

**SCHEDULE 3A - INFRASTRUCTURE MANAGER SERVICES,**

Schedule 3A.1	Identified and Defined Terms
Schedule 3A.2	Infrastructure Manager for CVL Assets
Schedule 3A.3	CVL Asset Management
	Annex 1 Part A: Asset Management Plan Requirements
	Annex 1 Part B: Draft Asset Management Plan
	Annex 2: Asset Management Reporting
	Annex 3 Part A: Discovery Plan
	Annex 3 Part B: IM Mobilisation and CVL Asset Transfer Plan
	Annex 3 Part C: ODP's CVL Asset Assumptions
	Annex 3 Part D: Schedule of Rates
	Annex 4: Part A: Asset Knowledge Management
	Annex 4: Part B: Initial Asset Knowledge Management Plan
	Annex 5: Renewals Process
	Annex 6: Form of CVL Asset Lease
	Annex 7: Infrastructure Manager Performance Bond
	Annex 8: Definitions

## **Schedule 3A.1 - Identified and Defined Terms**

### **1 IDENTIFIED AND DEFINED TERMS**

- 1.1 The terms used in this Schedule 3A shall have the meanings set out in Annex 8 (Definitions) to this Schedule 3A of this ODP Grant Agreement.
- 1.2 Except to the extent that they are inconsistent with the definitions in Annex 8 (Definitions) to this Schedule 3A (where the Annex 8 (Definitions) to Schedule 3A shall apply), the definitions and interpretations in clause 3 of this ODP Grant Agreement shall apply to this Schedule 3A.
- 1.3 Except where a contrary intention appears, references to Annexes and Paragraphs are to the annexes and paragraphs of this Schedule 3A.
- 1.4 Annex and paragraph headings are inserted for convenience only and shall not affect the interpretation of this Schedule 3A.
- 1.5 Any reference to this Schedule 3A or to any other document shall include any permitted variation, amendment or supplement to this Schedule 3A or such other document.
- 1.6 The Annexes form part of this Schedule 3A and shall have effect as if set out in full in the body of this Schedule 3A. Any reference to this Schedule 3A includes the Annexes.

## **Schedule 3A.2 – Infrastructure Manager for CVL Assets**

### **1 CVL ASSETS**

- 1.1 Following provision of the same by the Authority, the ODP shall complete a lease of the CVL Assets on or prior to the Planned CVL Asset Transfer Longstop Date substantially in the form attached at Annex 6 (Form of CVL Asset Lease) to Schedule 3A.3, subject to population of the schedules and gaps in the Form of the CVL Asset Lease which the Authority properly requires having regard to information provided by Network Rail. In the event that the CVL Asset Lease is not completed by the parties to it by the Planned CVL Asset Transfer Longstop Date, the situation set out in Clause 5.4(a)(ii) shall be deemed to have occurred and Clauses 5.4 to 5.6 shall apply.
- 1.2 The Authority and the ODP shall use reasonable endeavours to agree the form of station access conditions, depot access conditions and Network Code required for granting and allowing access to all stations, depots and rail network forming part of the CVL Assets. Provided always that such station access conditions, depot access conditions and Network Code shall be as approved by ORR.
- 1.3 The Authority shall deduce title to the CVL Assets as soon as reasonably possible following the date of this Agreement, and, subject to paragraph 1.4, the ODP shall have a period of sixty (60) days following:
- (a) the receipt of the whole or part of such title as applicable from the Authority (which shall include the receipt of official copies of the register and title plan; and registered and unregistered title deeds and ancillary documents) to notify the Authority where the ODP reasonably believes that it or they contain any Material CVL Asset Title Restriction; and
  - (b) confirmation from the Authority that the ODP has received the whole or the final part of such title (as applicable) to notify the Authority where the ODP believes that there is a Material CVL Asset Title Omission.
- 1.4 Notwithstanding the periods available for ODP notification in paragraph 1.3, the ODP shall notify the Authority as soon as reasonably possible on becoming aware of any possible Material CVL Asset Title Restriction or Material CVL Asset Title Omission.
- 1.5 The ODP and the Authority shall meet at least once every Reporting Period from the date of this Agreement (unless otherwise agreed the Parties) to discuss any issue, objection or requisition which could be classified as or lead to a Material CVL Asset Title Restriction or Material CVL Asset Title Omission. The ODP and the Authority shall act reasonably and cooperate with each other in assessing and proposing solutions and mitigation strategies to overcome or otherwise lessen the impact of any Material CVL Asset Title Restriction or Material CVL Asset Title Omission which has arisen or is likely to arise.
- 1.6 The Authority agrees that, subject to the ODP discharging its obligations under this paragraph 1, any Material CVL Asset Title Restriction or Material CVL Asset Title Omission shall be deemed to be a Change and shall be dealt with in accordance with Schedule 9 (Changes and Variations) provided always that the impact and cost of such Material CVL Asset Title Restriction and/or Material CVL Asset Title Omission to the ODP shall not have been dealt with through any adjustment to any Fixed Charge, Firm Charge or Emerging Charge or elsewhere in accordance with Schedule 3A.3.

### **2 INFRASTRUCTURE MANAGER SERVICES**

- 2.1 Following CVL Asset Transfer, the ODP shall be the Infrastructure Manager for the CVL Assets and shall provide Infrastructure Manager Services to enable provision of other CVL Services. The CVL shall encompass all CVL Assets required for the provision of CVL Services up to the boundaries set out in the Interconnection Agreement as set out in paragraph 3 of this Schedule 3A.2.

- 2.2 Prior to the CVL Asset Transfer Date, the ODP shall establish and agree with ORR all policies, processes, agreements and consents to enable the ODP to perform the Infrastructure Manager Services.
- 2.3 The ODP shall throughout the ODP Grant Agreement Term maintain all policies, processes, agreements and consents agreed with ORR pursuant to paragraph 2.2, and develop further policies and processes or enter into any such further agreements or consents that ORR may require from time to time.
- 2.4 The ODP shall throughout the ODP Grant Agreement Term establish, agree and maintain policies, processes, agreements and consents with any other body to enable it to provide the Infrastructure Manager Services, and develop further policies and processes or enter into any such further agreements or consents that such bodies may require from time to time.

### **3 INTERCONNECTION AGREEMENT AND INTERFACE ASSET DEEDS**

- 3.1 The ODP shall establish and agree with Network Rail prior to the date of the CVL Asset Transfer:
- (a) an interconnection agreement to the national rail network (the “**Interconnection Agreement**”); and
  - (b) other land access agreements (“**Interface Asset Deeds**”) as may be required over land retained by Network Rail (and vice versa) between Cardiff Queen Street station and Cardiff Central station and any other relevant site required to provide CVL Services, other Rail Services that run over CVL lines and other accesses that Network Rail or the ODP may require.
- 3.2 The ODP shall maintain the Interconnection Agreement and the Interface Asset Deeds throughout the ODP Grant Agreement Term and manage any changes to the Interconnection Agreement and Interface Asset Deeds as required from time to time to enable the continued provision of the CVL Services.

### **4 OPERATIONAL MANAGEMENT OF RAILWAY CONTROL SYSTEM**

- 4.1 Following CVL Asset Transfer, the ODP shall be responsible for:
- (a) signalling and train control of the CVL network interfacing with the national rail network; and
  - (b) operational management of traction power and all other operational power supplies on the CVL network.
- 4.2 The ODP shall develop and provide to the Authority, within two (2) months of the date of this Agreement, a draft plan for the operational management of CVL railway control and CVL Assets (“**CVL Assets Operational Management Plan**”). Such plan shall be based on the design and technology set out in the Concept Design and the principles set out in:
- (a) R9.27 (Operational management of railway control systems);
  - (b) R9.28 (Steady state operational management of railway control systems);
  - (c) R9.29 (Steady State interface between CVL railway control and the wider network);
  - (d) R9.30 (Key transitional arrangements for railways control systems); and
  - (e) R9.33 (Operational management of train powers systems and interfaces),
- each as set out in the ITSFT Bid Submission.

- 4.3 Within one (1) month of the date of receipt of the draft CVL Assets Operational Management Plan by the Authority, the Authority shall provide the ODP with its written response to the draft CVL Assets Operational Management Plan. Such response shall set out, whether the Authority has:
- (a) no comments or concerns on the draft CVL Assets Operational Management Plan, following which the ODP shall be required to implement the agreed CVL Assets Operational Management Plan for the remainder of the ODP Grant Agreement Term; or
  - (b) comments or concerns on the draft CVL Assets Operational Management Plan, and shall set out in such comments and/or concerns including any suggested improvements and/or amendments to the draft CVL Assets Operational Management Plan.
- 4.4 In the event that the ODP has not dealt with the comments and/or concerns raised by the Authority in paragraph 4.3(b) to the satisfaction of the Authority within two (2) Reporting Periods (or such other period as agreed by the Parties) from receipt of the draft CVL Assets Operational Management Plan by the Authority, either Party may refer the matter to the Independent Reporter for comment or recommendation.

## **Schedule 3A.3 – CVL Asset Management**

### **1.1 CVL Asset Data**

- (a) The ODP shall at all times update, and keep updated, the CVL Asset Data in accordance with its obligations under this Schedule 3A.3 including Annex 4 Part A (Asset Knowledge Management) to this Schedule 3A.3.
- (b) Subject to paragraph 1.1(c), the ODP shall use reasonable endeavours to grant to the Authority an exclusive, perpetual, worldwide, royalty-free licence (with the right to sub-licence to any Successor Operator) to use all the software the ODP uses in relation to the CVL Asset Data for any purpose related to this ODP Grant Agreement.
- (c) Where the ODP is unable (using reasonable endeavours) to provide any licence pursuant to paragraph 1.1(b), any contracts or licences relating to the ODP's right to use all the software the ODP uses in relation to the CVL Asset Data for any purpose related to this ODP Grant Agreement shall be deemed to be designated as Key Contracts.
- (d) The ODP shall ensure that the CVL Asset Data shall be capable of being accessed by the Authority online at all times.
- (e) The ODP shall ensure that the Authority is at all times able to generate reports in an agreed form on any aspect of the CVL Asset Data.
- (f) The ODP shall regularly (and as a minimum on a weekly basis or otherwise as agreed between the Parties) provide to the Authority an electronic copy (in such format as requested by the Authority) of the CVL Asset Data in a secure data repository of the Authority's choice.

### **1.2 Reporting**

- (a) The ODP shall comply with its reporting obligations in respect of the CVL Assets as set out in Annex 2 (Asset Management Reporting) to this Schedule 3A.3.

### **1.3 ODP and Authority Representatives**

- (a) The Authority shall appoint an Authority's Infrastructure Manager Representative who shall exercise the functions and powers of the Authority in relation to the Infrastructure Manager Services. The Authority's Infrastructure Manager Representative shall also exercise such other functions and powers of the Authority as may be notified to the ODP from time to time.
- (b) The ODP shall appoint an ODP's Infrastructure Manager Representative and such person shall have full authority to act on behalf of the ODP for all purposes in respect of the Infrastructure Manager Services. Except as previously notified in writing before such act is carried out by the ODP, the Authority and the Authority's Infrastructure Manager Representative shall be entitled to treat any act of the ODP's Infrastructure Manager Representative as being expressly authorised by the ODP and the Authority and the Authority's Infrastructure Manager Representative shall not be required to determine whether any express authority has in fact been given.
- (c) The ODP's Infrastructure Manager Representative and the Authority's Infrastructure Manager Representative shall (unless agreed otherwise by the Parties) attend each CVL Asset Monthly Performance Meeting and CVL Asset Annual Performance Meeting.

### **1.4 Standards**

- (a) No later than eighteen (18) months following the commencement of the Infrastructure Manager Phase, the ODP shall obtain ISO 55001 accreditation and shall maintain such accreditation for the remainder of the ODP Grant Agreement Term.
- (b) The ODP shall ensure that at all times its Asset Management Plan and all CVL Asset management policies, procedures and activities carried out in respect of the CVL Assets are:
  - (i) in accordance with all Law;
  - (ii) in accordance with all Good Industry Practice;
  - (iii) in accordance with its Risk Based Management Framework;
  - (iv) in accordance with the relevant Railway Group Standards, Network Rail Standards or any approved derogations to Network Rail Standards or ODP developed standards; and
  - (v) sufficient to ensure that the ODP can deliver the ODP Services in accordance with this Agreement.

#### 1.5 Objectives of the Infrastructure Manager Services

- (a) In developing its Asset Management Plan and performing the Infrastructure Manager Services the ODP shall use reasonable endeavours to ensure that:
  - (i) the ODP complies with the Authority's spending objectives and other policy requirements as notified in writing by the Authority to the ODP from time to time;
  - (ii) the Infrastructure Manager Services are effective, economic and adopt a risk based whole life cost approach to asset management;
  - (iii) its Asset Management Plan and its implementation of its Asset Management Plan allow the ODP to meet the Operational Service Levels required under Schedule 7.1 (Operational Performance ); and
  - (iv) the CVL Assets are capable of meeting the CVL Hand Back Conditions.
- (b) Notwithstanding any other express obligations of the ODP to review certain plans and strategies in accordance with this Agreement, the ODP shall document and periodically update all of its strategies, policies and plans to ensure they are fit for purpose and continually improve.

#### 1.6 Health and Safety Management

- (a) The ODP shall throughout the ODP Grant Agreement Term perform the Infrastructure Manager Services in accordance with all applicable obligations concerning health and safety relating to the Infrastructure Manager (including any duty of care arising at common law, and any obligation arising under statute, statutory instrument or mandatory code of practice) in Great Britain.
- (b) The ODP shall:
  - (i) No later than twelve (12) weeks following the date of this ODP Grant Agreement provide an Initial Safety Plan to the Authority and the

Independent Reporter and, from this date, shall comply with its Initial Safety Plan (and each successor Safety Plan);

- (ii) issue a revision to its Initial Safety Plan to the Independent Reporter and the Authority in advance of the first Review Date, for the Independent Reporter and the Authority to review and, if they elect to do so, comment on; and
  - (iii) update such plan on each Review Date thereafter as part of the Asset Management Plan review process.
- (c) By no later than the commencement of the Infrastructure Manager Phase, the ODP shall, in respect of its Infrastructure Manager Services obligations, be a member of the Rail Safety and Standards Board.
- (d) The ODP's Safety Management System shall be compliant with ISO 31000:2009. The ODP shall be required to provide to the Authority the latest iteration of the ODP's Safety Management System upon request.

#### 1.7 Environmental Management

- (a) The ODP shall throughout the ODP Grant Agreement Term, perform the Infrastructure Manager Services in accordance with all:
- (i) policies, processes, agreements and consents as are required to comply with its legal and regulatory environmental obligations; and
  - (ii) relevant environmental standards and codes of practice.
- (b) The ODP shall:
- (i) no later than six (6) weeks following the date of this ODP Grant Agreement, provide an Initial Infrastructure Manager Environmental Management Plan to the Authority and the Independent Reporter and, from this date, shall comply with its Initial Infrastructure Manager Environmental Management Plan (and each successor Infrastructure Manager Environmental Management Plan) and ensure that its Infrastructure Manager Environmental Management Plan is aligned to and does not conflict with its Public Impact of Implementation Plan.
  - (ii) issue a revision to its Initial Infrastructure Manager Environmental Management Plan to the Independent Reporter and the Authority in advance of the first Review Date, for the Independent Reporter and the Authority to review and, if they elect to do so, comment on; and
  - (iii) update such plan on each Review Date thereafter as part of the Asset Management Plan review process.
- (c) The ODP shall remove and replace contaminated ballast at the thirty (30) most contaminated Stations on the CVL prioritised using a methodology based on the percentage of ballast affected in the relevant Station and reviewed by the Independent Reporter, by no later than twelve (12) months after completion of the CVL Transformation, provided always that such removal and replacement shall not be funded as part of the Renewals Process. This activity will comprise the removal of contaminated ballast and replacement with clean ballast, between sleepers to the full depth of the sleepers, including the adjacent ballast shoulder(s), without removing rails or sleepers.
- (a) The ODP shall limit the impact of the Infrastructure Manager Services to persons and other third parties adjacent to the CVL Assets through:



- (i) using noise and light-reducing methods and construction techniques such as acoustics screens or battery powered tools, equipment and lighting;
- (ii) using low-level lighting at junctions where appropriate with 'silenced type' generators; and
- (iii) scheduling the works with the most impact for such entities and persons to earlier in the evening,

and the ODP shall fully record and document where such mitigations are decided not to be taken (including the ODP's rationale for such decision) and the ODP shall provide such information to the Authority upon request.

## **2 CVL ASSET MANAGEMENT PHASES**

2.1 The Parties acknowledge and agree that in respect of the Infrastructure Manager Services, the ODP Grant Agreement Term has been divided into the following periods of time:

- (a) the Pre CVL Asset Transfer Phase; and
- (b) the Infrastructure Manager Phase, which is further sub-divided into two stages:
  - (i) the Transformation Stage; and
  - (ii) the Steady State Stage.

