

**TENTH SUPPLEMENTAL AGREEMENT**

**between**

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

**TRANSPORT FOR WALES RAIL LTD**

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

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## THIS TENTH SUPPLEMENTAL AGREEMENT

is dated 29<sup>th</sup> May 2024 and made between

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

### Whereas:

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

**IT IS HEREBY AGREED** as follows:

## 1 INTERPRETATION

- 1.1 In this Supplemental Agreement:
  - a) Words and expressions defined in and rules of interpretation set out in the Contract shall have the same meaning and effect when used in this Supplemental Agreement except where the context requires otherwise; and
  - b) "**Effective Date**" shall mean 1<sup>st</sup> April 2024

## 2 EFFECTIVE DATE AND DURATION

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

### 3 AMENDMENTS TO THE CONTRACT

- 3.1 In the main body of the contract at paragraph 16.1.3 (Content of invoices and other statements of amounts payable) insert the following after “and check it”:

“and, where required by either party, include a purchase order number”

- 3.2 In Schedule 4 1A (Single star model) delete the explanatory note and replace with the new explanatory note below:

***Explanatory Note***

- A. *Where there is a Network Rail TAC (Passenger Services), matters concerning variations to services for the CVL will be administered by Network Rail through (and as part of) Schedule 4 of the Network Rail TAC (Passenger Services).*
- B. *This explanatory note does not form part of this contract.*

- 3.3 In Schedule 4 1A (Single star model) delete paragraph (b) and replace with the following:

“(b) The Train Operator acknowledges and agrees that, if it elects to opt out of the Schedule 4 provisions relating to the CVL Network under the Network Rail TAC, from the effective date of such opt out it will not be entitled to any compensation that would otherwise be due to it for CVL variations to services under this contract and the Network Rail TAC (Passenger Services) contract. The Train Operator further acknowledges and agrees that to be entitled to receive such compensation in the future it must opt back into Schedule 4 compensation for the CVL Network under the provisions of the Network Rail TAC (Passenger Services), and this change must be formalised in a further supplemental agreement to this contract.”

- 3.4 In Schedule 4 1A (Single star model) insert a new paragraph (c) as shown below:

“(c) Without prejudice to paragraph (b) above, the provisions of Schedule 4 of the Network Rail TAC (Passenger Services) will apply insofar as such provisions relate to the CVL in place of the provisions of this Schedule 4 which are disapplied by paragraph 1A(a) above, such that:

- (i) Network Rail will pay or procure the payment of all amounts in accordance with Schedule 4 of the Network Rail TAC (Passenger Services) and all amounts due shall be payable between the Train Operator and Network Rail pursuant to the Network Rail TAC (Passenger Services);
- (ii) no invoice and/or credit note issued by Network Rail under the Network Rail TAC (Passenger Services) shall be considered to be

an invoice and/or credit note issued under this contract;

- (iii) no payments due or rights of set-off under Schedule 4 of the Network Rail TAC (Passenger Services) shall be considered to be amounts payable or to be set off under this contract;
- (iv) any dispute that arises (including in respect of a failure to pay) pursuant to the terms of Schedule 4 of the Network Rail TAC (Passenger Services) shall be a dispute under the terms of the Network Rail TAC (Passenger Services) although the CVL IM can participate in disputes and the Train Operator shall not object to the CVL IM participating in such dispute including any negotiations;
- (v) any failure by the Train Operator to make undisputed payments to Network Rail payable in respect of the CVL pursuant to Schedule 4 of the Network Rail TAC (Passenger Services) shall be a breach of this contract; and
- (vi) where the Network Rail TAC (Passenger Services):
  - (A) does apply pursuant to this paragraph 1A of Schedule 4, any reference to Schedule 4 in this contract (save for this paragraph 1A and any references to this paragraph 1A in this contract) shall be construed, mutatis mutandis, as a reference to Schedule 4 of the Network Rail TAC (Passenger Services); and
  - (B) does not apply pursuant to paragraph 1A of Schedule 4, any reference to Schedule 4 in this contract shall be construed as references to Parts one to five of this Schedule 4."

3.5 Before paragraph 1 (Definitions) of Part 3 of Schedule 4 insert new paragraph A1 as follows:

**"A1. Change in Effect of Schedule 4**

A1.1 The Train Operator may serve a notice, in the form set out in Appendix 4A, informing the CVL IM that this Schedule 4 shall have no effect, save for this paragraph A1 and paragraph 1.1 of Part 3 (and any further paragraphs of Part 3 necessary to give effect to paragraph 1.1 of Part 3) (an "Opt-out Notice"). This Opt-out Notice may only be served in the event of:

- (a) the commencement of services pursuant to the award of a franchise agreement following re-tendering of the Services;
- (b) the commencement of services pursuant to a direct award of the Services by a franchising authority;
- (c) the commencement of services following a change in identity of an operator of a franchise agreement that is not as a result of paragraph A1.1(a) and which results in a significant change in the Services;
- (d) the commencement of services following a change of franchising authority;

Or

(e) Not used”,

each being a “Trigger Event”.

