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**Transport for Wales**

3 Llys Cadwyn  
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CF37 4TH

**Transport for Wales Rail Limited**

3 Llys Cadwyn  
Pontypridd  
Wales  
CF37 4TH

2023

Dear Sirs,

**RE: Amendments to the OLR Grant Agreement relating to replacement of Schedule 8.1**

**1 BACKGROUND**

1.1 The Welsh Ministers (the "**Authority**") and Transport for Wales Rail Limited ("**TfWRL**") are parties to a grant agreement dated 5 February 2021, as amended by a further deed amending and restating that agreement dated 15 March 2023 (the "**OLR Grant Agreement**"). As acknowledged at clause 22.1 of the OLR Grant Agreement, subject to certain limitations, Transport for Wales ("**TfW**") is authorised to agree variations to the OLR Grant Agreement on behalf of the Authority.

1.2 In accordance with clauses 20 (*Variations in writing*) and 22.1 of the OLR Grant Agreement, TfW and TfWRL wish to enter into this letter signed by their duly authorised representatives in order to amend the OLR Grant Agreement in accordance with the provisions set out herein.

1.3 TfW is satisfied that it has the authority to authorise the variations implemented pursuant to this letter on behalf of the Authority.

**2 DEFINITIONS**

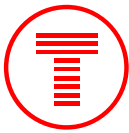
2.1 Unless otherwise defined, terms used in this letter shall have the meaning given to them in the OLR Grant Agreement.

2.2 The following terms used in this letter shall have the meanings given in the table below:



Mae Trafnidiaeth Cymru yn eiddo i  
**Lywodraeth Cymru**  
Transport for Wales is owned by the  
**Welsh Government**

Cwmni Cyfyngedig drwy Warrant. Cofrestrwyd yng Nghymru. Rhif Cwmni 09476013.  
Cyfeiriad Swyddfa Gofrestredig: 3 Llys Cadwyn, Pontypridd, CF37 4TH  
A Company Limited by Guarantee. Registered in Wales. Company No. 09476013. Registered Office Address:  
3 Llys Cadwyn, Pontypridd, CF37 4TH



"Effective Date" means 1 April 2022;

"Existing OLR Grant Agreement" means the OLR Grant Agreement as it was prior to the implementation of the Amendments;

### 3 AMENDMENTS

3.1 Subject to paragraph 3.2, with effect from the Effective Date:

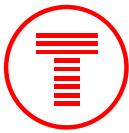
- (a) Schedule 8.1 of the OLR Grant Agreement shall be deleted and replaced with the version of Schedule 8.1 set out at Schedule 1 (*Restated Schedule 8.1*); and
- (b) the further amendments to the OLR Grant Agreement described at Schedule 2 (*Further Amendments*) shall take effect;

these changes being the "**Amendments**".

3.2 The Amendments shall take effect without prejudice to any rights, liabilities and obligations accrued or otherwise existing pursuant to the terms of the Existing OLR Grant Agreement prior to the Effective Date. Any matters arising that relate to the period prior to the Effective Date shall be governed by the terms of the Existing OLR Grant Agreement.

### 4 COUNTERPARTS

4.1 This letter may be entered into in any number of counterparts and by the parties to it on separate counterparts, all of which when taken together will constitute one and the same document.



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[tfw.wales](http://tfw.wales)

Signed on behalf of **TRANSPORT FOR WALES** acting by one director

.....

Director (Signature)

.....

Name (Block Capitals)

Signed on behalf of **TRANSPORT FOR WALES RAIL LIMITED** acting by one director

.....

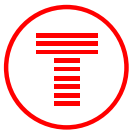
Director (Signature)

.....

Name (Block Capitals)



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**Schedule 1**

Restated Schedule 8.1



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## Schedule 8.1 – Rail Services Payments

### 1 DEFINITIONS

1.1 For the purposes of this Schedule 8.1 (Rail Services Payments) only, the following words and expressions shall have the following meanings unless otherwise set out in clause 3 (Definitions):

**“Actual Capex”** means the actual Capital Expenditure incurred by TfWRL;

**“Actual Costs”** means the actual Costs incurred by TfWRL in the relevant period in relation to the Rail Services;

**“Actual Lease Costs”** means the actual Lease Costs incurred by TfWRL;

**“Actual Revenue”** means the actual Revenue generated by TfWRL in the relevant period in relation to the Rail Services;