## **3 PRE CVL ASSET TRANSFER PHASE**

3.1 During the Pre CVL Asset Transfer Phase the ODP shall:

- (a) work collaboratively with Network Rail and the Authority using all reasonable endeavours to:
  - (i) obtain or procure accurate and up to date information about the CVL Assets, including information as to their condition, capability, capacity and identifying any Material Discoveries, inaccuracies, inconsistencies or errors in the CVL Asset Statement;
  - (ii) carry out the activities as set out in its Discovery Plan including using all reasonable endeavours to agree access to the CVL Assets with Network Rail to allow such activities to be undertaken;
  - (iii) develop and agree the Interconnection Agreement and the Interface Asset Deeds with Network Rail, ensuring such agreed form documents are completed (but not necessarily executed) by the end of the Preliminary Design and Discovery Phase and are provided to the Authority as part of the CVL Transformation Proposal;
  - (iv) develop and maintain the CVL Asset Data in accordance with its IM Mobilisation and CVL Asset Transfer Plan;
  - (v) establish, develop and maintain its Enterprise Asset Management System provided always such system will not be the principle system used for the infrastructure management in respect of the CVL Assets during the Pre CVL Asset Transfer Phase;
  - (vi) provide iterative updates of its development of its draft Asset Management Strategy;

- (vii) to the extent possible, ensure that the scheduled inspections which are carried out by Network Rail during the Pre CVL Asset Transfer Phase address those issues which the ODP seeks further information on; and
  - (viii) develop its Draft Asset Management Plan in conjunction with development of its Preliminary Design including detailed information on how any discoveries (including Material Discoveries) in the CVL Assets identified during the Preliminary Design and Discovery Phase are to be managed either through revised maintenance activities or through Planned Renewals, ensuring such developed plan is completed by the end of the Preliminary Design and Discovery Phase and is provided to the Authority as part of the CVL Transformation Proposal;
- (b) establish and agree with ORR and DfT (as applicable) such agreements, licenses, consents and approvals required by ORR for the ODP to perform the Infrastructure Manager Services ensuring all such regulatory agreements, licenses, consents and approvals are completed (but not necessarily executed) by the completion of the Preliminary Design and Discovery Phase and are provided to the Authority as part of the CVL Transformation Proposal;
  - (c) further develop and carry out the activities as set out in its IM Mobilisation and CVL Asset Transfer Plan and all other mobilisation activities required in respect of the ODP's future role as Infrastructure Manager of the CVL Assets to allow the ODP to implement its Asset Management Plan from commencement of the Infrastructure Manager Phase, such developed plan to be provided to the Authority as part of the CVL Transformation Proposal;
  - (d) carry out surveys, inspections and other discovery activities in accordance with its IM Mobilisation and CVL Asset Transfer Plan and any other activities as agreed with the Authority in respect of each relevant CVL Asset Class including any reprioritisation of such activities that the Authority may reasonably require having notified the ODP of the same;
  - (e) produce a Schedule of Inspections, to be provided to the Authority, of CVL Assets to be undertaken in the Transformation Stage for each relevant CVL Asset Class in accordance with;
    - (i) the inspection periods and inspection classes set out in Network Rail's Standards or alternative ODP standards once such standards have obtained any necessary approvals or consents; and
    - (ii) the time to next inspection based on the date of the last inspection of the relevant CVL Asset;
  - (f) respond to information provided to it by the Authority on specific risks associated with certain CVL Assets through carrying out appropriate investigation of such CVL Assets to a timeframe determined by the Authority (acting reasonably) and the ODP shall update its Schedule of Inspections to reflect such requirements; and
  - (g) as soon as reasonably practicable after the date of the ODP Grant Agreement, review the programme of any outstanding Renewals and Enhancements to be carried out by Network Rail in CP5 in respect of the CVL Assets and provide a written report to Network Rail and the Authority (copied to the Independent Reporter) identifying any Renewals and Enhancements which the ODP considers are no longer required pursuant to its Draft Asset Management Plan,
 

(such activities being the "**Discovery Phase Services**").

3.2 The Parties acknowledge and agree that the ODP shall be compensated by the Authority for:

- (a) carrying out Discovery Phase Services; and
- (b) the ODP's share of the cost of the Independent Reporter prior to the CVL Asset Transfer,

as a component of the amounts payable by the Authority to the ODP for Principal Infrastructure Services being delivered by the ODP in accordance with Appendix 5 Part B Annex 1 of Schedule 3B (Infrastructure Services and ODP Infrastructure Works).

#### **4 INFRASTRUCTURE MANAGER PHASE**

4.1 During the Infrastructure Manager Phase the ODP shall;

- (a) provide, or procure, the following services and/or works in respect of the CVL Assets:
  - (i) Asset Operational Management;
  - (ii) Day to Day Asset Management; and
  - (iii) Renewals Services,

at all times in accordance with its current Asset Management Plan;

- (b) continually develop and improve its CVL Asset knowledge through obtaining accurate and up to date information about the CVL Assets, including information as to their condition, capability and capacity;
- (c) revise and update the Asset Management Plan in accordance with this Schedule 3A;
- (d) maintain the CVL Asset Data in accordance with Annex 4: Part A (Asset Knowledge Management) including maintenance of the CVL Asset Register; and
- (e) maintain the Schedule of Inspections as a rolling programme of inspections providing such inspection regime to the Authority and Independent Reporter no later than ten (10) weeks in advance of each Review Date and at any other time reasonably requested by the Authority and/or the Independent Reporter,

(such services and/or works being the "**Infrastructure Manager Asset Management Services**").

#### **5 RISK BASED MANAGEMENT FRAMEWORK**

5.1 No later than three (3) months from the date of this Agreement, the ODP shall provide a draft Risk Based Management Framework to the Authority (copied to the Independent Reporter), which shall:

- (a) set out how the ODP shall meet and exceed its safety obligations;
- (b) contain a consistent approach to risk management;
- (c) ensure risk controls are clear;
- (d) ensure performance is constantly monitored;

- (e) allow an approach to risk management that is appropriate for local conditions and operations;
  - (f) provide clarity of roles and responsibilities; and
  - (g) promote a proactive, rather than reactive, approach to CVL Asset maintenance.
- 5.2 Within one (1) month of the date of receipt of the draft Risk Based Management Framework by the Authority, the Authority shall provide the ODP with its written response to the draft Risk Based Management Framework. Such response shall set out, whether the Authority has:
- (a) no comments or concerns on the draft Risk Based Management Framework, following which the ODP shall be required to implement the Risk Based Management Framework for the remainder of the ODP Grant Agreement Term; or
  - (b) comments or concerns on the draft Risk Based Management Framework, and shall set out any such comments and/or concerns including any improvements and/or amendments to the draft Risk Based Management Framework.
- 5.3 In the event that the ODP has not dealt with the comments and/or concerns raised by the Authority in paragraph 5.2(b) to the satisfaction of the Authority within two (2) Reporting Periods (or such other period as agreed by the Parties) from receipt of the draft Risk Based Management Framework by the Authority, either Party may refer the matter to the Independent Reporter for comment or recommendation.

## **6 STANDARDS AND DEROGATIONS MANAGEMENT**

- 6.1 In respect of rail lines contained in the CVL Assets which are not currently in passenger service use, the ODP shall carry out Off Track and Drainage Maintenance, Earthworks Maintenance and Structures (including Tunnels) Maintenance (including inspections) and any other inspection and maintenance of such CVL Assets during the Infrastructure Manager Phase to ensure that all CVL Assets comprising those rail lines:
- (a) in respect of CVL Assets that continue to be used by third parties including road and pedestrian over rail bridges and Level Crossing surfaces, shall comply with Law;
  - (b) are secure against trespass (including all buildings);
  - (c) meet all statutory health and safety obligations to the public including any unauthorised trespassers;
  - (d) do not cause any greater risk to neighbours or neighbouring property than if the rail lines were required to be maintained for Passenger Services;
  - (e) do not suffer accelerated decline of the CVL Assets that could have been avoided had a maintenance intervention been undertaken by the ODP including, but not limited to, additional corrosion of a bridge deck resulting from any failure to maintain the deck drainage system; and
  - (f) could be reinstated by implementing Renewals and brought into future use for Passenger Services.
- 6.2 No later than three (3) months from the date of this ODP Grant Agreement, the ODP shall operate and keep under continual review a standards and derogations management process which shall be developed in accordance with the principles set out in its Risk Based Management Framework (and its response to R9.18 (Standards and derogations management), R9.19 (Relationship with 'managing variation to Network Rail Standards

and Control Documents and Railway Group Standards') and R9.20 (Schedule of the standards being changed) of the ITSFT Bid Submission) and shall set out:

- (a) the Engineering Authorities for each CVL Asset Class, who shall, as a minimum, be selected to ensure full coverage of the CVL infrastructure and all relevant engineering disciplines and operational activities;
- (b) the process for reviewing future changes to CVL standards (including the issue and control of such standards);
- (c) the process for considering, agreeing and managing proposed derogations to CVL standards; and
- (d) the means by which any efficiencies and cost savings arising from a derogation to CVL standards or changes to any CVL standards will be reflected in the cost of delivering its Asset Management Plan,

(being the "**Standards and Derogations Management Process**").

6.3 Subject to paragraph 6.4, the Standards and Derogations Management Process shall include a self-assurance process whereby the ODP shall undertake internal audits of its Standards and Derogations Management Process and its implementation.

6.4 Upon reasonable request by the Authority and/or the Independent Reporter, the ODP shall:

- (a) provide the Standards and Derogations Management Process to the Authority and/or the Independent Reporter for review (and in any event this shall be provided no less than ten (10) weeks in advance of each Review Date);
- (b) grant the Independent Reporter and/or the Authority audit rights to inspect the implementation of the Standards and Derogations Management Process undertaken by the ODP; and
- (c) adopt any comments and/or amendments reasonably requested by the Authority and/or the Independent Reporter in respect of such processes.

6.5 The ODP acknowledges and agrees that Network Rail Standards shall apply in respect of the management of the CVL Assets until any changes and/or derogations to such Network Rail Standards are agreed in accordance with the Standards and Derogations Management Process.

## **7 ASSET MANAGEMENT PLAN**

7.1 The ODP shall provide its Asset Management Plan to the Independent Reporter and the Authority for review in accordance with Annex 2 (Asset Management Reporting) to this Schedule 3A.3.

7.2 The scope and content of the Asset Management Plan to be provided by ODP in accordance with paragraph 7.1 shall be as set out in Annex 1 (Asset Management Plan Requirements) to this Schedule 3A.3.

## **8 INDEPENDENT REPORTER**

### **Scope of the Independent Reporter's Appointment**

8.1 The Parties shall jointly appoint the Independent Reporter for the purposes of this Agreement upon the terms of the Independent Reporter's Appointment for an initial five (5) year term (such Independent Reporter's Appointment shall include the ability of the Parties to extend the term of the appointment to the remainder of the ODP Grant Agreement Term).

- 8.2 The lead person acting for the Independent Reporter under the Independent Reporter's Appointment shall be a senior railway engineering or asset management professional whose experience shall include (as a minimum):
- (a) leadership of the maintenance and renewal of rail or light rail systems;
  - (b) analysis of asset management plans to assess whether they are economical and efficient in meeting their objectives; and
  - (c) provision and presentation of independent expert views and conclusions to rail industry bodies and leadership.
- 8.3 The Independent Reporter shall be, and shall remain throughout the term of the Independent Reporter's Appointment, fully independent of the ODP, InfraCo and OpCo (and their Affiliates) and the Authority.
- 8.4 The Independent Reporter's Appointment shall specify the duties of the Independent Reporter owed to the Authority and the ODP. Subject to the terms of the Independent Reporter's Appointment, the Parties acknowledge and confirm that the scope of the Independent Reporter's role may include:
- (a) on or before each Review Date, reviewing and providing comments on the revised Asset Management Plan and Asset Knowledge Management reports provided by the ODP;
  - (b) producing its own reports, comments and recommendations on each revised Asset Management Plan, and (as requested) any other information provided to it, for the benefit of the ODP and the Authority;
  - (c) assessing and determining any payment adjustments to be applied to the ODP in accordance with Schedule 8.5 (Infrastructure Manager Service Payments);
  - (d) assessing whether the ODP has acted in compliance with its Asset Management Plan and obligations under this Schedule 3A;
  - (e) ensuring that in the event of any conflict between any ORR requirements and Authority requirements under this ODP Grant Agreement in respect of any relevant asset management plan, policy or strategy, the ORR requirements shall prevail; and
  - (f) acting as an independent entity in all other matters as instructed by the Parties in accordance with the terms of the Independent Reporter's Appointment and this Schedule 3A.
- 8.5 The ODP and the Authority shall (unless otherwise agreed by the Parties):
- (a) comply with their respective obligations as set out in the Independent Reporter's Appointment;
  - (b) under the terms of the Independent Reporter's Appointment, jointly instruct the Independent Reporter; and
  - (c) share equally the cost of the Independent Reporter providing its services to the ODP and the Authority under the Independent Reporter's Appointment provided always that either Party shall be entitled to pay the Independent Reporter's fees due and payable to the Independent Reporter in full and such payor shall be entitled to recover the other Party's contributions from the other party as a debt under this ODP Grant Agreement.
- 8.6 The ODP and the Authority agree to co-operate with each other generally in relation to all matters within the scope of, or in connection with, the Independent Reporter's

Appointment. All instructions or representations issued by either of the ODP or the Authority shall be simultaneously copied by that Party to the other Party and both Parties shall be entitled to attend all inspections undertaken by or meetings involving the Independent Reporter. All instructions given to the Independent Reporter shall be jointly given by the Authority and the ODP.

- 8.7 In the event of the Independent Reporter's Appointment being terminated otherwise than following full performance, the Authority and the ODP shall liaise and co-operate with each other in order to appoint a replacement independent reporter as soon as reasonably practicable. The identity of such replacement independent reporter shall be as agreed by the Authority or the ODP and the terms of its appointment shall, unless otherwise agreed, be set out in the replacement Independent Reporter's Appointment.
- 8.8 In the event that the Authority and the ODP fail to agree the identity and/or terms of a replacement Independent Reporter in accordance with paragraph 8.7 within forty (40) days of the original Independent Reporter's appointment being terminated, either the Authority or the ODP may refer the matter for determination under the dispute resolution procedure in accordance with Clause 11 of this Agreement.
- 8.9 The Parties acknowledge and agree the role of the Independent Reporter under this Schedule 3A as an independent expert, advisor and consultant to:
- (a) assist, where instructed to do so by either Party, in the resolution of any technical, financial or other issues or disputes associated with the Infrastructure Manager Services prior to such disputes being referred by the parties to the dispute resolution procedure under Clause 11 of this Agreement; and
  - (b) determine any adjustments to the Emerging Charge, Firm Charge or Fixed Charge to be made in accordance with this Schedule 3A.
- 8.10 Subject to paragraph 8.11, where the Parties fail to reach agreement on any issue associated with the performance of their obligations under this Schedule 3A (Infrastructure Manager Services) either Party shall be entitled to refer such dispute to the Independent Reporter for determination.
- 8.11 Any review, comment, approval or determination of the Independent Reporter shall not be final and binding on the Parties and the Parties shall be entitled to resolve any dispute between them in accordance with the dispute resolution procedure.
- 8.12 The Parties acknowledge and agree that (unless agreed otherwise by the Parties) the cost of the Independent Reporter shall be shared equally between the Parties. In any year where:
- (a) the ODP's share of the Independent Reporter costs is less than the amount identified in the Final Tender Financial Model for such costs the ODP shall roll over such underspend into the budget available for Independent Reporter costs for the subsequent year. Where any such accumulated underspend exists at the expiry or termination of any Independent Reporter Appointment the ODP shall (where requested to do so by the Authority) pay an amount equal to such underspend to the Authority within thirty (30) days of such expiry or termination; and
  - (b) the ODP considers its share of the Independent Reporter's costs will be, or is likely to be, in excess of the amount identified in the Final Tender Financial Model for such costs and no additional sums are available following any underspend from previous years in accordance with paragraph 8.12(a) to meet such costs, the ODP shall, as soon as reasonably practicable, notify the Authority in writing of such expected overspend and the Parties shall work together to agree whether such costs are required to be incurred and, if so, how such costs are to be funded.

## **9 ORR APPROVALS**

- 9.1 If there is a requirement for the ORR to approve any plan, policy, process or strategy for the CVL Assets, the Parties shall use reasonable endeavours to ensure that the relevant plan, policy, process or strategy for the CVL Assets required under this Agreement and any plan, policy or strategy required by the ORR overlap to the greatest extent possible and the Parties acknowledge that in the event of conflict between any plan, policy or strategy under this Agreement and any plan, policy or strategy required by the ORR, the provisions of the plan, policy or strategy required by the ORR shall prevail.

## **10 INFRASTRUCTURE MANAGER SERVICES PRICING**

- 10.1 The Parties agree that as the date of this ODP Grant Agreement, prices for certain Infrastructure Manager Services shall be either:

- (a) agreed as a Fixed Charge in accordance with paragraph 11 (Fixed Charges for certain Infrastructure Manager Services);
- (b) agreed as a Firm Charge and subject to adjustments for Material Discoveries as set out in paragraph 12 (Firm Charges for certain Infrastructure Manager Services); or
- (c) developed on an Emerging Charge basis in accordance with paragraph 13 (Emerging Charge for certain Infrastructure Manager Services).

- 10.2 All Infrastructure Manager Services which are agreed as Firm Charges or priced on an Emerging Charge basis shall, by no later than the completion of the Transformation Stage, become Fixed Charges in accordance with the process for agreeing or determining Fixed Charges as set out in paragraphs 12 (Firm Charges for certain Infrastructure Manager Services) and/or 13 (Emerging Charges for certain Infrastructure Manager Services) (as applicable).

## **11 FIXED CHARGES FOR CERTAIN INFRASTRUCTURE MANAGER SERVICES**

- 11.1 The Parties acknowledge and agree that the ODP's agreed prices in respect of

- (a) Asset Operational Management;
- (b) Asset Knowledge Management;
- (c) Weather and Season Related Intervention Services (excluding Extreme Weather Events);
- (d) Annual Infrastructure Manager Services Overheads;
- (e) Amenities and Services; and
- (f) Annual Infrastructure Manager Services Profit,

are as set out in Schedule 8.5 (Infrastructure Manager Services Payments) and shall be deemed to be Fixed Charges.