- A1.2 The Train Operator must serve an Opt-out Notice given pursuant to paragraph A1.1 on the CVL IM no later than two months after the date of the relevant Trigger Event. Promptly following the service of the notice the parties shall endeavour to agree the required amendment. As soon as reasonably practicable after the parties have agreed the required amendment pursuant to the Opt-out Notice, they shall use all reasonable endeavours to ensure that ORR is furnished with such amendment and sufficient information and evidence as it shall require to determine whether or not to approve the amendment. Any amendment pursuant to the Opt-out Notice shall apply only where ORR approval is granted under section 22 of the Act and with retrospective effect from the date of the Trigger Event.
- A1.3 Where an Opt-out Notice has been served and taken effect, the Train Operator may serve a subsequent notice, in the form set out in Appendix 4B, informing The CVL IM that the whole of this Schedule 4 shall have effect (an “Opt-in Notice”). This Opt-in Notice may only be served on the occurrence of a further Trigger Event.
- A1.4 The Train Operator must serve an Opt-in Notice given pursuant to paragraph A1.3 on the CVL IM no later than two months after the date of the relevant Trigger Event. Promptly following the service of the notice the parties shall endeavour to agree the required amendment. As soon as reasonably practicable after the parties have agreed the required amendment pursuant to the Opt-in Notice, they shall use all reasonable endeavours to ensure that ORR is furnished with such amendment and sufficient information and evidence as it shall require to determine whether or not to approve the amendment. Any amendment pursuant to the Opt-in Notice shall apply only where ORR approval is granted under section 22 of the Act and with retrospective effect from the date of the Trigger Event.”
- 3.6 In Schedule 4 part 3 (Definitions) delete ““Initial Indexation Factor” shall have the meaning ascribed to it in Schedule 7;”
- 3.7 In Schedule 4 part 3 (Definitions) delete ““SPD Cost Threshold No.1” means £684,447 in 2017-2018 prices;” and replace with the following:  
““SPD Cost Threshold No.1” means £[To be determined];”
- 3.8 In Schedule 4 part 3 (Definitions) delete ““SPD Cost Threshold No.2” means £1,368,893 in 2017-2018 prices;” and replace with the following:  
““SPD Cost Threshold No.2” means £[To be determined];”
- 3.9 In Schedule 4 Part 3 delete Paragraph 2.11 (b) (Early notice of RoU Losses) and replace with the following:  
“Following any agreement or determination that such RoU Losses are likely to arise in connection with one or more future Restrictions of Use or that mitigating actions should be contemplated, the parties shall where reasonably practicable engage in discussions on any options for mitigating costs, revenue loss and/or disruption. This may include any advance compensation for such Restriction(s) of Use to the extent such advance compensation would

or would reasonably be expected to facilitate the mitigation of the contemplated disruption.”

- 3.10 In Schedule 4 Part 3 Paragraph 4.2 (b) delete “EBMPR is the payment rate per EBM, which is £10.73 in 2017-2018 prices” and replace with the following:

“EBMPR is the payment rate per EBM, which is £[To be determined].”

- 3.11 In Schedule 4 Part 3 delete Paragraph 10 (Dispute Resolution) and replace with the following:

“10.1 If the Train Operator and the CVL IM fail to reach agreement as required under paragraph 2.6(c), 2.7(c), 2.10(g), 2.11, 6, 7 or 8, or fail to reach agreement on the amount of costs notified under paragraph 2.9(c):

(a) within 6 months, or such other period as the parties may agree, of the issue of the relevant notice (as set out in paragraph 2.6(b), 2.7(b), 2.9(c), 2.10(d), 6.1(a) or 7.1(a) or once discussions or negotiations have commenced (as required under 2.11 and 8.1(a)) (as applicable), the parties shall meet to discuss outstanding aspects of the claim, which may include but is not limited to the provision of information or points in dispute;

(b) if no later than 28 days after the date of the meeting referred to in paragraph 10.1(a), the claim is not resolved or withdrawn:

(i) the parties shall agree a timetable for a subsequent meeting; or

(ii) either party may refer the matter for resolution in accordance with the CVL ADRR.

10.2 Notwithstanding 10.1, either party may refer the matter for resolution in accordance with the CVL ADRR at any time following the issue of the relevant notice(s) in accordance with paragraph 2.6(b), 2.7(b), 2.9(c), 2.10(d), 6.1(a) or 7.1(a) and/or once the discussions or negotiations have commenced in accordance with paragraph 2.11 or 8.1(a).”

- 3.12 In Schedule 4 Part 3 Paragraph 13.2 (Disputes) delete the words “10 days” and replace with “15 days”.

