestone Delay Payments to this Schedule 18.4 by the applicable Planned Rail Services Milestone Delivery Date, the ODP shall be liable to pay to the Authority by way of liquidated damages the amount of Rail Services Milestone Delay Payments specified in the Table of Rail Services Milestone Delay Payments for each week of delay until the specified Remedy Period expires and/or the Rail Services Delay Payment Cap is reached. Where such Remedy Period expires or the Rail Services Delay Payment Cap is reached without the Rail Services Milestone having been Achieved, this shall constitute a material breach of the ODP Grant Agreement by the ODP.
- 1.2 Where the Remedy Period has been completed or the Rail Services Delay Payment Cap reached without the Rail Services Milestone being Achieved, Rail Services Payments and / or Infrastructure Manager Services Payments identified for delivery of the Committed Obligations and/or Service Improvements which are unachieved Rail Services Milestone Deliverables within the unachieved Rail Services Milestone shall be reduced by the amount of the Rail Services Payment associated with such Rail Services Milestone or Rail Services Milestone Deliverables within the Record of Assumptions from the Planned Rail Services Milestone Delivery Date. Such reduction shall be progressed as a Change within Schedule 9 (Changes and Variations).



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[REDACTED]