- 11.2 In respect of any Fixed Charges:

- (a) subject to paragraph 11.2(b), such prices shall be fixed for the duration of the ODP Grant Agreement Term either:
  - (i) at the amount as set out in Schedule 8.5 (Infrastructure Manager Service Payments); or



- (ii) through the fixing of Firm Charges in accordance with paragraph 12 (Firm Charges for certain Infrastructure Manager Services) or paragraph 13 (Emerging Charges for certain Infrastructure Manager Services); and
- (b) the ODP shall not be entitled to any payment adjustment in respect of any Fixed Charges other than where such price adjustment is:
  - (i) following the Authority not approving a Renewal pursuant to paragraph 3.1(b) of Annex 5 of Schedule 3A.3 (Renewals Process);
  - (ii) agreed or determined in accordance with Schedule 9 (Changes and Variations); or
  - (iii) made for any financial underspend in accordance with Schedule 8.5 (Infrastructure Manager Service Payments).

## **12 FIRM CHARGES FOR CERTAIN INFRASTRUCTURE MANAGER SERVICES**

12.1 The Parties acknowledge and agree that:

- (a) the ODP's prices in respect of carrying out Inspection Services, Fault Management Services and Asset Maintenance Services relating to the following CVL Asset Class:
  - (i) Signalling and Control Systems and Passenger Information Systems;
  - (ii) Track;
  - (iii) Overhead Line Equipment;
  - (iv) Power Distribution and Electricity and Power;
  - (v) Level Crossings; and
  - (vi) Telecoms;

are as set out in Schedule 8.5 (Infrastructure Manager Service Payments) and have been developed by the ODP based on the extent, condition and other characteristics of the CVL Assets as set out in the CVL Asset Statement, these prices shall be deemed to be Firm Charges.

12.2 The ODP shall be paid by the Authority on a Firm Charge basis (including, without prejudice to paragraph 12.4) any adjustments following the Authority not approving a Renewal pursuant to paragraph 3.1(b) of Annex 5 of Schedule 3A.3 (Renewals Process) or following Material Discoveries during the Pre CVL Asset Transfer Phase) for those services set out in paragraph 12.1(a) during the period:

- (a) from the commencement of the Transformation Stage; until
- (b) the end of IM Year One.

12.3 The Parties agree that the ODP shall be entitled to propose adjustments to any Firm Charges, provided always that:

- (a) the ODP has identified a Material Discovery in a relevant CVL Asset to which the Firm Charge relates;
- (b) all cost estimates and changes shall be proposed upon the basis of the Schedule of Rates and the ODP shall provide an explanation, in reasonable detail, of the principal components of the cost estimates (including any management fee or contingencies and the factors on which the costs basis has been developed);

- (c) the ODP shall not be able to include cost increases for activities or services for which it is to be compensated under a service it is providing for a Fixed Charge or Emerging Charge;
- (d) the ODP shall report to the Authority (and the Independent Reporter where required to do so by the Authority) routinely (and in any event no less than once every two weeks) on any proposed adjustments to the Firm Charge, any required amendments to its Asset Management Plan and any consequential amendments to the ODP's design of the CVL Transformation to be addressed by the Parties in Schedule 3B (Infrastructure Services and ODP Infrastructure Works);
- (e) all adjustments to any Firm Charge shall be subject to approval by the Authority of the relevant Asset Management Plan; and
- (f) any proposed adjustments to the Firm Charges shall be solely borne by the Authority.

12.4 From the end of IM Year One:

- (a) the Firm Charges for delivering those services set out in paragraph 12.1(a) shall become fixed for the remainder of the ODP Grant Agreement Term at the adjusted amounts in accordance with the ODP's entitlement to adjust its Firm Charges in accordance with paragraph 12.3; and
- (b) once a Firm Charge become fixed in accordance with 12.4(a), such Fixed Charge shall be subject to the treatment of Fixed Charges pursuant to paragraph 11.2.

### **13 EMERGING CHARGES FOR CERTAIN INFRASTRUCTURE MANAGER SERVICES**

13.1 The Parties acknowledge and agree that:

- (a) the ODP's prices in respect of the delivery of Inspection Services, Fault Management Services and Asset Maintenance Services relating to the following CVL Asset Class;
  - (i) Earthworks;
  - (ii) Structures (including Tunnels);
  - (iii) Property and Buildings (including Stations);
  - (iv) Off Track and Drainage; and
  - (v) Other Assets,

are to be developed by the ODP on an Emerging Charge basis with the requirement of a Firm Charge being agreed or determined by the first Review Date, and such price shall be developed by the ODP in accordance with paragraph 13.2.

13.2 The Parties agree that the ODP shall be entitled to develop its Emerging Charge, provided always that:

- (a) adjustments to the Emerging Charge shall only be allowable for any CVL Asset characteristics discovered:
  - (i) which are not consistent with the ODP's CVL Asset Assumptions;
  - (ii) which are not included in CVL Assets to which Firm Charges or Fixed Charges apply;

- (iii) which have not resulted from any negligent act or omissions of the ODP or its agents or sub-contractors or the ODP's own contravention of this Agreement;
  - (iv) where the ODP's proposal for dealing with such discovery is efficient, delivers economic value to the Authority and appropriately applies the principles set out in its Risk Based Management Framework; and
  - (v) that impacts on the cost of the management, maintenance and/or monitoring of the CVL Asset;
- (b) all cost estimates and changes shall be developed by the ODP upon the basis of the Schedule of Rates and the ODP shall provide an explanation, in reasonable detail, of the principal components of the cost estimates (including any management fee or contingencies and the factors on which the costs basis has been developed);
  - (c) the ODP shall report to the Independent Reporter and the Authority routinely (and in any event no less than once every two weeks) on any adjustments to the Emerging Charges, any required amendments to its Asset Management Plan and any consequential amendments to the ODP's design of the CVL Transformation to be addressed by the Parties in Schedule 3B (Infrastructure Services and ODP Infrastructure Works); and
  - (d) adjustments shall be allowable following the Authority not approving a Renewal pursuant to paragraph 3.1(b) of Annex 5 of Schedule 3A.3 (Renewals Process);
- 13.3 Following the first Review Date, the Emerging Charge developed in accordance with paragraph 13.2 shall be deemed to be a Firm Charge and the ODP shall be entitled to propose adjustments to such Firm Charges from such date and ending on the later of:
- (a) the end of IM Year One; or
  - (b) three (3) months following the completion of the inspection of all the relevant CVL Assets relating to those services, provided always that such inspection is undertaken no later than the Transformation Stage.

13.4 From the completion of the period set out in paragraph 13.3, the Firm Charges as adjusted in accordance with paragraph 12.3 during such period, shall become Fixed Charges whereby such prices shall be fixed at the adjusted amount at the end of the relevant period and the provisions set out in paragraph 11.2 shall apply to such Fixed Charges.

## **14 EXTREME WEATHER EVENT**

14.1 For the duration of the Infrastructure Manager Phase, if an Extreme Weather Event occurs the Authority shall reimburse the ODP for any additional incremental costs directly incurred in connection with the ODP's additional use of plant and sub-contractors resource to manage and mitigate the impact of an Extreme Weather Event provided that the ODP shall use and continue to use all reasonable endeavours to mitigate and minimise the effect of such Extreme Weather Event.

14.2 By no later than the commencement of the Infrastructure Manager Phase, the ODP shall develop and continually maintain a wind speed operational response protocol:

- (a) which draws both on meteorological forecasts and on live data from the CVL wind speed monitoring system (following installation of such system);
- (b) covering safe Overhead Line Equipment performance;
- (c) covering risk from falling trees and other infrastructure on or adjacent to the CVL, that will define the operational response to high wind conditions; and

- (d) defining the operational speed restrictions for different wind speeds and the wind speed at which operations have to be suspended,

(being the “**Wind Speed Operational Response Protocol**”).

- 14.3 The ODP shall continually monitor the Overhead Line Equipment wind speed and implement any required temporary speed restrictions in accordance with its Wind Speed Operational Response Protocol.

## **15 MATERIAL DISCOVERIES AND EXCLUDED RISK**

- 15.1 In the event of the ODP becoming aware of any Material Discoveries or Excluded Risks the ODP shall:

- (a) to the extent applicable, use all reasonable endeavours to continue to operate the Rail Services in the overall interests of passengers using railway passenger services;
- (b) where appropriate, seek a derogation against the applicable standard to which the Material Discovery or Excluded Risk relates;
- (c) operate at all times in accordance with its Risk Based Management Framework; and
- (d) carry out appropriate interventions to manage or rectify any non-compliance in accordance with this paragraph 15.1(a) to (d).

- 15.2 At all times throughout the ODP Grant Agreement Term:

- (a) where an Excluded Risk arises and the ODP is entitled to a payment adjustment to a Firm Charge or Emerging Charge in accordance with paragraph 12 (Firm Charges for certain Infrastructure Manager Services) or paragraph 13 (Emerging Charges for certain Infrastructure Manager Services) in respect of the affected CVL Asset as the Excluded Risk constitutes a Material Discovery, no Excluded Risk Charge shall be payable by the Authority as the ODP shall be entitled to an adjustment as a Material Discovery; and
- (b) where an Excluded Risk arises and the ODP is not entitled to a payment adjustment to a Firm Charge or Emerging Charge as a result of such Excluded Risk in accordance with paragraph 12 (Firm Charges for certain Infrastructure Manager Services) or paragraph 13 (Emerging Charges for certain Infrastructure Manager Services) in respect of the affected CVL Asset, the Authority shall be responsible for the costs associated with any Excluded Risks (including the cost of any Rail Service performance impacts of such Excluded Risk) above an excess amount [REDACTED] per Excluded Risk occurrence, provided always that the ODP shall solely be responsible for costs suffered up to such excess amount.

- 15.3 The ODP and the Authority shall co-operate with each other and take all reasonable steps to mitigate any costs, expenses and any adverse effect arising as a direct or indirect result of the presence of any identified Material Discoveries or in the event of any Excluded Risks.

- 15.4 Notwithstanding paragraph 15.1, the ODP shall, as soon as it becomes aware of any Material Discoveries identified which might result in an entitlement to a payment adjustment to a Firm Charge or Emerging Charge above the Material Discoveries Notification Threshold or, at all times during the ODP Grant Agreement Term, any payment in respect of any Excluded Risk Charges, notify the Authority (copied to the Independent Reporter) in writing promptly of the following matters:

- (a) the type of the Material Discovery or Excluded Risk, including details of the affected CVL Assets;

- (b) any further inspections, test, surveys and/or assessments necessary to assess the affected CVL Assets and inspections, tests, surveys and/or assessments necessary to assess any similar CVL Assets that may be affected and any changes to the Schedule of Inspections;
- (c) any measures adopted by the ODP in order to mitigate the impact of the Material Discovery or Excluded Risk (including any Urgent Renewal) and, where applicable, prevent any deterioration before any required rectification works;
- (d) any measures the ODP has taken or intends to take in order to manage any immediate or potential health and safety risk to the public (including any Urgent Renewal);
- (e) any revisions and updates to its current Asset Management Plan in relation to the CVL Assets affected, provided always that such revised Asset Management Plan shall be subject to approval in accordance with paragraph 5 of Annex 2 (Asset Management Reporting);and
- (f) an assessment of any forecast impact on the CVL Transformation and any Associated Projects recommending a course of action to the Authority to mitigate against such impact, provided always that where the course of action may (in the ODP's opinion acting reasonably) affect the Rail Services Payments and/or the design of the CVL Transformation and/or Associated Projects, the ODP shall:
  - (i) act in a manner which delivers the best overall value to the Authority over the ODP Grant Agreement Term and;
  - (ii) notify the Authority (copied to the Independent Reporter) in respect of any recommended course of remedial action and its potential impact on the Rail Services Payments and/or the design of the CVL Transformation and/or Associated Projects.

15.5 Where the ODP considers (acting reasonably) that the actions to be taken pursuant to paragraph 15.4 are likely to result in:

- (a) a change in the design of the CVL Transformation and/or any Associated Projects;
- (b) delay to any Completion or Key Date; or
- (c) a change to the Accepted Programme,

the ODP shall notify the Authority as soon as it becomes aware of the same.

15.6 The ODP shall keep a separate detailed account of the impacts of Material Discoveries that impact on forecast Rail Services Payments, the Preliminary Design and Discovery Phase Budget and/or the CVL Capital Budget.

15.7 Where an Excluded Risk results in a requirement for an Urgent Renewal, the ODP shall promptly inform the Authority and the Independent Reporter of:

- (a) the details of the Urgent Renewals required, including details of any affected CVL Assets and the ODP's proposed timeframe for carrying out the necessary Urgent Renewals work, provided always that such assessment shall be in accordance with its Risk Based Management Framework;
- (b) any inspections, tests, surveys and/or assessments necessary to assess the affected CVL Assets and inspections, tests, surveys and/or assessments necessary to assess any similar CVL Assets that may be affected;
- (c) any measures adopted by the ODP in order to mitigate the impact of any works required;

- (d) any measures the ODP has taken or intends to take in order to manage any immediate or potential health and safety risk to the public; and
- (e) any revisions and updates to its current Asset Management Plan and/or activities being undertaken as part of the Renewals Services in relation to the CVL Assets affected by the relevant Urgent Renewals works.

(being an "**Urgent Renewal Notice**").

15.8 The cost of any Urgent Renewal shall be allocated between the Parties in accordance with paragraph 15.2(b).

## **16 PLANNED RENEWALS**

16.1 The Parties acknowledge and agree that as part of the Asset Management Plan process, the process for agreeing and implementing Planned Renewals shall be undertaken on an annual basis by the ODP and shall be based on a two (2) year cycle from the identification of Renewals to the implementation of such Renewals. The process for identification, design, pricing and implementation of such Renewals is set out in Annex 5 of this Schedule 3A.3 (the "**Planned Renewals Process**").

16.2 The ODP shall, as part of the Planned Renewals Process, and in accordance with the current Asset Management Plan, seek to achieve an optimum balance between Renewals and Day to Day Asset Management to ensure:

- (a) CVL Assets are managed in accordance with the principles of sustainable, long-term asset stewardship, in which asset management policies, strategies and practices are designed to achieve optimal, whole-life asset cost of ownership;
- (b) CVL Assets condition and other characteristics are maintained at, but not materially above or below, a level at which the CVL Asset is capable of delivering its function and required service outputs;
- (c) the condition of any CVL Assets do not inappropriately decline; and
- (d) Renewals are not prematurely proposed solely to reduce maintenance activities,  
  
(being a "**Steady State Asset System**").

16.3 The ODP shall be required to set out for the Authority the purpose for any required Renewals either during the Planned Renewals Process or as an Unplanned Renewal in accordance with paragraph 17. Such purposes may include where:

- (a) the Renewal is required to maintain a Steady State Asset System;
- (b) the life of the CVL Asset has expired;
- (c) any CVL Asset no longer complies with the standards set out in paragraph 1.4 of Schedule 3A.3; or
- (d) a strategic asset management decision has been taken to renew the CVL Asset in advance of the expiration of the relevant CVL Asset's life; and

provided always that any Renewal shall not be required as a direct or indirect result of the ODP failing to deliver the Infrastructure Manager Services in accordance with its obligations under this Schedule 3A.3.

## **17 UNPLANNED RENEWALS**

17.1 The ODP may, at any time, propose a Renewal that has not been proposed as part of the Renewal Process (an "**Unplanned Renewal**") by providing to the Authority a written

request for such Unplanned Renewal to be implemented (with a copy issued to the Independent Reporter) (an “**Unplanned Renewal Request**”), including the details of:

- (a) the Unplanned Renewal required, including details of any affected CVL Assets and the ODP’s proposed timeframe for carrying out the necessary Unplanned Renewals work, provided always that such assessment shall be in accordance with its Risk Based Management Framework;
- (b) any measures adopted by the ODP in order to mitigate the impact of any Unplanned Renewals required; and
- (c) any revisions and updates to its current Asset Management Plan and/or activities being undertaken as part of the Renewals Services in relation to the Unplanned Renewals works proposed.

17.2 As soon as reasonably practicable following the receipt of an Unplanned Renewal Request, the Authority shall either:

- (a) agree that the Unplanned Renewals are to be carried out and provide written instructions to the ODP to either:
  - (i) implement the Unplanned Renewals, provided always that the mechanism for such instruction and the implementation of such works shall be dealt with through the process for implementing ODP Infrastructure Works as a Package Order in Schedule 3B (Infrastructure Services and ODP Infrastructure Works): or
  - (ii) where the ODP and the Authority are unable to agree the terms of the implementation of the Unplanned Renewals to be delivered as ODP Infrastructure Works, the Authority shall have the right to determine such works are implemented by an IDP with the ODP acting as a delivery partner in respect of the Unplanned Renewals implementation; or
- (b) reject the proposed Unplanned Renewal Request in writing to the ODP, following which in respect of any additional incremental direct cost of enhanced maintenance requirements to be performed by the ODP such cost shall be borne by the ODP provided always the ODP shall be entitled to propose such Renewal in the subsequent Renewal Process.