- 3.13 In Schedule 4 Part 3 delete Paragraph 14.2 and 14.3 (Indexation) and replace with the following:

“14.2 Each of the EBMPR and TMPR (respectively defined in paragraph 4.2) and Defined Service Group Revenues shall be adjusted in respect of Periods in Relevant Year t in accordance with the formula set out in paragraph 14.1 except that in relation to the Relevant Year commencing on 1 April 2024, Rt-1 shall have the value specified in:

- a) paragraph 4.2 in respect of the EBMPR;
- b) in Annex C to this Part 3 of Schedule 4 in respect of TMPR;
- c) in Annex D to this Part 3 of Schedule 4 in respect of the Defined Service Group Revenues.

14.3 Each of the SPD Cost Threshold No.1 and SPD Cost Threshold No.2 shall be adjusted in respect of Periods in Relevant Year t in accordance with the formula set out in paragraph 14.1 except that in relation to the Relevant Year commencing on 1 April 2024, Rt-1 shall have the

relevant value specified in the definition of "SPD Cost Threshold No.1", ; or "SPD Cost Threshold No. 2"; as appropriate, set out in paragraph 1.1 of this Schedule 4 ."

**3.14** In In Schedule 4 Part 3 delete Annex A (Notification Factors) and replace with the following:

**“Annex A to Part 3 of Schedule 4  
Notification Factors**

|                                  | <b>A</b>                  | <b>B</b>    | <b>C</b>           | <b>D</b>           | <b>E</b>            |
|----------------------------------|---------------------------|-------------|--------------------|--------------------|---------------------|
| <b>Service Group Description</b> | <b>Service Group Code</b> | <b>Type</b> | <b>By D-26</b>     | <b>By TW- 22</b>   | <b>After TW- 22</b> |
| Cardiff Valleys                  | HL05                      | Off-Peak    | [To be determined] | [To be determined] | [To be determined]  |
| Cardiff Valleys                  | HL05                      | Peak        | [To be determined] | [To be determined] | [To be determined]" |

- 3.15 In In Schedule 4 Part 3 delete Annex C (Payment Rate per train mile) and replace with the following:

**“Annex C to Part 3 of Schedule 4  
Payment Rate per train mile**

| <b>Service Group</b> | <b>Description</b>         | <b>Compensation Rate</b> | <b>Total Train Cost per Mile (Pence)</b> |
|----------------------|----------------------------|--------------------------|--|
| HL05                 | Cardiff Valleys (Off Peak) | Other                    | [To be determined]                       |
| HL05                 | Cardiff Valleys (Peak)     | Other                    | [To be determined]”                      |

- 3.16 In In Schedule 4 Part 3 delete Annex D (Defined Service Group Revenue) and replace with the following:

**“Annex D to Part 3 of Schedule 4  
Defined Service Group Revenue**

| <b>Service Group</b> | <b>Description</b> | <b>Defined Service Group Revenue (£)</b> |
|----------------------|--------------------|--|
| HL05 Off-Peak        | Cardiff Valleys    | [To be determined]                       |
| HL05 Peak            | Cardiff Valleys    | [To be determined]”                      |

- 3.17 In Schedule 4, delete Part 5 (Access Charge Supplement for Restrictions of Use) and replace with the new Part 5 shown in Annex 1 of this agreement.
- 3.18 In Schedule 4 after Part 5 insert a new Appendix 4A “OPT-OUT NOTICE” and Appendix 4B “OPT-IN NOTICE” as shown in Annex 2 of this agreement.
- 3.19 In Schedule 7 Section 2 (Model A) (Track Charges and Other Payments) (Interpretation) delete the definition of **"Initial Indexation Factor"**
- 3.20 In Schedule 7 Section 2 (Model A) (Track Charges and Other Payments) (Interpretation) delete the definition of **"Track Usage Price List"** and replace with the new definition shown below:
- “ **"Track Usage Price List"** means the document entitled "Track Usage Price List" published by Network Rail on or about 20 December 2023 (which, for the purposes of this contract, shall be deemed to incorporate any supplements to that document consented to or determined pursuant to paragraph 9.10 of Part 2 of Schedule 7 to this contract) or such other track usage price list published by the CVL IM from time to time, which shall take priority over the Track Usage Price list published by Network Rail;”
- 3.21 In Schedule 7 Section 2 (Model A) (Track Charges and Other Payments) (Interpretation)



delete the definition of "**VUC Default Period**" and replace with the new definition shown below:

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

- (a) the date on which the New Specified Equipment is first used on the CVL by the Train Operator; or
- (b) twelve months prior to the date on which ORR consents to or determines a supplement to the Track Usage Price List under paragraph 9.10 of Part 2 in respect of that New Specified Equipment; or
- (c) 1 April 2024,

until the date on which ORR consents to or determines a supplement to the Track Usage Price List under paragraph 9.2 of Part 2 in respect of that New Specified Equipment; and"