**“Annual Budget”** has the meaning set out in paragraph 5.1 of this Schedule 8.1 (Rail Services Payments);

**“Budget”** means together:

- (a) the periodic cost and revenues budget (which shall be in the format requested by the Authority from time to time);
- (b) the periodic capex budget (which shall be in the format requested by the Authority from time to time); and
- (c) the periodic lease costs budget (which shall be in the format requested by the Authority from time to time)

as set out in the Initial Budget, the Second Service Year Budget or Annual Budget (as applicable) and as such budget may be updated from time to time in accordance with paragraph 5 of Schedule 8.1 (Rail Services Payments);

**“Budgeted Revenue”** means the Revenue budgeted to be received or receivable by TfWRL in each Service Year and specified in the then current

Budget as agreed or determined pursuant to paragraph 5 of this Schedule 8.1 (Rail Services Payments);

**"Budgeted Capex"**

means the Capital Expenditure budgeted to be incurred by TfWRL in a Service Year and specified in the then current Budget as agreed or determined pursuant to paragraph 5 of this Schedule 8.1 (Rail Services Payments);

**"Budgeted Costs"**

means the costs budgeted to be incurred by TfWRL in each Service Year and specified in the then current Budget as agreed or determined pursuant to paragraph 5 of this Schedule 8.1 (Rail Services Payments);

**"Budgeted Lease Costs"**

means the Lease Costs budgeted to be incurred by TfWRL in each Service Year and specified in the then current Budget as agreed or determined pursuant to paragraph 5 of this Schedule 8.1 (Rail Services Payments);

**"Capital Expenditure"**

means costs capitalised under:

- (a) IAS 16 Property Plant & Equipment;
- (b) or IAS 38 Intangible Assets;

in relation to Rail Services (and excluding any cost capitalised under IFRS16 as Right of Use Assets) which are properly accrued during the term of this Agreement;

**"Capital Subsidy"**

means the funding which TfWRL is contractually entitled to receive from the Authority in any Service Year, which shall be an amount equal to Actual Capex capitalised by TfWRL in the same Service Year;

**"Capital Subsidy Drawdown"**

means the amounts agreed or determined to be paid to TfWRL by the Authority to enable TfWRL to meet its financial commitments as they fall due in respect of TfWRL's forecast payments of Capital Expenditure;

**“Costs”**

means the aggregate of costs and expenses relating to Rail Services properly accrued and stated in TfWRL’s profit and loss account but excluding:

- (i) any Rail Services Subsidy;
- (ii) any Capital Subsidy;
- (iii) any Lease Costs Subsidy;
- (iv) corporation tax and deferred tax charge in TfWRL’s profit and loss account;
- (v) any accounting transaction which does not require TfWRL to make a cash payment including notional pensions accounting adjustments and the accounting impact of financial instrument revaluations (including but not limited to the IFRS 9 (Financial Instruments), IFRS 16 (Leases) and IAS19 (Employee Benefits));
- (vi) Capital Expenditure; and
- (vii) Lease Costs;

**“Emergency Working Capital Payment”**

has the meaning given in paragraph 9.5 of Schedule 8.1 (Rail Services Payments);

**“Estimated Revenue”**

means the Revenue reasonably determined by the Authority using available resources as is practicable at the time of the determination (such resources including forecasts prepared by TfWRL and any other information or documentation provided by TfWRL at or in connection with the Periodic Finance Review Meetings);

**“Expected Costs”**

means the costs reasonably determined by the Authority using available resources as is practicable at the time of the determination (such resources including forecasts prepared by TfWRL and any other information or documentation

provided by TfWRL at or in connection with the Periodic Finance Review Meetings);

**"Final Working Capital Adjustment" or "FWCA"**

means the final working capital adjustment (if any) calculated in accordance with paragraph 10 of this Schedule 8.1;

**"Floor Cash Position"**

means [REDACTED] or such other value as the Authority may determine;

**"Forecast Closing Cash Position"**

means, with respect to a Reporting Period, TfWRL's forecast cash balance as at the last day of that Reporting Period and taking into account TfWRL's latest Management Accounts;

**"Initial Budget"**

means the document in the agreed terms marked "**TfWRL Initial Budget**" being the budget agreed by the Authority and TfWRL in respect of the operation of the Rail Services for the period commencing on the Service Commencement Date and ending on the expiry of the first Quarter of the second Service Year;