## **18 ASSET PROTECTION**

18.1 The Authority confirms that following the CVL Asset Transfer, the Authority (and/or the lessor for the time being under the CVL Asset Lease) shall in relation to the CVL Assets:

- (a) be a statutory consultee at all stages of the planning process for all developments undertaken adjacent to or near to the CVL;
- (b) have the power to require any Neighbour Third Party responsible for any such development to comply with all requirements of the Authority, or those of the lessor for the time being under the CVL Asset Lease, to protect the CVL Assets, operations and asset management; and
- (c) have the powers to:
  - (i) prevent the planning approval of any development whose design, including arrangements for future maintenance and management of emergencies such as fire, does not comply with the Authority’s asset protection requirements; and
  - (ii) prevent or suspend any pre-construction or construction activity that does not comply with the Authority’s asset protection requirements,

(being the “**Authority’s Asset Protection Powers**”)

- 18.2 The ODP shall act on behalf of the Authority (and/or, where applicable, the lessor for the time being under the CVL Asset Lease) to administer and enforce the Authority’s Asset Protection Powers and manage all relationships with Neighbour Third Parties, planning authorities and other relevant third parties associated with the enforcement. The ODP shall use reasonable endeavours, acting through its communications and marketing strategy and plans, to inform the public that the ODP is the first point of contact in respect of Authority’s Asset Protection Powers and queries from Neighbour Third Parties.
- 18.3 Acting on behalf of the Authority (and/or, where applicable, the lessor for the time being under the CVL Asset Lease) in respect of the Authority’s Asset Protection Powers, the ODP shall:
- (a) respond to initial enquiries from Neighbour Third Parties in an efficient way ensuring that the ODP:
    - (i) balances the need to be responsive, whilst containing initial enquiry effort to the minimum that is reasonably practical; and
    - (ii) sets out the requirement for the Neighbour Third Party to enter into an Asset Protection Agreement for any further consideration following the initial response.
- 18.4 Under any Asset Protection Agreement entered into between the ODP, the Authority (or where applicable the Lessor under the CVL Asset Lease) and a Neighbour Third Party, the ODP shall (where relevant acting on behalf of the Authority or the Lessor under the CVL Asset Lease):
- (a) provide the Neighbour Third Party with an initial estimate of the cost of carrying out the services within a time frame as required under the Asset Protection Agreement or, where no time frame is determined under such agreement, as soon as reasonably practicable;
  - (b) provide the Neighbour Third Party with a clear justification for any variations from the initial estimate; and
  - (c) be entitled to charge the Neighbour Third Party for all reasonable costs properly incurred after the initial enquiry provided always that such cost is:
    - (i) based on the ODP staff grades as set out in the Schedule of Rates; and
    - (ii) exclusive of any ODP overheads and profit, the Parties acknowledging and agreeing that such costs of the ODP are included in the Fixed Charge for Asset Operational Management under this Schedule 3A.
- 18.5 The ODP shall use all reasonable endeavours, in its role as acting on behalf of the Authority and/or the lessor for the time being under the CVL Asset Lease (as applicable), to enforce through each Asset Protection Agreement, that the Neighbour Third Party shall comply with:
- (a) all applicable Network Rail Standards; and
  - (b) any additional requirements, standards and codes of practice that the ODP or the Authority reasonably require to ensure compliance with all requirements of the Authority to protect the CVL Assets, operations and asset management.
- 18.6 The ODP shall:



- (a) provide a copy (as soon as reasonably practicable following receipt) of all correspondence associated with CVL Asset protection, including minutes of meetings, to the Authority and the Independent Reporter in a timely manner; and
  - (b) advise the Authority immediately if a Neighbour Third Party, who has an intent to progress a development, declines to enter into an Asset Protection Agreement.
- 18.7 The Authority acknowledges the limitations and restrictions of the ODP that might exist in respect of meeting its obligations under this paragraph 18 (Asset Protection) where the ODP is not a party to any relevant Asset Protection Agreement and/or the ODP is not granted the requisite rights to act as agent for the Authority (and/or the lessor for the time being under the CVL Asset Lease) in respect of such agreement (including any enforcement powers of the Authority under such agreements). Where such limitations and restrictions exist the ODP shall only be required to comply with its obligations under this paragraph 18 (Asset Protection) to the extent it is able to do so given such limitations and restrictions.

## **19 REIMBURSEMENT OF DAY TO DAY ASSET MAINTENANCE EFFICIENCY**

- 19.1 During the annual Asset Management Plan process preceding any of the IM Years seven (7) to fifteen (15), any or all of the savings for the subsequent IM Year, created as a result of contracted efficiency improvements for Day to Day Asset Management by the ODP, may be proposed by the ODP to be expended through additional Renewals undertaken by the ODP if the ODP can demonstrate that the Renewal:
- (a) was included in the previous IM Year Asset Management Plan; and
  - (b) was a Renewal, which under the previous IM Year Asset Management Plan, was to be undertaken within the subsequent two (2) IM Years,
- (being an "**Accelerated Renewal**").
- 19.2 The ODP shall advise the Authority in its revised Asset Management Plan, to be provided by the ODP in accordance with paragraph 5.1 of Annex 2 to this Schedule 3A.3, if the ODP wishes to carry out an Accelerated Renewal and the Authority may indicate within its response to the revised Asset Management Plan whether this approach is acceptable.
- 19.3 The Authority has the right to decline to accept an Accelerated Renewal at any time in the Asset Management Plan and Renewals Process.

## **20 ASSET MANAGEMENT PERFORMANCE BOND**

- 20.1 The ODP shall obtain and maintain an Asset Management Performance Bond from the Defects Date until seven (7) Reporting Periods following the Expiry Date in relation to the CVL Assets condition which shall:
- (a) be issued by a Bond Provider;
  - (b) have a value of [REDACTED] x RPI; and
  - (c) have a minimum duration of three (3) years.
- 20.2 The Asset Management Performance 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 certifying that:
- (a) the Infrastructure Manager Services have been terminated either through:
    - (i) expiration or termination of the ODP Grant Agreement in accordance with Schedule 10 (Remedies, Events of Default and Termination Events); or

- (ii) the removal of the Infrastructure Manager Services in accordance with the process for Partial Termination; or
    - (iii) the issue of an Infrastructure Manager Notice in accordance with paragraph 21 (Infrastructure Manager Notice); and
  - (b) the Independent Reporter has provided certification that the ODP has failed to perform or comply with its obligation to deliver any or all aspects of the current Asset Management Plan at the date at which Infrastructure Manager Services have been terminated as set out in 20.2(a) and such failure has resulted in the Authority suffering loss, liabilities, costs or expenses which it is not otherwise able to recover from the ODP under the ODP Grant Agreement.
- 20.3 The ODP shall be permitted subject to prior consent of the Authority (such consent not to be unreasonably withheld or delayed) to meet its obligations to provide a valid and effective Asset Management Performance Bond by providing up to three (3) valid and effective Asset Management Performance Bonds, the aggregate value of which at all times is equal to the value determined under paragraph 20.1(b). With the exception of the value of each Asset Management Performance Bond, the provisions of this Schedule 3A.3 in relation to the Asset Management Performance Bond shall be deemed to apply separately in relation to each such Asset Management Performance Bond.
- 20.4 Where more than one (1) Asset Management Performance Bond is provided, each claim by the Authority shall be made against (i) all of such Asset Management Performance Bonds, and (ii) each Asset Management Performance Bond in the proportion that the Asset Management Performance Bond bears to value determined under paragraph 20.1.
- 20.5 The ODP may replace the then current Asset Management Performance Bond referred to in paragraph 20.1 at any time. The ODP shall replace each Asset Management Performance Bond at least six (6) months prior to its scheduled expiry with a replacement Asset Management Performance Bond which complies with the requirements of paragraph 20.1.

## 21 INFRASTRUCTURE MANAGER NOTICE

- 21.1 Notwithstanding any other rights and remedies available to the Authority under this ODP Grant Agreement, no earlier than eighteen (18) months and no later than twelve (12) months prior to the expiry of the Transformation Stage the Authority may (at its sole discretion) notify the ODP in writing that the Authority requires the Infrastructure Manager Services to be removed from the ODP Services. Such notice shall set out:
- (a) the Authority's proposals for the continued operation of the Rail Services on the CVL by the ODP where the Infrastructure Manager Services are not delivered by the ODP; and
  - (b) the provisions of Schedule 15 (Obligations associated with Termination) which shall apply in respect of the Authority removing the Infrastructure Manager Services from the ODP Services,
- (being an "**Infrastructure Manager Notice**").
- 21.2 The Parties acknowledge and agree that:
- (a) issuance of an Infrastructure Manager Notice by the Authority and the required consequential amendments to the ODP Grant Agreement shall be deemed to be a Qualifying Change and processed in accordance with Schedule 9 (Changes and Variations) including any required variations to the ODP Grant Agreement; and
  - (b) the ODP shall be entitled to be paid any Breakage Costs incurred as a result of the termination of the Infrastructure Manager Services.

## 22 CVL ASSET HAND BACK CONDITIONS

- 22.1 Commencing from a date three (3) years prior to the Expiry Date, the ODP shall fully and effectively co-operate with the Authority to ensure a smooth transition of the CVL Assets to a successor infrastructure manager including providing seconded resource to support the Authority in respect of the re-tendering process and transfer of maintenance of the Asset Management Plan and CVL Asset Data.
- 22.2 The ODP shall on the Expiry Date or, in respect of the termination of the Infrastructure Manager Services following a Partial Termination Notice or Infrastructure Manager Notice, the date of cessation of Infrastructure Manager Services as set out in the Infrastructure Manager Termination Notice or Partial Termination Notice, ensure that the CVL Assets comply with the following conditions:
- (a) all Infrastructure Manager Services required to be undertaken by, or on behalf of, the ODP, in accordance with the current Asset Management Plan, have been delivered to the satisfaction of the Independent Reporter;
  - (b) the CVL Assets are in such standard of repair and condition as required by the CVL Asset Lease;
  - (c) all ODP signage and ODP fixtures, fittings and furniture have been removed from the CVL Assets unless the ODP is otherwise instructed by the Authority not to carry out such removal; and
  - (d) all buildings, structures or other works to the CVL Assets for which planning permission or any other consent has been granted for a limited time or on terms making it personal to the ODP have been removed.
- 22.3 Notwithstanding the ODP's obligations in Schedule 15 (Obligations associated with Termination), the ODP shall during the twelve (12) months at or before the termination of this Agreement or cessation of the Infrastructure Manager Services:
- (a) ensure that all operational and safety targets are maintained;
  - (b) maintain the Asset Management Plan and CVL Asset Data;
  - (c) continue effective management and maintenance of the CVL Assets;
  - (d) manage materials effectively (including specialist tools and parts);
  - (e) continue the inspections and recording of CVL Asset conditions and co-operate with the Authority in the prioritisation of activities required during the remainder of the ODP Grant Agreement Term; and
  - (f) liaise with any successor infrastructure manager in respect of all infrastructure manager information, systems and licenses (including IPR licences) required by the successor infrastructure manager to provide the Infrastructure Manager Services following such termination or cessation.
- 22.4 The ODP shall (where reasonably requested to do so by the Authority) at or before the termination of this Agreement or cessation of the Infrastructure Manager Services carry out a survey of the CVL Assets provided always that it shall not be unreasonable for the Authority to request such survey where the Independent Reporter considers such survey is necessary to validate the CVL Asset Data,
- (the requirements in paragraphs 22.1, 22.2 and 22.4 being the "**CVL Asset Hand Back Conditions**").

## **23 CDM REGULATIONS**

- 23.1 For the purposes of the CDM Regulations:
- (a) the Authority appoints the ODP to act as Principal Contractor in respect of the Infrastructure Manager Services;
  - (b) the Authority appoints the ODP to act as a designer for the Infrastructure Manager Services;
  - (c) the Principal Designer is as stated in the Contract Data; and
  - (d) the ODP shall provide the Authority with all information reasonably required to facilitate compliance with the CDM Regulations in relation to the Infrastructure Manager Services.
- 23.2 The ODP shall comply with its obligations under the CDM Regulations. The ODP shall at all times co-operate, so far as is reasonably practicable, with all parties having health and safety responsibilities on or adjacent to the CVL Assets and/or in respect of the Infrastructure Manager Services for the effective discharge of those responsibilities.
- 23.3 The ODP warrants to the Authority that it is fully aware of the provisions of Regulation 9 ("Duties of designers") of the CDM Regulations and that it possesses the requisite degree of competence and level of resources to meet (and shall meet) the requirements of Regulation 9.

## **24 POSSESSION AND BLOCKADE STRATEGY**

- 24.1 The ODP shall carry out all possessions and blockades in accordance with the principles set out in its:
- (a) Public Impact of Implementation Plan;
  - (b) Possession and Blockade Schedule as set out in its CVL Concept Design;
  - (c) responses R9.21 (Planning and managing track access, possessions and blockades) and R9.22 (Approach to possessions and blockades management) of its ITSFT Bid Submission;
  - (d) Restriction of Use Plan; and
  - (e) Asset Protection arrangements.
- 24.2 The ODP shall provide the Possession and Blockage Schedule (including any updates and revisions to such schedule) to the Authority for review immediately upon request.

## **25 DISASTER MANAGEMENT AND BUSINESS CONTINUITY**

- 25.1 No later than nine (9) months from the date of this Agreement, the ODP shall provide a draft Disaster Management and Business Continuity Plan, in respect of the Infrastructure Manager Services, to the Authority (copied to the Independent Reporter), which shall set out how:
- (a) the ODP shall safely recover Infrastructure Manager Services in the event of a disaster or major incident (including major failure of the overhead line electrification equipment);
  - (b) disasters or major incidents affecting both CVL network and interconnected national rail infrastructure would be managed; and

- (c) training will be delivered so that ODP Services Employees have full knowledge of procedures and understand system capabilities in failure modes.
- 25.2 Within one (1) month of the date of receipt of the draft Disaster Management and Business Continuity Plan by the Authority, the Authority shall provide the ODP with its written response to the draft Disaster Management and Business Continuity Plan. Such response shall set out, whether the Authority has:
- (a) no comments or concerns on the draft Disaster Management and Business Continuity Plan, following which the ODP shall be required to implement the Disaster Management and Business Continuity Plan for the remainder of the ODP Grant Agreement Term providing an updated Disaster Management and Business Continuity Plan every second IM Year; or
  - (b) comments or concerns on the draft Disaster Management and Business Continuity Plan, and shall set out in such comments and/or concerns including any improvements and/or amendments to the draft Risk Based Management Framework.
- 25.3 In the event that the ODP has not dealt with the comments and/or concerns raised by the Authority in paragraph 25.2(b) to the satisfaction of the Authority within two (2) Reporting Periods (or such other period as agreed by the Parties) from receipt of the draft Disaster Management and Business Continuity Plan by the Authority, either Party may refer the matter to the Independent Reporter for comment or recommendation.

## **26 Infrastructure Manager Years**

- 26.1 Within three (3) Reporting Periods of the date of this Agreement, the ODP and the Authority shall work together in good faith to seek to align the definitions of Infrastructure Manager Years and ODP Years, provided always that such alignment provides a benefit for both parties in respect of the financial and operational delivery of the Infrastructure Manager Services. Where the ODP and the Authority agree to any such alignment then any consequential variations required to reflect such agreement shall be deemed to not constitute a Change under this Agreement.

## **ANNEX 1 PART A – ASSET MANAGEMENT PLAN REQUIREMENTS**

### **1 ASSET MANAGEMENT PLAN**

- 1.1 The Asset Management Plan to be provided by the ODP in advance of each Review Date in accordance with paragraph 5 of Annex 2 (Asset Management Reporting) shall comply with the following requirements set out in this Annex 1 (Asset Management Plan Requirements).

### **2 FORMAT**

- 2.1 The Asset Management Plan shall be in the same format as the Draft Asset Management Plan (save for any changes reasonably required by the Authority or Independent Reporter as notified by the Authority or the Independent Reporter to the ODP from time to time).
- 2.2 No later than eighteen (18) months after the commencement of the Infrastructure Manager Phase, the Asset Management Plan shall comply with the ODP's ISO 55001 accreditation.
- 2.3 The Asset Management Plan shall contain the following:
- (a) the ODP's Asset Management Strategy;
  - (b) the ODP's Day to Day Asset Management services;
  - (c) the ODP's Renewals plan with a timetable for such works and proposed budget for subsequent ODP Years developed as part of the Renewals Process;
  - (d) the ODP's Risk Based Management Framework;
  - (e) the Authority's budget;
  - (f) any other components or information required to meet the requirements of ISO 55001 accreditation; and
  - (g) any other information reasonably required by the Authority or the Independent Reporter.
- 2.4 The ODP shall adopt an "open door" approach to information sharing with the Authority which shall grant the Authority full access to all ODP Services Employees and processes.

### **3 ASSET MANAGEMENT STRATEGY**

- 3.1 The Asset Management Plan shall set out the ODP's Asset Management Strategy.
- 3.2 The Asset Management Strategy shall include an asset management policy for each CVL Asset Class setting out the ODP's high-level principles and procedures for Asset Operational Management, Day to Day Asset Management and Renewals and Enhancements of the CVL Assets for the duration of the ODP Grant Agreement Term (being the "**Asset Management Strategy**").
- 3.3 The Asset Management Strategy shall be based on the ODP's Asset Class Strategy. Each Asset Class Strategy shall set out how the Asset Management Strategy is converted into daily activities to deliver safe operations and efficient maintenance.

#### **4 DAY TO DAY ASSET MANAGEMENT SERVICES**

- 4.1 The Asset Management Plan shall set out the plan for the delivery of Day to Day Asset Management services including:
- (a) in detail how the condition, capability and capacity of the CVL Assets will be maintained including detailing asset-specific procedures and applicable standards for each CVL Asset Class in each IM Year;
  - (b) how the general strategies and policies as set out in the Asset Management Strategy will be achieved; and
  - (c) the development of whole life cost models (including use of the Cost Benefit Asset Lifecycle Tool ("CoBALT" or successor model where CoBALT no longer represents best practice) that can be used to test a range of CVL Asset policy scenarios in terms of the Authority's budget and spending requirements and risk in order to find an optimum balance between cost, risk and performance.

#### **5 DAY TO DAY ASSET MANAGEMENT BUDGET COSTS**

- 5.1 During the Preliminary Design and Discovery Phase and the Infrastructure Manager Phase, the ODP shall be entitled in each revised Asset Management Plan to propose the allowable adjustments to its Emerging Charges and/or Firm Charges in accordance with this Schedule 3A.3.
- 5.2 The statement setting out any adjustments to the Emerging Charges and/or Firm Charges as proposed by the ODP shall include:
- (a) the assumptions made by the ODP in respect of such payment adjustments including those in respect of inflation and interest rates which the ODP has used in preparing cost estimates;
  - (b) an explanation, in reasonable detail, of the principal components of the cost estimates (including any management fee or contingencies and the factors on which the costs are based provided always that such costs shall be calculated using the Schedule of Rates); and
  - (c) the ODP's calculations including the deductions and additions to account for any Material Discoveries and Excluded Risks identified to date.