3.22 In Schedule 7 Section 2 (Model A) (Track Charges and Other Payments) (Part 2 Track Charges) delete paragraph 3.1 (Variable Usage Charge) and replace with the following:

"3.1 Variable Usage Charge

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

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

where:

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

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

where:

$CPI_{t-1}$  means the CPI published or determined with respect to the month of November in Relevant Year  $t-1$ ; and

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

but so that in relation to the Relevant Year commencing on 1 April 2024,  $V_{it}$  shall have, in respect of vehicle type  $i$ , the corresponding variable usage charge rate per Vehicle Mile for that vehicle type  $i$  set out in the Track Usage Price List,;

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

$\sum$  means the summation across all relevant categories of vehicle types  $i$ ."

- 3.23 In Schedule 7 Section 2 (Model A) (Track Charges and Other Payments) (Part 2 Track Charges) delete paragraph 3.3 (VUC Default Charge) and replace with the following:

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

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

where:

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

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

where:

$CPI_{t-1}$  and  $CPI_{t-2}$  have the meanings set out in paragraph 3.1 of this Part 2, but so that in relation to the Relevant Year commencing on 1 April 2024,  $D_{nt}$  shall have, in respect of New Specified Equipment, the corresponding VUC Default Rate for that New Specified Equipment;

$UD_{nt}$  means the actual volume of usage of New Specified Equipment in Vehicle Miles during the VUC Default Period in Relevant Year  $t$  operated by or on behalf of the Train Operator; and  $\sum$  means the summation across all relevant New Specified Equipment.”

- 3.24 In Schedule 7 Section 2 (Model A) (Track Charges and Other Payments) (Part 2 Track Charges) delete paragraph 8.1 (Electrification Asset Usage Charge) and replace with the following:

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

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

where:

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

$EV_{tk}$  means an amount in respect of the Electrification Asset Usage Charge per electrified Vehicle Mile on route type  $k$  for Relevant Year  $t$ , expressed in pence per

electrified Vehicle Mile and rounded to two decimal places, which is derived from the following formula:

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

where:

$CPI_{t-1}$  has the meaning set out in paragraph 2.2 above; and

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

but so that in relation to the Relevant Year commencing on 1 April 2024,  $EV_{t-1k}$  shall have, in respect of each electrified Vehicle Mile on route type k, the value per electrified Vehicle Mile for the Electrification Asset Usage Charge set out in the Track Usage Price List; and

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

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

- 3.25 In Schedule 7 Section 2 (Model A) (Bilateral supplements to the Track Usage Price List) delete paragraph 9.4 and replace with the following:

"9.4 Either the Train Operator or the CVL IM shall be entitled to propose that the Track Usage Price List be supplemented as necessary to include a new vehicle type and corresponding rate."

- 3.26 In Schedule 7 Section 2 (Model A) (Bilateral supplements to the Track Usage Price List) delete paragraph 9.5 and replace with the following:

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

- 3.27 In Schedule 7 Section 2 (Model A) (Track Charges and Other Payments) (Part 2 Track Charges) delete paragraph 9.12 (Bilateral supplements to the Track Usage Price List) and replace with the following:

"The supplement shall have retrospective effect from the first day of the VUC Default Period.";

- 3.28 In Schedule 7 Section 2 (Model A) (Track Charges and Other Payments) (Part 2 Track Charges) delete paragraph 9.13 (Bilateral supplements to the Track Usage Price List) and replace with the following:

"9.13 Following ORR's consent or determination under paragraph 9.10 the CVL IM shall:

(a) apply the supplement from the date in accordance with paragraph 9.12 above;  
and

(b) within 28 days of the date of ORR's consent or determination:

(i) issue any adjusting invoice or credit note to the Train Operator, which will reflect the difference between the amount paid by the Train Operator for the VUC Default Charge during the VUC Default Period and the amount that it would have paid during the VUC Default Period in respect of the Variable Usage Charge had the supplement been in place at the time the Train Operator first used the relevant railway vehicle on the Network; and

(ii) publish on its website details of the supplement alongside the details of any other such supplements to which ORR has consented or determined pursuant to this or any other track access contract to which the CVL IM is a party."

3.29 In Schedule 7 Section 3 (Model B) (Track Charges and Other Payments) Part 1 (Interpretation) delete the definition of **"Initial Indexation Factor"**

3.30 In Schedule 7 Section 3 (Model B) (Track Charges and Other Payments) Part 1 (Interpretation) delete the definition of **"New Modelled Train"** and replace with the following definition:

**"New Modelled Train"** means a type of train for which  $E_{\text{tno}}$  is to be calculated for the purposes of paragraph 4.1.1 of Part 2 but in relation to which no train category i, and no modelled consumption rate, is shown in the Passenger Traction Electricity Modelled Consumption Rates for CP7 table in the Traction Electricity Modelled Consumption Rates List;

3.31 In Schedule 7 Section 3 (Model B) (Track Charges and Other Payments) Part 1 (Interpretation) delete the definition of **"Timetabled train miles"**

3.32 In Schedule 7 Section 3 (Model B) (Track Charges and Other Payments) Part 1 (Interpretation) delete the definition of **"Track Usage Price List"** and replace with the new definition shown below:

**"Track Usage Price List"** means the document entitled "Track Usage Price List" published by Network Rail on or about 20 December 2023 (which, for the purposes of this contract, shall be deemed to incorporate any supplements to that document consented to or determined pursuant to paragraph 9.10 of Part 2 of Schedule 7 to this contract) or such other track usage price list published by the CVL IM from time to time, which shall take priority over the Track Usage Price list published by Network Rail;"

3.33 In Schedule 7 Section 3 (Model B) (Track Charges and Other Payments) Part 1 (Interpretation) delete the definition of **"Traction Electricity Modelled Consumption Rates List"** and replace with the following:

**"Traction Electricity Modelled Consumption Rates List"** means the document entitled "Traction Electricity Modelled Consumption Rates List" published by the CVL IM the CVL IM Network Rail on or about 20th December 2023 and specifying freight and passenger traction electricity modelled consumption rates which, for the purposes of this contract, shall be deemed to incorporate:

(a) any supplements to that document consented to or determined pursuant to paragraph 9.3A of Part 2 of Schedule 7 of this contract;

(b) any supplements to the document entitled "Traction Electricity Modelled Consumption Rates List" published by Network Rail on or about 20 December 2018 which ORR consents to or determines after 20 December 2023."

3.34 In Schedule 7 Section 3 (Model B) (Track Charges and Other Payments) Part 1 (Interpretation) amend the definition of **"Traction Electricity Modelled Default Rate"** by deleting "CP6" and replacing this with "CP7".

3.35 In Schedule 7 Section 3 (Model B) (Track Charges and Other Payments) Part 1 (Interpretation) delete the definition of **"Traction Electricity Modelled Default Rate Period"** and replace with the new definition shown below:

**"Traction Electricity Modelled Default Rate Period"** means the period from the date on which the New Modelled Train is first used on the CVL by the Train Operator until the date on which the train in question has been added to Appendix 7D of this Schedule;

3.36 In Schedule 7 Section 3 (Model B) (Track Charges and Other Payments) Part 1 (Interpretation) delete the definition of **"train category i"** and replace with the new definition shown below:

**"train category i"** means train category i as identified in the relevant section of the Traction Electricity Modelled Consumption Rates List where there is a modelled consumption rate for a particular passenger vehicle type operating on a particular Train Service Code, the relevant category set out in the table entitled "Passenger Traction Electricity Modelled Consumption Rates" for CP7";

3.37 In Schedule 7 Section 3 (Model B) (Track Charges and Other Payments) Part 1 (Interpretation) delete the definition of **"VUC Default Period"** and replace with the new definition shown below:

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

a) the date on which the New Specified Equipment is first used on the CVL by the Train Operator;

or

b) 1 April 2024.

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

3.38 In Schedule 7 Section 3 (Model B) (Track Charges and Other Payments) Part 2 (Track Charges) paragraph 3.1 (Variable Usage Charge) delete paragraph 3.1 and replace with the following:

**"3.1 Variable Usage Charge"**

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

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

where:

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

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

where:

$CPI_{t-1}$  means the CPI published or determined with respect to the month of November in Relevant Year  $t-1$ ; and

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

but so that in relation to the Relevant Year commencing on 1 April 2024  $V_{it}$  shall have, in respect of vehicle type  $i$ , the corresponding variable usage charge rate per Vehicle Mile for that vehicle type  $i$  set out in the Track Usage Price List;

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

$\sum$  means the summation across all relevant categories of vehicle types  $i$ ."

- 3.39 In Schedule 7 Section 3 (Model B) (Track Charges and Other Payments) Part 2 (Track Charges) paragraph 3.3 (VUC Default Charge) delete paragraph 3.3 and replace with the following:

**"3.3 VUC Default Charge**

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

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

where:

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

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

where:

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

but so that in relation to the Relevant Year commencing on 1 April 2024,  $D_{nt}$  shall have, in respect of New Specified Equipment, the corresponding VUC Default Rate for that New Specified Equipment;

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

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

- 3.40 In Schedule 7 Section 3 (Model B) (Track Charges and Other Payments) Part 2 (Track Charges) paragraph 8 (Electrification Asset Usage Charge) delete paragraph 8 and replace with the following:

**“8. Electrification Asset Usage Charge**

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

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

where:

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

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

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

where:

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

but so that in relation to the Relevant Year commencing on 1 April 2024,  $EV_{tk}$  shall have, in respect of each electrified Vehicle Mile on route type  $k$ , the value per electrified Vehicle Mile for the Electrification Asset Usage Charge set out in the Track Usage Price List; and