#### **6 AUTHORITY'S BUDGET**

- 6.1 The Asset Management Plan shall contain the Authority's budget and spending requirements provided by the Authority to the ODP in accordance with paragraph 4 of Annex 2 (Asset Management Reporting).
- 6.2 The ODP shall use all reasonable endeavours to produce an Asset Management Plan which allows the ODP to deliver the Infrastructure Manager Services within the Authority's budget and spending requirements.
- 6.3 The ODP shall develop and maintain options for small infrastructure investment schemes (below [REDACTED]) which, following instructions from the Authority, may be implemented by the ODP to improve any CVL Asset should additional funding become available in any IM Year.

#### **7 PAYMENT**

- 7.1 The Asset Management Plan shall set out the ODP's initial proposal (including calculations based on Schedule 8.5 (Infrastructure Manager Service Payments)) of the Infrastructure Manager Service Payment the ODP considers it is entitled to be paid for

Infrastructure Manager Services provided during the current IM Year including all relevant payment adjustments allowable under this Schedule 3A.3.

- 7.2 Upon approval of the Asset Management Plan by the Authority, or the Independent Reporter where the Authority does not approve such plan, the proposed ODP's Infrastructure Manager Services Payment for the relevant IM Year (subject to any amendments or adjustments shall, subject to any further adjustments permitted in accordance with this Schedule 3A or Schedule 8.5, be deemed to be the total Infrastructure Manager Service Payment for the relevant IM Year for the purposes of Schedule 8.5 (Infrastructure Manager Service Payments).



**ANNEX 1 PART B – DRAFT ASSET MANAGEMENT PLAN**

## ANNEX 2 – ASSET MANAGEMENT REPORTING

### 1 MONTHLY REPORTING

1.1 Notwithstanding the ODP Performance Meeting between the Parties as set out in Schedule 11.1, this Annex 2 (Asset Management Reporting) set outs the reporting, meeting and planning obligations of the Parties in respect of the process for agreeing the Asset Management Plan.

1.2 From the date of this Agreement, the ODP shall meet with the Authority 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 ("**CVL Asset Monthly Performance Meeting**") and the ODP shall, at its own cost, provide in advance of such meeting a written report to the Authority setting out (in respect of the preceding Reporting Period):

(a) *Relevant Works undertaken and costs incurred:*

- (i) any material amendments to the CVL Asset Data and any related asset data management issues;
- (ii) a summary of any surveys, inspections and reviews undertaken on the CVL Asset and the results of such surveys, inspections and reviews;
- (iii) an overview of the asset maintenance activities carried out and Renewals and Enhancements undertaken by, or on behalf of, the ODP (including an update on planned and actual costs) and whether these have been:
  - (A) in accordance with the Asset Management Plan; or
  - (B) different to the activities anticipated in the Asset Management Plan;
- (iv) as relevant during the Pre CVL Asset Transfer Phase and the Transformation Stage, a summary of any Material Discoveries;
- (v) a summary of any Excluded Risks;
- (vi) a summary report on safety, standards (and derogations to standards), non-compliance with such standards and derogations and faults;
- (vii) its KPI performance summary;
- (viii) an asset sub-system reliability performance summary;
- (ix) any staffing or resourcing issues; and
- (x) a summary of any passenger comments and complaints regarding infrastructure management activities;

(b) *Relevant forecast of works to be undertaken and costs to be incurred in respect of the next Reporting Period:*

- (i) an overview of the asset maintenance activities to be carried out and Renewals and Enhancements to be undertaken by, or on behalf of, the ODP (including an update on planned costs) and whether these will be:
  - (A) in accordance with the Asset Management Plan; or
  - (B) different to the activities anticipated in the Asset Management Plan;

- (c) *Deferrals:*
  - (i) the ODP's proposal (if any) for the deferral to any later Reporting Period or the permanent omission of any asset maintenance works or Renewals and Enhancements that are identified in the Asset Management Plan as being required in the Reporting Period following the Reporting Period in which the CVL Asset Monthly Report is produced and in respect of any such proposal:
    - (A) confirmation from the ODP that the proposal will not result in the ODP being unable to comply with its obligations under this Schedule 3A.3; and
    - (B) a report setting out the likely effect on the performance and maintenance costs arising out of or in connection with the proposed deferral or permanent omission,

(being the "**CVL Asset Monthly Report**").

## **2 ODP INITIAL STATEMENT OF MATERIAL DISCOVERIES AND EXCLUDED RISKS**

2.1 No less than five (5) Reporting Periods prior to each Review Date:

- (a) during the Pre CVL Asset Transfer Phase and the Transformation Stage (as applicable), in respect of any Material Discoveries; and/or
- (b) during the Pre CVL Asset Transfer Phase and Infrastructure Manager Phase, in respect of Excluded Risks,

the ODP shall submit to the Independent Reporter and the Authority an initial statement of the impact of any Material Discoveries and/or Excluded Risks identified by the ODP from the commencement of that ODP Year (an "**Initial Statement of Material Discoveries and Excluded Risks**").

2.2 Within six (6) weeks of receipt of the Initial Statement of Material Discoveries and Excluded Risks by the Independent Reporter, the Parties acknowledge that the Independent Reporter shall, in accordance with the Independent Reporter Appointment, provide to the ODP and the Authority its initial comments on the Initial Statement of Material Discoveries and Excluded Risks.

## **3 CVL ASSET ANNUAL PERFORMANCE MEETING**

3.1 No less than four (4) Reporting Periods prior to the end of each Review Date, the Authority, the ODP and the Independent Reporter shall meet, at a time and location notified to the ODP by the Authority ("**CVL Asset Annual Performance Meeting**") to discuss:

- (a) the latest CVL Asset Monthly Report; and
- (b) any ODP advanced proposals in respect of its revised Asset Management Plan to be provided under paragraph 5 (Asset Management Plan) of this Annex 2.

## **4 AUTHORITY NOTIFICATION OF ASSET MANAGER BUDGET**

4.1 No later than three (3) Reporting Periods prior to each Review Date, the Authority shall provide to the ODP and the Independent Reporter an indication of the budget available to

the ODP for Infrastructure Manager Services and Renewals and Enhancement works for each remaining ODP Year.

- 4.2 The budget provided by the Authority in accordance with paragraph 4.1 shall be sufficiently detailed to allow the ODP to develop its five (5) year rolling plan within its Asset Management Plan.

## **5 ASSET MANAGEMENT PLAN**

- 5.1 No less than ten (10) weeks prior to each Review Date, the ODP shall provide its revised Asset Management Plan to the Authority (copied to the Independent Reporter) for the Authority and the Independent Reporter's review.

- 5.2 The Parties acknowledge and agree that:

- (a) the Authority shall be entitled to make representations to the Independent Reporter in respect of any comments it might have on the revised Asset Management Plan; and
- (b) the Independent Reporter will respond to any Authority comments in accordance with its duties under the Independent Reporter's Appointment.

- 5.3 Within one (1) month of the date of receipt of the revised Asset Management Plan by the Independent Reporter, the Independent Reporter shall, in accordance with the Independent Reporter's Appointment, provide the ODP and the Authority with its comments on the revised Asset Management Plan.

- 5.4 If the Authority does not approve any aspect of the Asset Management Plan:

- (a) the Authority shall set out in writing its reasons for such non approval including any improvements and/or amendments required to the Asset Management Plan for the Asset Management Plan to be approved; and
- (b) the Independent Reporter, the Authority and the ODP shall, as soon as reasonably practicable meet to discuss the relevant issue and the ODP shall submit a further revised Asset Management Plan and the review process set out in paragraph 5.3 shall be repeated.

- 5.5 The Parties acknowledge and agree that in the event that a conflict exists between the Infrastructure Manager Services the ODP considers are required to meet its obligations under this Agreement, the developed Asset Management Plan and the Authority's budget and spending requirements, the Parties and the Independent Reporter shall work together in good faith to resolve such conflict.

- 5.6 In the event that the Parties and the Independent Reporter are unable to resolve the conflict set out in paragraph 5.5 and the Independent Reporter considers that the Authority's budget and spending requirements are:

- (a) not sufficient to fund any Asset Management Plan developed in accordance with this Schedule 3A.3 (including any proposed amendments or alternatives to the Asset Management Plan deemed acceptable to the Independent Reporter and the Authority); and
- (b) an alternative Asset Management Plan cannot be developed which meets the Authority's budget and spending requirements and allows the ODP to meet its obligations under this ODP Grant Agreement,

then the Authority shall as soon as reasonably practicable:

- (i) serve a notice to the ODP setting out any variations to the terms of the ODP Grant Agreement (to be dealt with in accordance with Schedule 9

(Changes and Variations) necessary to allow for a revised Asset Management Plan to be implemented within the Authority's budget and spending requirements without the proposed Asset Management Plan (and the successful implementation of such plan by the ODP) directly resulting in the ODP contravening any of its obligations under this ODP Grant Agreement provided always that any resulting required adjustments to the Infrastructure Manager Services Payment and/or Rail Services Payments shall be dealt with as a Qualifying Change; or

- (ii) notify the ODP of the increases in the Authority's budget and spending requirements so as to allow the proposed Asset Management Plan to be implemented.

5.7 In the event that:

- (a) the Parties and the Independent Reporter are unable to resolve the conflict in paragraph 5.5 through working together in accordance with paragraph 5.5 or through the process set out in paragraph 5.6; or
- (b) the Asset Management Plan has not been approved by the Authority within three (3) Reporting Periods (or such other period as agreed by the parties) from receipt of the revised Asset Management Plan provided by the ODP,

either Party may refer the matter to the disputes resolution procedure provided always that pending resolution or determination of the dispute under the dispute resolution procedure the ODP shall be entitled to implement its proposed Asset Management Plan and be entitled to be paid for those Infrastructure Manager Services required to be carried out by the ODP to meet its safety obligations.

5.8 Following approval of the Asset Management Plan by the Authority or determination of the Asset Management Plan under the dispute resolution procedure the ODP shall implement such Asset Management Plan.

## **6 ENHANCEMENTS**

6.1 The ODP may, at any time during the Asset Management Plan process, be entitled to propose any Enhancements to the Authority for the Authority's review and consideration. Any such Enhancement proposal shall include:

- (a) the ODP's estimated cost of implementing such Enhancements; and
- (b) the performance and value for money benefits of such Enhancements sufficient to support any Authority business case analysis and approvals process for the implementation of such Enhancement; and
- (c) the level of contribution to be provided by the ODP for the implementation of the Enhancement where the Enhancement provides a financial or performance benefit to the ODP.

6.2 The Authority shall review and consider any Enhancements proposed by the ODP and shall at its sole discretion decide whether to proceed with an Enhancement, provided always that such Enhancement will be progressed through the Renewal Process and the funding of such Enhancements shall be agreed between the Parties on a case by case basis.

## **7 CVL TRANSFORMATION PROPOSAL**

7.1 The Parties acknowledge and agree that:

- (a) the Asset Management Plan approved or determined following the first Review Date shall be the Asset Management Plan provided to the Authority as part of the

CVL Transformation Proposal and shall be the Asset Management Plan implemented by the ODP during the period of mobilisation prior to the Transformation Stage; and

- (b) the second of the Review Dates is required to account for any price adjustments to the Firm Charge and Emerging Charge identified during the period after the ODP's submission of the Asset Management Plan for the first Review Date but prior to the second Review Date. The Asset Management Plan approved or determined following the second Review Date shall be the Asset Management Plan to be implemented by the ODP during the first ODP Year in the Transformation Stage.

**ANNEX 3 PART A – DISCOVERY PLAN**

**ANNEX 3 PART B – IM MOBILISATION AND CVL ASSET TRANSFER  
PLAN**



### **ANNEX 3 PART C – ODP'S CVL ASSET ASSUMPTIONS**

- 1 ODP's CVL Asset Assumption is the assumption that each CVL Asset:
  - (a) has been installed to the appropriate standards;
  - (b) has been maintained to the appropriate standards in line with Network Rail's policies;
  - (c) is in working operational order; and
  - (d) is not causing impedance to Railway operations, an example of such an impedance being a TSR.

### **ANNEX 3 PART D – SCHEDULE OF RATES**

The Schedule of Rates shall be those rates set out in the “Schedule of Rates” Tab within the KA W&B Infrastructure Maintenance Model v1.0.xlsx which is included in the Final Tender Financial Model.

## ANNEX 4 – PART A – ASSET KNOWLEDGE MANAGEMENT

### 1 ASSET KNOWLEDGE MANAGEMENT

- 1.1 In carrying out its obligations under this Schedule 3A.3 the ODP shall at all times use best practice in complying with its Asset Knowledge Management Plan and managing CVL Asset Data, including ensuring that:
- (a) AKM systems shall be based on a single 'source of truth'. Data duplication should be avoided where practical, but where it does exist, this shall be rigorously managed by the ODP to avoid deterioration in asset quality and/or ambiguity about whether or not the asset data is up-to-date. There shall at all times be total clarity of data master/slave mappings;
  - (b) all asset management activities and the technology used by those undertaking those activities (such as handheld devices) must be designed to safely, efficiently, reliably and continuously capture, maintain and make available to users all relevant improved or changed knowledge of the CVL Assets;
  - (c) data captured through CVL Asset management activities shall be entered into the ODP's Asset Knowledge Management systems within the timescales set out in ODP's knowledge management procedures;
  - (d) data structures shall be designed to support the safe, efficient and reliable operation of the CVL Assets and to support the reporting and decision support analysis that the Infrastructure Manager, the Authority and the Independent Reporter need to undertake to achieve these objectives;
  - (e) AKM tools, decision support tools and decision support analysis are continuously developed and improved taking full advantage of recent developments in technology, data management and processing and best practice where such improvements offer benefit to the Infrastructure Manager Services;
  - (f) all systems shall be user friendly and intuitive and will support the ready adoption of new technology such as artificial intelligence;
  - (g) strong AKM shall be a core part not only of the ODP's Infrastructure Manager culture, but also of the ODP's wider culture. For example, the ODP shall:
    - (i) make data entry into its AKM systems collected by relevant ODP personnel a core business activity;
    - (ii) ensure all ODP Services Employees undertaking asset maintenance or management activities:
      - (A) are inducted on the ODP's AKM systems; and
      - (B) fully understand that asset data is an intrinsic part of the CVL Assets, that good data collection is an essential component of any job and that ODP Services Employees undertake and maintain good quality asset data, facilitated by the AKM systems; and
  - (h) the ODP shall provide efficient ways for all ODP Services Employees to contribute to asset knowledge, maintenance and improvement and create an environment in which such employees are motivated to contribute.

## **ANNEX 4 PART B – INITIAL ASSET KNOWLEDGE MANAGEMENT PLAN**

### **1 INITIAL ASSET KNOWLEDGE MANAGEMENT PLAN**

- 1.1 The ODP's Initial Asset Knowledge Management Plan is as set out in this Part B to Annex 4 of Schedule 3A.3.
- 1.2 The ODP shall ensure that its Initial Asset Knowledge Management Plan is developed by the ODP from the date of this Agreement and a revised version of the Initial Asset Knowledge Management Plan shall be provided to the Independent Reporter in advance of the first Review Date (and each Review Date thereafter) for the Independent Reporter's review and comments.

**ANNEX 5 - RENEWALS PROCESS**

**1 RENEWALS PROCESS**

1.1 The Renewals Process is part of the annual Asset Management Plan process.

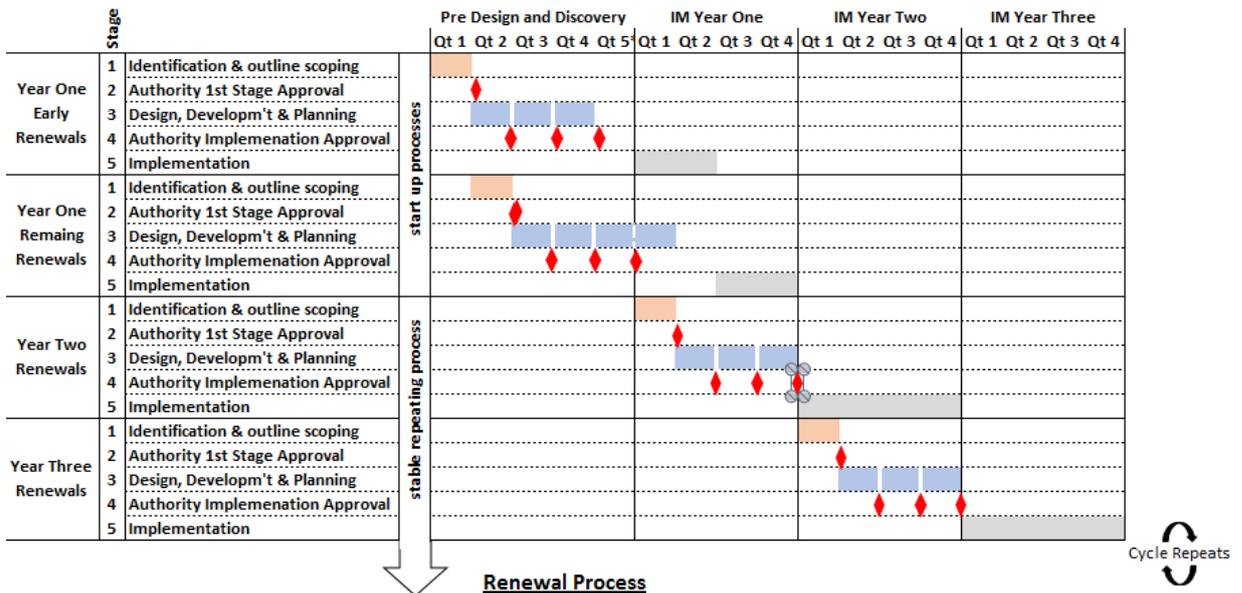
1.2 The two (2) year Renewals Process is to be undertaken in five stages:

- (a) Renewals Process – Stage One;
- (b) Renewals Process – Stage Two;
- (c) Renewals Process – Stage Three;
- (d) Renewals Process – Stage Four; and
- (e) Renewals Process – Stage Five.