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

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

- 3.41 In Schedule 7 Section 3 (Model B) (Track Charges and Other Payments) Part 2 (Track Charges) paragraph 9 (Bilateral supplements to the Traction Electricity Modelled Consumption Rates List and the Track Usage Price List) delete “**the Traction Electricity Modelled**

**Consumption Rates List and ” from the title.**

- 3.42 In Schedule 7 Section 3 (Model B) (Track Charges and Other Payments) Part 2 (Track Charges) paragraph 9.4 (Bilateral supplements to the Track Usage Price List) delete Paragraph 9.4 and replace with the following:
- “9.4 Either the Train Operator or the CVL IM shall be entitled to propose that the Track Usage Price List be supplemented as necessary to include a new vehicle type and corresponding rate.”
- 3.43 In Schedule 7 Section 3 (Model B) (Track Charges and Other Payments) Part 2 (Track Charges) paragraph 9.5 (Bilateral supplements to the Traction Electricity Modelled Consumption Rates List and the Track Usage Price List) delete “to the list in question” in Paragraph 9.5.
- 3.44 In Schedule 7 Section 3 (Model B) (Track Charges and Other Payments) (Part 2 Track Charges) delete paragraph 9.12 (Bilateral supplements to the Track Usage Price List) and replace with the following:
- “The supplement shall have retrospective effect from the first day of the VUC Default Period.”;
- 3.45 In Schedule 7 Section 3 (Model B) (Track Charges and Other Payments) Part 2 (Track Charges) paragraph 9.13 (Bilateral supplements to the Traction Electricity Modelled Consumption Rates List and the Track Usage Price List) delete Paragraph 9.13 and replace with the following:
- “9.13 Following ORR’s consent or determination under paragraph 9.10 the CVL IM shall:
- (a) apply the supplement from the date in accordance with paragraph 9.12 above; and
  - (b) within 28 days of the date of ORR’s consent or determination:
    - (i) issue any adjusting invoice or credit note to the Train Operator, which will reflect the difference between the amount paid by the Train Operator for the VUC Default Charge during the VUC Default Period and the amount that it would have paid during the VUC Default Period in respect of the Variable Usage Charge had the supplement been in place at the time the Train Operator first used the relevant railway vehicle on the Network; and
    - (ii) publish on its website details of the supplement alongside the details of any other such supplements to which ORR has consented or determined pursuant to this or any other track access contract to which the CVL IM is a party.”
- 3.46 In Schedule 7 Section 3 (Model B) (Track Charges and Other Payments) Part 2 (Track Charges) paragraph 9.14 (Bilateral supplements to the Traction Electricity Modelled Consumption Rates List and the Track Usage Price List) delete “the Traction Electricity Modelled Consumption Rates List or” in Paragraph 9.14.
- 3.47 In Schedule 8 (Performance Regime) (Interpretation) paragraph 1.1 (Definitions) delete the definition of **“Initial Indexation Factor”**.
- 3.48 In Schedule 8 (Performance Regime) (CVL IM Performance Sums), paragraph 9 delete paragraph 9.1 and replace with the following:



“9.1 In respect of a Service Group, the CVL IM Performance Sum (IMPS) for each Period shall be calculated according to the following formula:

$$IMPS = (IMPP - IMWAML) \bullet BF \bullet IMPR$$

where:

IMPP is the CVL IM Performance Point for that Service Group specified in column B of Appendix 1 for the year in which that Period falls;

IMWAML is the aggregate for all Monitoring Points in the Service Group of the weighted average minutes late allocated to the CVL IM in accordance with the following formula:

$$IMWAML = \sum \frac{(MLIM \bullet MPW)}{SP}$$

where:

$\sum$  is the sum across all Monitoring Points in the Service Group;

MLIM is the Minutes Late allocated to the CVL IM in respect of each Monitoring Point in that Period, in accordance with paragraph 7;

MPW is the weighting attributable to that Monitoring Point, as specified in column K of Appendix 1; and

SP is the aggregate number of stops to set down passengers at that Monitoring Point scheduled for the Period in the Applicable Timetable for which a stop or Cancelled Stop is recorded in accordance with paragraphs 4.1(a) and (b) except that if SP=0 for any Monitoring Point, then for that Monitoring Point it shall be deemed that  $\frac{(MLIM \bullet MPW)}{SP}$  shall equal zero;

BF is the relevant busyness factor estimated for the Period according to the following formula:

$$BF = \sum \left( MPW \bullet \frac{SD}{AS} \right)$$

where:

$\sum$  is the sum across all Monitoring Points in the Service Group;

MPW is the weighting attributable to that Monitoring Point, as specified in column K of Appendix 1;

SD is the aggregate number of stops to set down passengers at that Monitoring Point scheduled in the Applicable Timetable for that Period for that Service Group; and

AS is the average number of stops per day at the Monitoring Point scheduled in the Bi-annual Timetable in respect of that Period except that if AS=0 for any Monitoring Point it shall be deemed that  $\frac{(MPW \bullet SD)}{AS}$  shall equal zero; and

IMPR is the relevant CVL IM payment rate for that Service Group specified in column C of Appendix 1 as indexed in accordance with paragraph 13,

provided that:

- (i) if a Capped Value is specified in respect of that Service Group in Appendix 1 and the value of IMPS in respect of any Period is determined in accordance with the formula set out in this paragraph to be greater than the Capped Value in respect of such Period, then

the value of IMPS shall be deemed to be equal to the Capped Value in respect of such Period;

- (ii) the Capped Value shall be multiplied by the CV indexation figure for the Relevant Year;
- (iii) the CV indexation figure in Relevant Year t shall be derived from the following formula:

$$CV_t = \left(1 + \frac{(CPI_{t-1} - CPI_{2022})}{CPI_{2022}}\right)$$

where:

CV<sub>t</sub> means the CV indexation in Relevant Year t;

CPI<sub>t-1</sub> means the CPI published or determined with respect to the month of November in Relevant Year t-1; and

CPI<sub>2022</sub> means the CPI published or determined with respect to the month of November 2022."

- 3.49 In Schedule 8 (Performance Regime), paragraph 13 (Payment rates) delete paragraph 13.1 and replace with the following:

"Each payment rate in columns C and E of Appendix 1, expressed in pounds sterling and rounded to two decimal places, shall be adjusted in respect of Periods in Relevant Year t in accordance with the following formula:

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

where:

R<sub>t</sub> is the relevant rate in the Relevant Year t;

R<sub>t-1</sub> is the relevant rate in the Relevant Year t-1; and

CPI<sub>t-1</sub> has the same meaning as set out in paragraph 9.1 above of this Schedule 8; and

CPI<sub>t-2</sub> means the CPI published or determined with respect to the month of November in Relevant Year t-2,

but so that in relation to the Relevant Year commencing on 1 April 2024, R<sub>t</sub> shall have the relevant value specified in the relevant column (either C or E) of Appendix 1."

- 3.50 In Schedule 8 (Performance Regime), paragraph 15.1 (Notices) delete paragraph 15.2(c) and replace with the following

"(c) not used; and"

- 3.51 In Schedule 8 (Performance Regime), paragraph 17.3 (Procedure for amendments to Appendix 1 delete paragraph 17.3 and replace with the following:

"The CVL IM shall make appropriate amendments to the Performance Monitoring System to reflect the amendments to Appendix 1 by the date when in accordance with paragraph 17.2 such amendments are to take effect, or as soon as reasonably practicable thereafter. Where any such amendment to Appendix 1 or any consequential amendment to the Performance

Monitoring System is not made until after that date, the CVL IM shall, promptly following such amendments being made, issue to the Train Operator a statement showing the necessary adjustments to the statements already issued and the payments already made in respect of Performance Sums up to and including the Period commencing on the date when in accordance with paragraph 17.2 such amendments to Appendix 1 are to take effect. Any such adjusting statement shall be treated as if it were a statement under paragraph 11.1 and, subject to paragraph 12.2, an adjusting payment shall be payable within 35 days of that adjusting statement."

- 3.52 In Schedule 8 (Performance Regime), delete paragraph 19.2 (Application of SPP Indexation) and replace with the following:

"The SPP indexation figure in Relevant Year t shall be derived from the following formula:

$$SPPI_t = \left( 1 + \frac{(CPI_{t-1} - CPI_{2022})}{CPI_{2022}} \right)$$

where:

$SPPI_t$  means the SPP indexation in Relevant Year t;

$CPI_{t-1}$  has the meaning as set out in paragraph 9.1 above of this Schedule 8; and

$CPI_{2022}$  has the meaning as set out in paragraph 9.1 above of this Schedule 8."

- 3.53 In Schedule 8 (Performance Regime) delete Appendix 3 and replace with the Appendix 3 contained in Annex 3.

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

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

#### **5. LAW**

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

#### **6. COUNTERPARTS**

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

#### **7. THIRD PARTY RIGHTS**

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

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

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

)   
)  
)  
) Simon Rhoden  
) Infrastructure Services Director  
) 29 May 2024

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

)   
)  
)  
)  
)

|

## Annex 1

### Part 5

#### (Access Charge Supplement for Restrictions of Use)

1. The Train Operator shall pay or procure the payment to the CVL IM of an Access Charge Supplement for Restrictions of Use (ACSRU) in respect of each Period equal to 1/13 of the amount specified below (as indexed in accordance with paragraph 2) in respect of the Relevant Year commencing 1 April in which the first day of the relevant Period falls:

| Year      | £   |
|-----------|-----|
| 2024-2025 | [●] |
| 2025-2026 | [●] |
| 2026-2027 | [●] |
| 2027-2028 | [●] |
| 2028-2029 | [●] |

Each such payment shall be made within 35 days after the end of the relevant Period.