1.3 Diagram 1 below (the Renewals Process Diagram) sets out the timeframes for completion of each stage of the Renewals Process and the obligations of the Parties during each stage of the Renewals Process are set out in paragraphs 2 to 6 of this Annex 5 (Renewals Process).

1.4 As set out in Diagram 1 (the Renewals Process Diagram), a two (2) year renewal process occurring in the Pre CVL Asset Transfer Phase and IM Year One is further split into two parts to assist the ODP and Authority during this period.

**Diagram 1 (the Renewals Process Diagram)**



**2 RENEWALS PROCESS - STAGE ONE**

2.1 During Renewals Process - Stage One, the ODP shall:

- (a) provide to the Authority and the Independent Reporter a programme of Renewals for the next ODP Year based upon a detailed analysis of (where relevant):
  - (i) the CVL Asset Statement;

- (ii) any impact of the CVL Transformation on Renewal requirements;
  - (iii) in respect of IM Year One Renewals only, data provided in CP6; and
  - (iv) its CVL Asset knowledge within its Asset Knowledge Management system.
- (b) provide to the Authority and the Independent Reporter an outline scope and price in respect of the work to be undertaken in Renewals Process - Stage Three,
- (together being the "**Renewals Process - Stage One Deliverables**")

### **3 RENEWALS PROCESS – STAGE TWO**

3.1 During each Renewal Process: – Stage Two the Authority shall:

- (a) review the Renewals Process: – Stage One Deliverables and shall instruct the ODP on:
  - (i) any proposed changes to the Renewals price for the Parties;
  - (ii) subject to agreement between the Parties on price, the Renewals to be further developed and agreed with the ODP; and
  - (iii) the agreed price to be paid to the ODP for the activities to be carried out by the ODP during Renewal Process: – Stage Three including the ODP's production and delivery of the Renewals Process: – Stage Three Deliverables.
- (b) In the event that:
  - (i) the Authority's budget is reduced and any proposed Planned Renewal is not accepted or approved by the Authority as part of the Renewals Process then: and
  - (ii) the Independent Reporter considers that such Planned Renewal is required to maintain the Steady State Asset System, then:
    - (A) a conflict shall be deemed to have arisen between the Parties and the process set out in paragraphs 5.6 to 5.8 of Annex 2 of Schedule 3A.3 shall apply to produce a revised Asset Management Plan; and
    - (B) where either Party refers a dispute to the dispute resolution procedure pursuant to paragraph 5.7 of Annex 2 of Schedule 3A.3 the Authority shall be responsible for the additional incremental direct cost of enhanced maintenance requirements from the date that the relevant Planned Renewal was planned to be implemented and the ODP shall be entitled to propose an adjustment to the Emerging Charge, Firm Charge or Fixed Charge (as relevant) in respect of such costs to be agreed between the Parties or determined by the Independent Reporter.

### **4 RENEWALS PROCESS – STAGE THREE**

4.1 During each Renewal Process: – Stage Three, the ODP shall, for each Renewal which the Authority has instructed the ODP to further develop, provide to the Authority:

- (a) the relevant Renewals design to Stage C;
- (b) the cost proposal for implementation of such Renewal which shall be:

- (i) developed in accordance with the Railway Method of Measurement;
  - (ii) of sufficient detail to allow pricing of any variation that may be required during the delivery of the Renewal;
  - (iii) inclusive of design and other activities and costs for the delivery of the Renewal from the commencement of Stage D through to hand back and bring back into service; and
  - (iv) in respect of the eight (8) indicative renewal schemes, the price shall, where applicable, be based on the principles set out in response R9.35 (summary methods statements for eight infrastructure manager year one Renewals) of the ITSFT Bid Submission)
- (c) a renewals assurance pack to include the following items and information developed by the ODP and any others as reasonably requested by the Authority:
- (i) Overview;
  - (ii) Design and specification;
  - (iii) Risk assessment;
  - (iv) Assurance sign off;
  - (v) Method statement;
  - (vi) Programme;
  - (vii) Possession strategy; and
  - (viii) Plan for meeting the CVL Hand Back Conditions and bringing the CVL Asset back into service.

(together being the "**Renewals Process - Stage Three Deliverables**")

## **5 RENEWALS PROCESS – STAGE FOUR**

- 5.1 During each Renewal Process: – Stage Four, the Authority shall review the Renewals Process - Stage Three Deliverables provided by the ODP and provide instructions to the ODP to either:
- (a) implement the Renewals, provided always that the mechanism for such instruction and the implementation of such works shall be dealt with through the process for implementing ODP Infrastructure Works as a Package Order in Schedule 3B (Infrastructure Services and ODP Infrastructure Works); or
  - (b) where the ODP and the Authority are unable to agree the terms of the implementation of the Renewals to be delivered as ODP Infrastructure Works, the Authority shall have the right to determine such works are carried out by an IDP with the ODP acting as a delivery partner under its Principal Infrastructure Services in respect of the Renewals implementation.

## **6 RENEWALS PROCESS – STAGE FIVE**

- 6.1 During each Renewal Process: – Stage Five, the Renewals shall be implemented by the ODP or IDP (as instructed by the Authority) and the obligations of the Parties shall be as set out in Schedule 3B (Infrastructure Services and ODP Infrastructure Works) in respect of such works.

**ANNEX 6 - FORM OF CVL ASSET LEASE**



Annex 7 of Schedule 3A

Form of Asset Management Performance Bond

**ASSET MANAGEMENT  
PERFORMANCE BOND**

**relating to the provision of Infrastructure Manager  
Services**

**[AUTHORITY]** (1)  
("Authority")

and

**[ODP]** (2)  
("ODP")

and

**[IM GUARANTOR]** (3)  
("IM Guarantor")

**THIS BOND** is made as a **DEED** on [DATE],

**BETWEEN:**

- (1) [AUTHORITY] incorporated and registered in England and Wales with company number [COMPANY NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] ("**Authority**");
- (2) [ODP] incorporated and registered in England and Wales with company number [COMPANY NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] ("**ODP**"); and
- (3) [IM GUARANTOR] incorporated and registered in England and Wales with company number [COMPANY NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] ("**IM Guarantor**"),

each a "**Party**" and together, the "**Parties**".

**BACKGROUND**

- (A) The Authority entered into the ODP Grant Agreement dated [DATE] with the ODP for the Infrastructure Manager Services, as are more specifically described in schedule 3A of the ODP Grant Agreement ("**Contract**").
- (B) Pursuant to the paragraph 20 of schedule 3A.3 of the Contract, the ODP is required to procure that a bond in the form of this Bond be provided by the IM Guarantor to the Authority.

**AGREED TERMS**

**1 DEFINITIONS AND INTERPRETATION**

**1.1 Interpretation**

- (a) Unless otherwise defined in Clause 1.2 (below), capitalised terms and expressions used in this Bond shall have the same meaning ascribed to them in schedule 3A of the Contract.
- (b) References in the Bond to a Clause are to a clause of this Bond.
- (c) Any references to the Contract are to the Contract as amended from time to time.

**1.2 Definitions**

The following terms shall have the following meanings:

"**Bond**" means this bond;

"**Contract**" has the meaning given to it in recital A of this Bond;

"**Demand**" means a demand by the Authority for payment pursuant to Clause 2.2 which satisfies the criteria in Clause 2.3;

"**Expiry**" has the meaning given to it in Clause 3.1;

"**Insolvency**" has the meaning given to it in the Contract, except that (save for under clause 1.1(g) of schedule 10.2 to the Contract) references to the Parent, Bond Provider or IM Guarantor are excluded;

"**Loss**" means any liability, debt, damage, interest, expense, cost, loss or expense suffered by the Authority;

"**Maximum Amount**" means the maximum amount of this Bond which shall not exceed, in the aggregate, [REDACTED] x RPI; and

"**Notice**" has the meaning given to it in Clause 7.1;

"**Project**" has the meaning given to 'CVL Transformation' and/or 'Associated Projects' in schedule 3A of the Contract.

## **2 PAYMENT**

2.1 [The IM Guarantor guarantees to pay to the Authority the amount of any Loss:

- (a) caused by the Infrastructure Manager Services having been terminated, either through:
  - (i) expiration or termination of the Contract in accordance with schedule 10 (*Remedies, Events of Default and Termination Events*) of the Contract;
  - (ii) the removal of the Infrastructure Manager Services in accordance with the process for Partial Termination in accordance with the Contract; or
  - (iii) the issue of an Infrastructure Manager Notice in accordance with paragraph 21 (*Infrastructure Manager Notice*) of schedule 3A.3 of the Contract; and
- (b) for which the Independent Reporter has provided certification that the ODP has failed to perform or comply with its obligation to deliver any or all aspects of the current Asset Management Plan as at the date on which the Infrastructure Manager Services have been terminated as set out in paragraph 20.2(a) of schedule 3A.3 of the Contract,

up to the Maximum Amount.]<sup>1</sup>

2.2 The Authority may deliver a Demand to the IM Guarantor requiring the IM Guarantor to pay the Loss specified in the Demand, up to the Maximum Amount. The IM Guarantor shall pay the sum specified in the Demand to the Authority within five (5) Business Days of receipt of the Demand.

2.3 The Demand must:

- (a) be in writing and state:
  - (i) the breach of Contract giving rise to the Demand; and
  - (ii) the sum demanded;
- (b) state the account into which the sum demanded shall be paid;
- (c) be signed on behalf of the Authority; and
- (d) be delivered to the IM Guarantor in accordance with Clause 7 of this Bond.

2.4 The Authority may make more than one Demand for an amount or amounts not exceeding the Maximum Amount in aggregate.

## **3 EXPIRY**

3.1 This Bond shall take effect on the [COMMENCEMENT DATE] and expire on the earliest of the following:

---

<sup>1</sup> DN: This clause is to remain consistent with paragraph 20.2 of schedule 3A.3 of the Contract.

- (a) date that is seven (7) Reporting Periods following the [EXPIRY DATE]<sup>2</sup>;
- (b) [INSERT DATE],

(hereinafter referred to as “**Expiry**”).

- 3.2 On Expiry, this Bond shall become null and void, whether returned to the IM Guarantor for cancellation or not, except in respect of any Demand which is received by the IM Guarantor prior to Expiry.

#### **4 VARIATIONS TO THE CONTRACT**

- 4.1 The Contract may be modified, amended or supplemented in any way without the consent of the IM Guarantor.

- 4.2 The IM Guarantor's liability under this Bond shall remain in full force and effect and shall not be affected or discharged by any act, omission, waiver, matter or thing including, without limitation:

- (a) the liquidation, dissolution or Insolvency of the ODP;
- (b) invalidity, avoidance or termination of the Contract;
- (c) any alteration of the terms, conditions or provisions of the Contract;
- (d) the extent or nature of the Contract; or
- (e) any extension of time under the Contract,

which, but for this provision, might operate to release or otherwise exonerate the IM Guarantor under this Bond, in whole or in part.

#### **5 PRIORITY OF CLAIMS AGAINST THE ODP**

- 5.1 Until the Authority has recovered all sums due to it under, or in connection with, the Contract, the IM Guarantor shall not:

- (a) in respect of any payment made or liability under this Bond, claim, rank or vote as a creditor in the liquidation of the ODP in competition with the Authority; or
- (b) enforce any security over the assets of the ODP in respect of any such payment or liability in competition with the Authority.

- 5.2 This Clause 5 shall not limit or restrict the exercise or enforcement by the IM Guarantor of its rights against any other person.

- 5.3 If the IM Guarantor recovers any sums in breach of Clause 5.1, the IM Guarantor shall hold such sums on trust:

- (a) to pay to the Authority any sums due from the ODP to the Authority under, or in connection with, the Contract; and
- (b) subject to Clause 5.2(a), for the benefit of the IM Guarantor.

#### **6 CONCLUSIVE LIABILITY AND EXTENT OF LIABILITY**

- 6.1 For the purposes of this Bond, any money judgment, award, adjudicator's decision or settlement agreement against the ODP in favour of the Authority under, or in connection

---

<sup>2</sup> DN: Duration of this Bond is not to be less than three (3) years.

with, the Contract shall be conclusive evidence of any liability of the ODP to which that judgment, award, agreement or decision relates.

6.2 Insolvency of the ODP shall not reduce, release or impair the liability of the IM Guarantor under this Bond.

6.3 The Authority may compromise, release, waive or neglect any security as it sees fit, without impairing its rights under this Bond.

## 7 NOTICES

7.1 Each Demand, notice or other communication ("**Notice**") to be given under this Bond shall be given in writing in English and shall be delivered by hand or post. For the avoidance of doubt, Notice shall not be validly served by e-mail.

7.2 Any Notice to be given by one Party to another under this Bond shall (unless one Party has specified another address to the other Party, such address to take effect on the date that is five (5) Business Days after receipt or deemed receipt of the Notice specifying the other address) be given to that other Party at the address set out below:

(a) **Authority:**

[ADDRESS]

Attention: [CONTACT]

(b) **ODP:**

[ADDRESS]

Attention: [CONTACT]

(c) **IM Guarantor:**

[ADDRESS]

Attention: [CONTACT]

7.3 Any Notice given by any Party shall be deemed to have been received:

(a) if given by hand, at the time of day of actual delivery;

(b) if posted, by 10am on the second Business Day following the Business Day on which it was despatched by first class recorded or special delivery mail postage prepaid; and

(c) if sent by courier on the date and at the time that the courier's delivery receipt is signed,

provided that a Notice given in accordance with the above but received on a day which is not a Business Day or after normal business hours in the place of receipt shall be deemed to have been received on the next Business Day.

## 8 ASSIGNMENT

8.1 The IM Guarantor may not assign or transfer any rights under this Bond without the prior written consent of the Authority.

8.2 The Authority may not assign or transfer all or any rights under this Bond at any time to any party without the prior written consent of the IM Guarantor (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 the assignee of or successor to the Authority under the Contract).

**9 RIGHTS OF THIRD PARTIES**

A person who is not a Party to this Bond shall have no rights under the Contracts (*Rights of Third Parties*) Act 1999 to enforce any of its terms.

**10 LAW AND JURISDICTION**

10.1 This Bond, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by and construed in accordance with the law of England and Wales.

10.2 The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction sitting in Cardiff (save where the Authority directs that the High Court in London (or elsewhere) should have jurisdiction) to settle any disputes which may arise out of or in connection with this Bond and/or its subject matter or formation (including non-contractual disputes or claims).

10.3 This Bond has been executed as a deed and is delivered on the date stated at the beginning of it.

**EXECUTED** as a **DEED** by [AUTHORITY] acting by [NAME OF DIRECTOR], a director, in the presence of:

.....  
[SIGNATURE OF WITNESS]  
[NAME OF WITNESS – BLOCK CAPITALS]  
[ADDRESS OF WITNESS]  
[OCCUPATION OF WITNESS]

.....  
[SIGNATURE OF DIRECTOR]  
Director

**EXECUTED** as a **DEED** by [ODP] acting by [NAME OF DIRECTOR], a director, in the presence of:

.....  
[SIGNATURE OF WITNESS]  
[NAME OF WITNESS – BLOCK CAPITALS]  
[ADDRESS OF WITNESS]  
[OCCUPATION OF WITNESS]

.....  
[SIGNATURE OF DIRECTOR]  
Director

**EXECUTED** as a **DEED** by [IM GUARANTOR] acting by [NAME OF DIRECTOR], a director, in the presence of:

.....  
[SIGNATURE OF WITNESS]  
[NAME OF WITNESS – BLOCK CAPITALS]  
[ADDRESS OF WITNESS]  
[OCCUPATION OF WITNESS]

.....  
[SIGNATURE OF DIRECTOR]  
Director

## ANNEX 8 - DEFINITIONS

“**Accelerated Renewal**” has the meaning given to it in paragraph 19.1 of Schedule 3A.3;

“**Amenities and Services**” means all activities necessary to maintain the offices and depots of the infrastructure manager;

“**Annual Infrastructure Manager Services Overheads**” means the amount of annual overheads for provision of Infrastructure Manager Services as set out in Table A4 of Annex A to Schedule 8.5;

“**Annual Infrastructure Manager Services Profit**” means the amount of annual profits for provision of Infrastructure Manager Services as set out in Table A5 of Annex A to Schedule 8.5;

“**Accepted Programme**” has the meaning given to it in Schedule 3B (Infrastructure Services and ODP Infrastructure Works);

“**Asset Knowledge Management**” or “**AKM**” means the management of the ODP's knowledge of the CVL Assets primarily through the maintenance of an asset knowledge management system;

“**Asset Management Performance Bond**” means the bond to be provided by the ODP in accordance with paragraph 20 of Schedule 3A.3 substantially in the form set out in Annex 7 (Infrastructure Manager Performance Bond) of this Schedule 3A.3;

“**Asset Maintenance Services**” means:

- (a) Earthworks Maintenance;
- (b) Structures (including Tunnels) Maintenance;
- (c) Signalling and Control Systems and Passenger Information Systems Maintenance;
- (d) Track Maintenance;
- (e) Overhead Line Equipment Maintenance;
- (f) Power Distribution and Electricity and Power Maintenance;
- (g) Property and Buildings (including Stations) Maintenance;
- (h) Level Crossings Maintenance;
- (i) Off Track and Drainage Maintenance;
- (j) Telecoms Maintenance;
- (k) Other Asset Maintenance;
- (l) any works that are needed because of the ODP's failure to operate, inspect or maintain any CVL Asset Class in accordance with the principles set out in this Agreement and as modified and agreed through the Asset Management Planning process including poorly planned or executed ODP's works which have a detrimental impact upon the assets; and
- (m) where CVL Assets require enhanced maintenance as a result of the ODP not granting reasonable access to those CVL Assets for the completion of timely Renewals by others (including IDPs);

**“Asset Management Plan”** means the Asset Management Plan to be produced by the ODP in accordance with its obligations under Schedule 3A.3 and containing the information set out in Annex 1 (Asset Management Plan Requirements) to Schedule 3A.3;

**“Asset Management Strategy”** shall have the meaning given to it in paragraph 3 of Annex 1 (Asset Management Plan Requirements) of Schedule 3A.3 as updated by the Authority in writing from time to time;

**“Asset Operational Management”** means:

- (a) signalling control;
- (b) performance reporting;
- (c) the process for development and production of each revision to the Asset Management Plan;
- (d) the carrying out of all activities related to Renewals Process: - Stage One and Renewals Process - Stage Two; and
- (e) ensuring the ODP is compliant with its obligations under this Schedule 3A.