2. Each such amount specified in paragraph 1 shall be adjusted in respect of payments made relating to Periods in the Relevant Year  $t$  in accordance with the following formula:

$$ACSRU_{pt} = ACSRU_t \cdot \left( 1 + \frac{(CPI_{t-1} - CPI_{2022})}{CPI_{2022}} \right)$$

where:

$ACSRU_{pt}$  is the actual amount, expressed in pounds sterling and rounded to zero decimal places, payable in the Relevant Year  $t$ ;

$ACSRU_t$  is the relevant amount specified in paragraph 1 of this Part 5 for the Relevant Year  $t$  (before indexation);

$CPI_{t-1}$  has the meaning set out in paragraph 14.1 of Part 3 of this Schedule 4; and

$CPI_{2022}$  means the CPI published or determined with respect to the month of November 2022,

but so that in relation to the Relevant Year commencing on 1 April 2024,  $ACSRU_t$  shall have the relevant value specified in the relevant column of the table in paragraph 1.

## **Annex 2**

### **Appendix 4A – OPT-OUT NOTICE**

[Name of train operator representative]

[Position]

Telephone: [xxx]

E-mail: [xxx]

[Date]

[Enter name of person specified in paragraph 1 of Schedule 1 to the contract]

[Enter address specified in paragraph 1 of Schedule 1 to the contract]

Dear [Enter name of person specified in paragraph 1 of Schedule 1 to the contract]

#### **Opt-out from the Schedule 4 Restrictions of Use provisions**

This is an Opt-out Notice in respect of Schedule 4 of the track access contract between Seilwaith Amey Cymru / Amey Infrastructure Wales Limited (AIW) and [Enter train operator name here], dated [insert date of track access contract] (“the contract”).

[Enter train operator name here] hereby exercises its right to opt out of the provisions of Schedule 4, pursuant to paragraph {delete as appropriate [A1.1(a)], [A1.1(b)] or [A1.1(c)]} of Part 3 to Schedule 4 to the contract.

This notice does not apply to paragraphs A1 and 1.1 of Part 3 of Schedule 4, and any further paragraphs of Part 3 necessary to give effect to paragraph 1.1 of Part 3.

I have sent a copy of this notice to the Head of Access and Licensing at the Office of Rail and Road [and any other person at AIW entitled to a copy as set out in paragraph 1 of Schedule 1 to the contract].

Yours faithfully

**[Name of train operator representative]**

## **Appendix 4B – OPT-IN NOTICE**

[Name of train operator representative]

[Position]

Telephone: [xxx]

E-mail: [xxx]

[Date]

[Enter name of person specified in paragraph 1 of Schedule 1 to the contract]

[Enter address specified in paragraph 1 of Schedule 1 to the contract]

Dear [Enter name of person specified in paragraph 1 of Schedule 1 to the contract]

### **Opt-in to the Schedule 4 Restrictions of Use provisions**

This is an Opt-in Notice in respect of Schedule 4 of the track access contract between Seilwaith Amey Cymru / Amey Infrastructure Wales Limited (AIW) and [Enter train operator name here], dated [insert date of track access contract] ("the contract").

[Enter train operator name here] hereby exercises its right to opt in to all of the Schedule 4 provisions, pursuant to paragraph {delete as appropriate [A1.3(a)], [A1.3(b)] or [A1.3(c)]} of Part 3 to Schedule 4 to the contract.

I have sent a copy of this notice to the Head of Access and Licensing at the Office of Rail and Road and to AIW.

Yours faithfully

**[Name of train operator representative]**



**Appendix 3**

## SPP Threshold

|         | <b>Period:</b>        | <b>3</b>              | <b>6</b>              | <b>10</b>             | <b>13</b>             |
|---------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| 2024/25 | <i>[to be agreed]</i> | <i>[to be agreed]</i> | <i>[to be agreed]</i> | <i>[to be agreed]</i> | <i>[to be agreed]</i> |
| 2025/26 | <i>[to be agreed]</i> | <i>[to be agreed]</i> | <i>[to be agreed]</i> | <i>[to be agreed]</i> | <i>[to be agreed]</i> |
| 2026/27 | <i>[to be agreed]</i> | <i>[to be agreed]</i> | <i>[to be agreed]</i> | <i>[to be agreed]</i> | <i>[to be agreed]</i> |
| 2027/28 | <i>[to be agreed]</i> | <i>[to be agreed]</i> | <i>[to be agreed]</i> | <i>[to be agreed]</i> | <i>[to be agreed]</i> |
| 2028/29 | <i>[to be agreed]</i> | <i>[to be agreed]</i> | <i>[to be agreed]</i> | <i>[to be agreed]</i> | <i>[to be agreed]</i> |