**“Asset Protection Agreement”** means any agreement to be entered into between the ODP or the Authority and a Neighbour Third Party in respect of Asset Protection Issues;

**“Asset Protection Issues”** means those issues adversely affecting the CVL Assets which the ODP shall mitigate against pursuant to its obligations in paragraph 18 of Schedule 3A.3, including (but not limited to):

- (a) the effect of ground movement on the CVL during and after construction;
- (b) mitigation of glare from outside lighting and avoidance of coloured lighting to prevent potential confusion with signalling;
- (c) mitigation of glare from glazing to avoid signal sighting impact;
- (d) impact of building and facilities on signals between mobile communications links, such as GSMR transmitters;
- (e) in respect of building use;
  - (i) restricted roof top access; and
  - (ii) avoidance of balconies and opening windows on elevations with close proximity to the railway;
- (f) in respect of drainage;
  - (i) surface water should not discharge towards or onto CVL Assets; and
  - (ii) surface water and foul drains should not pass over or under CVL Assets except through established services routes;
- (g) any arrangements to avoid road vehicle incursion for new roads, bridges and car parks;
- (h) the effect of electromagnetic interference and compatibility;
- (i) earth bonding of the permanent works and temporary works to manage touch potential and induced currents;



- (j) management of Mobile Elevated Works Platform between new buildings and facilities and the railway;
- (k) fire strategy which must confirm a fire in the building will not affect railway operations;
- (l) construction methodology, including crane usage;
- (m) methodologies for cleaning and maintaining the facilities; and
- (n) access to CVL Assets;

**“Associated Projects”** has the meaning given to it in Schedule 3B (Infrastructure Services and ODP Infrastructure Works);

**“Authority's Infrastructure Manager Representative”** means the representative appointed by the Authority in accordance with paragraph 1.3(a) of this Schedule 3A.3;

**“CDM Regulations”** are the Construction (Design and Management) Regulations 2015 and the related guidance together with any requirements issued from time to time by the Health and Safety Executive and the ORR;

**“Completion”** has the meaning given to it in Schedule 3B (Infrastructure Services and ODP Infrastructure Works);

**“CP5”** means Network Rail's Control Period 5 being the period from 1 April 2014 to 31 March 2019;

**“CP6”** means Network Rail's Control Period 5 being the period from 1 April 2019 to 31 March 2024;

**“CVL Asset Annual Performance Meeting”** shall have the meaning given to it in paragraph 3 of Annex 2 (Asset Management Reporting) of this Schedule 3A.3;

**“CVL Asset Class”** means;

- (a) Earthworks;
- (b) Structures (including Tunnels);
- (c) Signalling and Control Systems and Passenger Information Systems;
- (d) Track;
- (e) Telecoms;
- (f) Off Track and Drainage;
- (g) Overhead Line Equipment;
- (h) Power Distribution and Electricity and Power;
- (i) Property and Buildings (including Stations);
- (j) Level Crossings; or
- (k) Other Assets;

**“CVL Asset Data”** means any information or data defining the CVL Assets and the characteristics of the CVL Assets and shall include information from the CVL Asset Register (including any information or data which the Authority reasonably requires the ODP to collect and maintain in respect of the CVL Assets to allow the Authority to carry out duties in respect of its role in the planning process under Schedule 3A.3);

**“CVL Asset Monthly Performance Meeting”** shall have the meaning given to it in paragraph 1.2 of Annex 2 (Asset Management Reporting) to this Schedule 3A.3;

**“CVL Assets Operational Management Plan”** shall have the meaning given to it in paragraph 5.2 of Schedule 3A.2;

**“CVL Asset Monthly Report”** shall have the meaning given to it in paragraph 1.2 of Annex 2 (Asset Management Reporting) of this Schedule 3A.3;

**“CVL Asset Register”** means all systems containing data on the CVL Assets which shall include any new CVL Asset installed or delivered as part of the CVL Transformation;

**“CVL Asset Statement”** means the statement produced by the Authority in respect of the CVL Assets dated November 23 2017;

**“CVL Asset Hand Back Conditions”** has the meaning given to it in paragraph 22 of Schedule 3A.3;

**“CVL Transformation”** has the meaning given to it in Schedule 3B;

**“CVL Transformation Proposal”** has the meaning given to it in Schedule 3B;

**“Day to Day Asset Management”** means the daily operational management of the CVL Assets and shall include Asset Maintenance Services, Inspection Services, Fault Management Services, Asset Knowledge Management and Weather and Season Related Intervention Services (excluding Extreme Weather Events);

**“Defects Date”** has the meaning given to it in Schedule 3B (Infrastructure Services and ODP Infrastructure Works);

**“Discovery Phase Services”** has the meaning given to it in paragraph 3.1 of Schedule 3A.3;

**“Discovery Plan”** means the ODP's plan for discovering the condition of the CVL Assets as set out in Annex 3 Part A (Discovery Plan) of this Schedule 3A.3;

**“Draft Asset Management Plan”** means the ODP's draft Asset Management Plan as set out in Annex 1 Part B (Draft Asset Management Plan) of this Schedule 3A.3;

**“Earthworks”** means those CVL Assets meeting the definition of "Earthworks" in Network Rail's Standards;

**“Earthworks Maintenance”** means the carrying out of all earthwork maintenance activities on the CVL Assets except for any Renewals activities;

**“Earthworks Renewals”** means:

- (a) other than works associated with the CVL Transformation, any works which require permanent works design, including:
  - (i) stabilisation by the addition of new permanent retaining structures such as piled walls, gabion or cast in-situ walls, ground anchors and berms; and

- (ii) works for the permanent remediation of earthworks following failures such as slips and collapses;
- (b) the extension, repair or replacement of existing asset(s) over a length greater than three metres (3m) or an area greater than twenty metres squared (20m<sup>2</sup>);
- (c) works which require significant re-profiling of slopes over a length greater than three metres (3m) or an area greater than twenty metres squared (20m<sup>2</sup>);
- (d) works which require the permanent acquisition of additional land in order to implement earthworks activities;
- (e) alterations which enhance the design capacity of existing earthworks or earthworks drainage; and/or
- (f) remediation works required because of Neighbour Third Party actions causing unexpected impacts on the assets, for example excessive surcharge loading in the area adjacent to the top of a cutting;

**“Emerging Charges”** means those prices for Infrastructure Manager Services that are deemed to be Emerging Charges in accordance with this Schedule 3A.3;

**“Engineering Authorities”** means the Amey professional head for each CVL Asset Class, who shall be responsible for standards assigned to that CVL Asset Class and shared responsibility for standards applicable to, but not assigned to, the CVL Asset Class;

**“Enhancement”** means the enhancement of a CVL Asset with an alternative asset or part of asset to the CVL Asset from time to time (excluding any enhancements delivered through the ODP’s CVL Transformation);

**“Enterprise Asset Management System”** means a single asset management system (Maximo or similar system approved by the Authority, such approval not to be unreasonably withheld) containing the information as described in response to R9.16 (Draft Asset Knowledge Management Plan) of the ITSFT Bid Submission and which will enable the effective management of the CVL assets in accordance with recognised asset management best practice;

**“Excluded Risks”** any discovery to the condition in the whole or any part of any CVL Assets or any such discoveries resulting from an unexpected specific event or single root cause (including any defect, provided it is not a defect which has been caused through any negligent act or omission of the ODP) which:

- (a) directly results in or is reasonably likely to result in:
  - (i) the level of Day to Day Asset Management service required being significantly in excess of that set out in the Asset Management Plan; or
  - (ii) the need for an Urgent Renewal or future Renewal not previously anticipated as required by the ODP or the Independent Reporter; or
  - (iii) a restriction on the operation of the Rail Services for a sustained period; and
- (b) was not known to the ODP and/or could not reasonably have been identified as an immediate risk by a competent asset manager monitoring the CVL Assets in advance of the Excluded Risk arising; and
- (c) during the Infrastructure Manager Phase, results in financial, operational and maintenance cost consequences (including any Rail Service performance impacts) in the twelve (12) month period following the Excluded Risk for the ODP

that is agreed by the Parties or determined by the Independent Reporter to be in excess of [REDACTED] for each Excluded Risk occurrence;

**“Excluded Risks Charges”** means the amount to be paid by the Authority to the ODP in accordance with Schedule 3A.3 following the occurrence of an Excluded Risk;

**“Extreme Weather Event”** means when a weather measurement is recorded:

- (a) within a calendar month,
- (b) during the Infrastructure Manager Phase; and
- (c) at Tredegar, Bryn Bach Park No 2 Automatic Weather Station,

the value of which, by comparison with the historical weather data for location Tredegar, is shown to occur on average less frequently than once in every ten (10) years.

For the purposes of this definition the weather measurements to be recorded for each calendar month are:

- (a) the cumulative rainfall (mm);
- (b) the number of days with rainfall more than five (5) mm;
- (c) the number of days with minimum air temperature less than zero (0) degrees celsius; and
- (d) the number of days with snow lying at 08:00 hours GMT.

**“Fault Management Services”** means the management of monitoring, responding to and rectifying faults arising in respect of the CVL Assets and the continual analysis of fault trends in the CVL Assets to ensure continuance improvement;

**“Firm Charges”** means those prices for Infrastructure Manager Services that are deemed to be Firm Charges accordance with this Schedule 3A.3;

**“Fixed Charges”** means those prices for Infrastructure Manager Services that are deemed to be Fixed Charges in accordance this Schedule 3A.3;

**“Good Industry Practice”** means using standards, practices, methods and procedures (as practised in the United Kingdom) and conforming to Law and exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced asset manager, maintainer or other person (as the case may be) engaged in a similar type of undertaking as under this Schedule 3A under the same or similar circumstances;

**“IM Mobilisation and CVL Asset Transfer Plan”** means the plan as set out in Annex 3 Part B of Schedule 3A.3;

**“Independent Reporter”** means the third party independent entity appointment by the ODP and the Authority under the Independent Reporter's Appointment;

**“Independent Reporter's Appointment”** means the agreement entered into between the Authority, the ODP and the Independent Reporter;

**“Initial Infrastructure Manager Environmental Management Plan”** means the plan to be developed by the ODP and provided to the Authority in accordance with paragraph 1.7 of Schedule 3A.3;

**“Infrastructure Manager Asset Management Services”** means the services to be provided by the ODP during the Infrastructure Manager Phase as set out in paragraph 4.1 of Schedule 3A.3;

**“Infrastructure Manager Notice”** has the meaning given to it in paragraph 21 of Schedule 3A.3;

**“Infrastructure Manager Phase”** means the period commencing on the completion of the Pre CVL Asset Transfer Phase and ending on the Expiry Date or earlier termination of the ODP Grant Agreement in accordance with its terms;

**“Infrastructure Manager Services”** means the Discovery Phase Services and the Infrastructure Manager Asset Management Services;

**“Infrastructure Manager Years” or “IM Year”** means the following periods:

- (a) IM Year One, being the period commencing on the date of the CVL Asset Transfer Date and ending on the last day of the thirteenth (13<sup>th</sup>) full Reporting Period following the commencement of the Infrastructure Manager Phase;
- (b) IM Year Two, being the period from the end of IM Year One and ending thirteen (13) full Reporting Periods following such date; and
- (c) IM Year Three (and each IM Year thereafter), being the period commencing on the completion of the previous IM Year and completing thirteen (13) full Reporting Periods following such date;

**“Initial Asset Knowledge Management Plan”** means the plan set out in Annex 4 Part B (Initial Asset Knowledge Plan) of Schedule 3A.3;

**“Initial Safety Plan”** means the plan to be provided by the ODP pursuant to paragraph 1.6 of Schedule 3A.3;

**“Initial Statement of Material Discoveries and Excluded Risks”** shall have the meaning given to it in paragraph 2.1 of Annex 2 (Asset Management Reporting) of Schedule 3.3;

**“Inspection Services”** means the ODP's inspection of the CVL Assets in accordance with:

- (a) its Schedule of Inspections; and
- (b) any other required surveys, investigations and inspections,

as required for the ODP to meet its asset management obligations under this Schedule 3A;

**“Interconnection Agreement”** has the meaning given to it in paragraph 4.1 of Schedule 3A.2;

**“Interface Assets Deed”** has the meaning given to it in paragraph 4.1 of Schedule 3A.2;

**“Key Date”** has the meaning given to it in Schedule 3B (Infrastructure Services and ODP Infrastructure Works);

**“Level Crossings”** means those CVL Assets meeting the definition of Level Crossings in Network Rail's Standards;

**“Level Crossings Maintenance”** means the carrying out of all maintenance activities for any Level Crossing assets which constitute CVL Assets except for Level Crossings Renewals;

**“Level Crossing Renewals”** means:

- (a) repairs to and replacement of crossing surfaces in any single area greater than 5m<sup>2</sup> or greater than 10m<sup>2</sup> in no more than 4 separate areas in any single year and where such works are required to the same installation in more than two years;
- (b) full replacement of fences, gates and barriers; and/or
- (c) replacement of complete crossing control and monitoring system where an inspection can be used to demonstrate that the equipment has come to the end of its useful life and is either:
  - (i) obsolete and no spares are held or can be obtained; or
  - (ii) no longer compliant with legislation as amended from time to time;

**“Material CVL Asset Access Restriction”** means:

- a) where, under the CVL Asset Lease or otherwise, the ODP’s access rights to the CVL Assets is not sufficient to allow the ODP to access the CVL Assets in the manner such assets have been historically accessed by Network Rail prior to the date of this Agreement; and
- b) such restriction materially impacts on the cost of the management, maintenance or monitoring of the CVL Assets including through any inability of the ODP to comply with an applicable standard; and
- c) such restriction could not reasonably have been expected to have been identified by a competent and experienced rail management and maintenance contractor having reviewed all data provided to the ODP by the Authority prior to the date of this Agreement; and
- d) the ODP has used all reasonable endeavours to mitigate against the impact of such restriction.

**“Material CVL Asset Title Omission”** means any apparent lack of title to the CVL Assets where such lack of title:

- (a) materially and adversely impacts the ODP’s costs in managing, maintaining, or monitoring the CVL Assets or the ODP’s ability to manage, maintain or monitor the CVL Assets;
- (b) could not reasonably have been expected by the ODP to have been present in the title so deduced;
- (c) the ODP has used all reasonable endeavours to mitigate the impact of such apparent lack of title.

**“Material CVL Title Restriction”** means any material and subsisting restriction on title, title impediment or title covenant or other third party right (the **“Adverse Rights”**) contained or referred to in any official copies of the register and title plan or any registered or unregistered title deeds or any ancillary documents including local authority searches (including the existence of any lease(s) subject to which the CVL Asset Lease is granted or any payment obligation or other charges) provided by the Authority to the ODP pursuant to paragraph 1.4 of Schedule 3A.2 or obtained by the ODP where:

- (a) such Adverse Rights materially and adversely impact the ODP’s costs in managing, maintaining, or monitoring of the CVL Assets or the ODP’s ability to manage, maintain or monitor the CVL Assets, including through any inability of the ODP to comply with or observe (as applicable) such Adverse Rights;

- (b) such Adverse Rights could not reasonably have been expected to exist by the ODP; and
- (c) the ODP has used all reasonable endeavours to mitigate against the impact of such Adverse Rights.

**“Material Discovery”** means:

- (a) any Material CVL Asset Access Restriction;
- (b) any Excluded Risk; or
- (c) any discovery to the condition in the whole or any part of any CVL Assets (excluding any CVL Assets installed by, or on behalf of, the ODP as part of the CVL Transformation and including any defect) which is materially different to the state of the condition of such CVL Asset as set out in the CVL Asset Statement provided such condition:
  - (i) is not a defect which has been caused through any negligent act or omission of the ODP;
  - (ii) after twelve (12) months from the commencement of the Infrastructure Manager Phase, is not a condition in relation to a CVL Asset which has been inspected as part of the Schedule of Inspections or where such inspection has been undertaken such inspection occurred no more than three (3) months prior to the relevant condition being discovered;
  - (iii) could not reasonably have been expected to have been identified by a competent and experienced rail management and maintenance contractor having reviewed all data provided to the ODP by the Authority in respect of the condition of the CVL Assets as set out in the CVL Asset Statement; and
  - (iv) materially impacts on the cost of the management, maintenance or monitoring of the CVL Assets including through any inability of the ODP to comply with an applicable standard;

**“Material Discoveries Notification Threshold”** means if at any time a Material Discovery results in financial operational and maintenance cost consequence (including any Rail Service performance impacts) for the ODP that is in excess [REDACTED] for each Material Discovery;

**“Neighbour Third Parties”** means any third parties that propose to or who are undertaking developments adjacent to or near to the CVL which might adversely affect CVL Assets, operations and asset management during the development’s preconstruction investigations, construction or subsequent use;

**“Network Rail Standards”** means all Network Rail Standards controlled by and accessed through either HIS Markit or SAI Global;

**“ODP’s CVL Asset Assumptions”** means the ODP’s assumptions on the condition of the CVL Assets as set out in Annex 3 Part C of this Schedule 3A.3 (ODP’s CVL Asset Assumptions);

**“ODP’s Infrastructure Manager Representative”** means the representative of the ODP appointed by the ODP in accordance with paragraph 1.3(b) of this Schedule 3A.3 as updated by the ODP in writing from time to time;

**“Off Track and Drainage Maintenance”** means the carrying out of all off track and drainage maintenance activities on the CVL Assets except for any Off Track and Drainage Renewals activities;

**“Off Track and Drainage Renewals”** means:

- (a) other than works associated with the CVL Transformation, any works that require permanent works design;
- (b) removal of vegetation where causing slope instability;
- (c) one or more works involving a ‘patch repair’ of an existing retaining structures e.g. re-wiring / stone replacement in more than five (5) gabion baskets or in the case of a retaining wall a length greater than three metres (3m) or an area greater than twenty metres squared (20m<sup>2</sup>).
- (d) replacement of under-track crossings (UTX);
- (e) full replacement of catchpits, drainage pipework in excess of five metres (5m) and outfalls;
- (f) complete replacement of more than twelve metres (12m) continuous length fencing and all posts;
- (g) complete replacement of fencing over twelve metres (12m), but less than 25m, continuous length of fencing in which more than 50% of posts are replaced;
- (h) complete replacement of more than twenty five metres (25m) continuous length of fencing regardless of how many posts are replaced; and/or
- (i) re-surfacing of roads, car parks and footways comprising a single area of greater than twenty metres squared (20m<sup>2</sup>) in any one location or greater than 40m<sup>2</sup> in total on any one access road.

**“Other Assets”** means the carrying out of all asset management activities on all CVL Assets other than the following CVL Assets:

- (a) Earthworks;
- (b) Structures (including Tunnels);
- (c) Signalling and Control Systems and Passenger Information Systems;
- (d) Track;
- (e) Telecoms;
- (f) Off Track and Drainage;
- (g) Overhead Line Equipment;
- (h) Power Distribution and Electricity and Power;
- (i) Property and Buildings (including Stations); and
- (j) Level Crossings;

**“Overhead Line Equipment”** means those CVL Assets which meet the definition of Overhead Line Equipment in Network Rail's Standards;

**“Overhead Line Equipment Maintenance”** means the carrying out of all maintenance activities for any overhead line equipment which constitute CVL Assets except for Overhead Line Equipment Renewals;

**“Overhead Line Equipment Renewals”** means:



- (a) replacement of over a tension length of conductor / catenary wire (or length more than one kilometre (1 km) if the section is not divided into tension lengths);
- (b) replacement of a tension length of conductor / catenary wire (or length more than one kilometre (1 km) if the section is not divided into tension lengths);
- (c) replacement of feeder stations / distribution points;
- (d) replacement of distribution switchgear either post / mast mounted or forming part of a feeder / distribution station;
- (e) replacement of transformers / booster transformers;
- (f) replacement of masts and associated steelwork including fixings to bases and structures; and/or
- (g) replacement of tensioning devices,

provided always that:

- (i) such works are not required as a direct or indirect result of a failure of the CVL Assets, or any part of the system, to achieve the specified design life for CVL Transformation; or
- (ii) such works are not required a failure of the ODP to maintain the whole system and relevant interfaces (including rolling stock and track), such that the expected life of the assets is not achieved; or
- (iii) during the period from IM Year One to the end of IM Year Ten, any Overhead Line Equipment Renewals provided as part of the ODP's CVL Transformation shall be solely funded by the ODP;

**“Planned Renewals”** means those Renewals proposed by the ODP as part of the Renewals Process;

**“Power Distribution and Electricity and Power Maintenance”** means the carrying out of all maintenance activities for any power distribution equipment which constitute CVL Assets;

**“Power Distribution and Electricity and Power Renewals”** means:

- (a) where an inspection can be used to demonstrate that an individual component, for example a fan, has come to the end of its useful life, is obsolete or is no longer compliant with Law as amended from time to time and the entire assembly is rendered unserviceable; and/or
- (b) where an inspection can be used to demonstrate that the unit / assembly e.g. motor, pump, condenser etc, has come to the end of its useful life, is obsolete or the entire installation is no longer compliant with Law as amended from time to time;

provided always that:

- (i) such works are not required as a direct or indirect result of a failure of the CVL Assets, or any part of the system, to achieve the specified design life for CVL Transformation; or
- (ii) such works are not required a failure of the ODP to maintain installed assets such that the expected life of the assets is not achieved; or

- (iii) during the period from IM Year One to the end of IM Year Ten, any Power Distributions and Electricity and Power Renewals provided as part of the ODP's Transformation shall be solely funded by the ODP;

**"Pre CVL Asset Transfer Phase"** means the period commencing on the date of this ODP Grant Agreement and expiring on the CVL Asset Transfer Date;

**"Preliminary Design"** has the meaning given to it in Schedule 3B (Infrastructure Services and ODP Infrastructure Works);

**"Preliminary Design and Discovery Phase"** has the meaning given to it in Schedule 3B (Infrastructure Services and ODP Infrastructure Works);

**"Principal Contractor"** has the meaning given to it in the CDM Regulations;

**"Principal Designer"** has the meaning given to it in the CDM Regulations;

**"Principal Infrastructure Services"** has the meaning given to it in Schedule 3B (Infrastructure Services and ODP Infrastructure Works);

**"Property and Buildings (including Stations)"** means those CVL Assets which meet the definitions of properties, buildings and stations in Network Rail's Standards;

**"Property and Building (including Stations) Maintenance"** means the carrying out of all maintenance activities on the Properties and Buildings (including Stations) except for Property and Buildings (including Stations) Renewals;

**"Property and Buildings (including Stations) Renewals"** means:

- (a) any works for which a like for like replacement is either not practical or is not sufficient to demonstrate compliance with applicable standards and which requires permanent works design;
- (b) re-surfacing of a single area of greater than twenty metres squared (20m<sup>2</sup>) in any one location or greater than forty metres squared (40m<sup>2</sup>) in total (in up to four (4) areas) on any one platform / footpath;
- (c) re-surfacing of a single area of greater than forty metres squared (40m<sup>2</sup>) in any one location or greater than eighty metres squared (80m<sup>2</sup>) in total (in up to four (4) areas) on any one access road or car park;
- (d) full replacement of a staircase, an access ramp, a lift or a lift shaft;
- (e) replacement of more than three (3) adjacent ancillary structures, excluding items such as lampposts and bicycle stands;
- (f) replacement of more than twenty five per cent (25%) of the total of any individual category of component parts in a building e.g. windows, doors etc which have not deteriorated due to lack of maintenance and which, as a result of inspection, are deemed 'life expired';
- (g) replacement of a roof coverings in a single area of greater than four metres squared (4m<sup>2</sup>) in any one location or greater than eight metres squared (8m<sup>2</sup>) in total (in up to four (4) areas) on any one building;
- (h) replacement of services e.g. mains water, gas etc (pipes or installations) beyond annual legislative testing and certification or where an inspection can be used to demonstrate that the unit / assembly e.g. pipework, pump etc has come to the end of its useful life, is obsolete or the entire installation is no longer compliant with Law as amended from time to time.

- (i) repairs to platform walls and ramps where the area to be treated in the current year exceeds twenty metres squared (20m<sup>2</sup>), or when combined with the repairs undertaken in the previous two (2) years exceeds fifty metres squared (50m<sup>2</sup>) or fifty percent (50%) in which case the current year will be treated as a renewal;
- (j) repairs to platform edgings, including copings and tactile paving strips, where the length to be treated exceeds ten metres (10m) in the current year, or when combined with repairs undertaken in the previous two (2) years exceeds twenty five metres (25m) or fifty percent (50%) of the total platform length in which case the current year will be treated as a renewal;
- (k) works to raise platforms to comply with current standards, including all associated resurfacing and drainage works;
- (l) works to extend platforms;
- (m) like replacement of more than three (3) lighting columns or other lighting installations in a single year, or when combined with replacement works undertaken in the previous two (2) years exceeds Six (6) lighting columns or installations in which case the current year will be treated as a renewal;
- (n) works to enhance or improve the existing lighting provision, including on stations, footpaths and car parks, in order to comply with current standards; and/or
- (o) works to enhance or improve existing signage;

**“Railway Group Standards”** means those standards set by the Rail Safety and Standards Board (RSSB);

**“Railway Method of Measurement”** means RMM 1 Rail Method of Measurement Cost Planning - Industry Consultation Issue - July 2014.

**“Renewals”** means:

- (a) Overhead Line Equipment Renewals;
- (b) Earthworks Renewals;
- (c) Off Track and Drainage Renewals;
- (d) Level Crossing Renewals;
- (e) Structure (including Tunnels) Renewals;
- (f) Telecoms Renewals;
- (g) Power Distribution and Electricity and Power Renewals;
- (h) Property and Buildings (including Stations) Renewals;
- (i) Signalling and Control Systems and Passenger Information Systems Renewals; and
- (j) Track Renewals.

**“Renewals Process”** means the process for identifying, designing and implementing Renewals as set out in Annex 5 (Renewals Process) to Schedule 3A.3;

**“Renewals Services”** means the services and/or works to be carried out by the ODP in the delivery of Renewals including the activities carried out as part of the Renewals Process;

**“Review Dates”** means the following dates (unless otherwise agreed by Parties):

- (a) 1 December 2019;
- (b) 1 April 2020; and
- (c) 1 April of each ODP Year thereafter;

**“Risk Based Management Framework”** means the ODP risk based management framework developed by the ODP in accordance with paragraph 5 of Schedule 3A.3.

**“Schedule of Inspections”** means the ODP's programme for inspection of the CVL Assets as required for the ODP to meet its asset management obligations under this Schedule 3A;

**“Schedule of Rates”** means the ODP's rates for the carrying out certain works and services as set out in Annex 3 Part D (Schedule of Rates) of Schedule 3A.3;

**“Safety Plan”** means the ODP's safety plan developed in accordance with paragraph 1.6 of Schedule 3A.3;

**“Signalling”** means those CVL Assets which meet the definition of Signalling assets in Network Rail's Standards;

**“Signalling and Control Systems and Passenger Information Systems Maintenance”** means the carrying out of all maintenance activities for any signalling and control systems and passenger information systems which constitute CVL Assets including all life extension works to existing signalling and control system CVL Asset that continue to be used after CVL Transformation completion will be treated as maintenance except for Signalling and Control Systems and Passenger Information Systems Renewals;

**“Signalling and Control Systems and Passenger Information Systems Renewals”** means:

- (a) where the Signal Works Testing Handbook (SWTH) is required for installation of replacement equipment;
- (b) replacement of point machines that are not capable of being overhauled or where competitively-obtained price for overhaul exceeds the price of provision of new or re-furbished item;
- (c) replacement of Level Crossing equipment that is not capable of being overhauled or where competitively-obtained price for overhaul exceeds the price of provision of new or re-furbished item;
- (d) replacement of software which is no longer capable of being supported or updated because the System Integrator or OEM or its successors has withdrawn or ceased support and support is not obtainable from third parties;
- (e) replacement of hardware required as a consequence of circumstances envisaged above;
- (f) where an inspection can be used to demonstrate that an individual component, (for example, a relay):
  - (i) has come to the end of its useful life, and is either:
    - (A) obsolete, no spares are held or can be obtained and the entire assembly is rendered unserviceable; or

- (B) no longer compliant with legislation as amended from time to time and the entire assembly is rendered unserviceable; and
- (ii) the cost of replacement of the entire assembly exceeds [REDACTED] (at 2017 Q3 prices);
- (g) where an inspection can be used to demonstrate that the unit / assembly (for example, a relay):
  - (i) has come to the end of its useful life, and is either:
    - (A) obsolete, no spares are held or can be obtained; or
    - (B) no longer compliant with Law as amended from time to time; and/or
- (h) the cost of replacement of the entire assembly exceeds [REDACTED] (at 2017 Q3 prices);

**“Standards and Derogations Management Process”** has the meaning given to it in paragraph 6.2 of Schedule 3A.3;

**“Steady State Asset System”** has the meaning given to it in paragraph 16.2 of Schedule 3A.3;

**“Steady State Stage”** means the period commencing at the completion of the Transformation Stage and ending at the Expiry Date;

**“Structures (including Tunnels) Maintenance”** means the carrying out of all maintenance activities for any structures (including tunnels) which constitute CVL Assets except for Structures (including Tunnels) Renewals;

**“Structures (including Tunnels) Renewals”** means:

- (a) other than works associated with the CVL Transformation, activities which require permanent works design, including whole or partial reconstruction and/or permanent stabilisation, or which are considered to be works to strengthen or upgrade the capability of a structure;
- (b) complete replacement of a structure or partial replacement or repair of the major elements of a structure such as abutments, arch, deck, other main structural element (e.g. girders) or wingwall, and where significant demolition and reconstruction or replacement are required;
- (c) replacement of;
  - (i) expansion joints;
  - (ii) bearings;
  - (iii) waterproofing systems, and
  - (iv) other components where the interventions require similar disruptive access to the structure to those noted in limbs (c)(i) to (c)(iii) above;
- (d) repointing and patch repairs to brick, masonry or concrete surfaces where the area to be treated in the current year:
  - (i) exceeds an area of twenty metres squared (20m<sup>2</sup>); or

- (ii) when combined with the repairs undertaken in the previous two (2) years exceeds fifty metres squared (50m<sup>2</sup>) or fifty per cent (50%) in which case the current year will be treated as a renewal;
- (e) works to provide additional tunnel lining where none has previously existed;
- (f) steelwork repairs in either:
  - (i) a single area greater than five metres squared (5m<sup>2</sup>) in any one location or greater than ten metres squared (10m<sup>2</sup>) in no more than two (2) separate areas; or
  - (ii) a single component patch repair or replacement exceeding a five (5) linear metre length and where no more than two (2) such component parts are affected in any single year;
- (g) preparation and painting of a structure where the area requiring is assessed to be the greater of either:
  - (i) a single area of twenty metres squared (20m<sup>2</sup>) or more; or
  - (ii) twenty per cent (20%) of the total area of the structure, provided that the programming of work on a single structure in a single year or over subsequent years cannot be regarded as a means of simply adjusting the definitions and balance between maintenance and renewals; and/or
- (h) replacement of an area greater than two metres squared (2m<sup>2</sup>) of footbridge decking or greater than ten (10) per cent of stair treads in any single year, and where such works are required to the same structure in more than two (2) years.

**“Telecoms”** means those CVL Assets which meet the definition of Telecoms assets in Network Rail's Standards;

**“Telecoms Maintenance”** means the carrying out of all maintenance activities for any Telecoms which constitute CVL Assets except for Telecoms Renewals;

**“Telecoms Renewals”** means:

- (a) renewals needed to address obsolescence issues that arise during Steady State Stage for new assets installed as part of the Transformation Stage provided that such obsolescence could not have been reasonably predicted and designed out of the transformation solution at the Transformation Stage; and/or
- (b) renewals needed to replace existing assets during the Steady State Stage as result of expected decline in condition provided that such decline could not have been reasonably predicted and designed out of the CVL Transformation solution at the Preliminary Design and Discovery Phase;

**“Track”** means those CVL Assets which meet the definition of Track in Network Rail's Standards;

**“Track Maintenance”** means the carrying out of all maintenance activities for any track assets which constitute CVL Assets except for Track Renewals:

**“Track Renewals”** means:

- (a) replacement of a complete turnout, comprising left and right half set of switches and the crossing;
- (b) replacement of more than one (1) in three (3) sleepers / bearers within a switch;

- (c) excavation and replacement of ballast below sleeper level under a switch for which there is no practical alternative to lifting the switch out of the track bed and then lifting it back in after ballast replacement - replacement of ballast below sleepers at the stock front, for example, is not expected to compromise a Track Renewal;
- (d) plain line rail replacement equal to or greater than two hundred and seventeen metres (217m) on one or two rails at the same location;
- (e) sleeper replacement in excess of one (1) in three (3) over any thirty metre (30m) length and only in the lengths in which the one (1) in three (3) replacement is exceeded;
- (f) ballast excavation and subsequent replacement over seven (7) or more consecutive wet/contaminated beds, providing the exceedance of seven (7) or more consecutive wet/contaminated beds is not as a result of failure to follow the programme of bed replacement set out in the Asset Management Plan;
- (g) complete replacement of any full set of adjustment or expansion switches;
- (h) complete replacement of foot crossings and Level Crossings; and/or
- (i) complete replacement of buffer stop;

**“Transformation Stage”** means the period commencing at the completion of the Pre CVL Asset Transfer Phase and ending on 31 March 2024;

**“Unplanned Renewal”** has the meaning given to in paragraph 17 of Schedule 3A.3;

**“Urgent Renewals”** means any Renewals required to be carried out urgently for safety following an Excluded Risk which have not been programmed or planned as part of the Renewals Process or in the current Asset Management Plan in respect of the IM Year in which the Urgent Renewal is required;

**“Urgent Renewal Notice”** has the meaning given to it in paragraph 15.7 of Schedule 3A.3;

**“Wind Speed Operational Response Protocol”** means the protocol to be developed by the ODP in accordance with paragraph 14.2 of Schedule 3A.3;

**“Weather and Season Related Intervention Services (Excluding Extreme Weather Events)”** means all preparatory and reactive activities necessary to manage and mitigate all potential impacts of weather and seasonal effects (with the exception of Extreme Weather Events) on the day to day operations of the CVL, such effects include but are not limited to:

- a) snow, ice and extreme cold;
- b) extreme heat;
- c) flooding;
- d) high wind; and
- e) leaf fall.