**"IFRS16 Right of Use Assets"**

has the meaning given to such term within IFRS16 (Leases);

**"Lease Costs"**

means:

- (a) for leases which commenced after 1 April 2022 and which TfWRL accounts for under IFRS 16, interest and depreciation costs on an IFRS16 accounting basis; and
- (b) for leases which commenced before 1 April 2022 and which TfWRL accounts for under IFRS 16, rental costs on an IAS17 accounting basis (for the avoidance of doubt, TfWRL will continue to account for these leases under IFRS 16 but will be contractually entitled to funding to match rental costs calculated in accordance with IAS 17),

provided that:



- (i) for all leases, TfWRL's total entitlement to funding over the life of the lease shall not exceed the costs for the lease recognised in TfWRL's profit and loss account; and
- (ii) Lease Costs exclude costs recognised in TfWRL's profit and loss account in respect of leases exempt from IFRS 16 accounting, since such costs shall be funded by the Periodic Rail Services Subsidy;

<b>"Lease Costs Subsidy"</b>	means the funding which TfWRL is contractually entitled to receive from the Authority in any Reporting Period, which shall be an amount equal to Lease Costs recognised in TfWRL's profit and loss account in the same Reporting Period;
<b>"Lease Costs Subsidy Drawdown"</b>	means the amounts agreed or determined to be paid to TfWRL by the Authority to enable TfWRL to meet its financial commitments as they fall due in respect of TfWRL's forecast payments of Lease Costs;
<b>"Periodic Budget Forecast Review Meeting"</b>	has the meaning given in paragraph 5.2 of Schedule 8.1 (Rail Services Payments);
<b>"Periodic Finance Review Meeting"</b>	has the meaning given in paragraph 6.1 of Schedule 8.1 (Rail Services Payments);
<b>"Periodic Rail Services Subsidy" or "PRSS"</b>	means the subsidy formulated pursuant to the provisions of paragraphs 2.1 and 2.2 of this Schedule 8.1 (Rail Services Payments);
<b>"Rail Services Subsidy Drawdown"</b>	means the amounts agreed or determined to be paid to TfWRL by the Authority to enable TfWRL to meet its financial commitments as they fall due in respect of TfWRL's forecast payments offset by TfWRL's forecast receipts in respect of Revenue, provided that such amounts are not included in the

Capital Subsidy Drawdown or Lease Costs Subsidy Drawdown;

**“Revenue”**

means the gross total revenue of TfWRL received or receivable and properly accrued as stated in TfWRL’s profit and loss account but excluding:

- (a) any Periodic Rail Services Subsidy;
- (b) any Lease Costs Subsidy; and
- (c) any accounting transaction included in the Management Accounts, Annual Management Accounts or Annual Audited Accounts but which does not result in TfWRL receiving a cash payment including notional pensions accounting adjustments and the accounting impact of financial instruments revaluations;

**“Statement of Expected Cash Flows”**

means a statement (in such format as is agreed between the parties acting reasonably) to be provided by TfWRL to the Authority in accordance with paragraph 3.1 of this Schedule 8.1, setting out TfWRL's calculations in respect of:

- a) estimated payments; and
- b) estimated receipts;

for the relevant period contemplated by that statement;

**"Subsidy"**

means any (or all, as the context requires) of the:

- (a) Lease Costs Subsidy;
- (b) Capital Subsidy; or
- (c) Periodic Rail Services Subsidy;

**“Subsidy Drawdown”**

means any (or all, as the context requires) of:

- (a) Rail Services Subsidy Drawdown;
- (b) Capital Subsidy Drawdown; or

(c) Lease Costs Subsidy Drawdown;

**“Supporting Materials”** means any materials explaining or supporting the Budget which have been produced by TfWRL and serve as supporting materials.

## 2 PERIODIC RAIL SERVICES SUBSIDY

2.1 The Periodic Rail Services Subsidy shall be an amount equal to:

<b>£PRSS =</b>	<b>AC n – AR n</b>
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where:

AC n	means the Actual Costs for the current Reporting Period (if any). AC may only be a positive number.
AR n	means the Actual Revenue for Reporting Period (if any). AR may only be a positive number.
PRSS may be a positive or negative number.	

2.2 The Parties agree that:

- (a) where **PRSS is a positive number**, TfWRL shall be contractually entitled to receive that amount from the Authority in relation to the relevant Reporting Period, provided that the net amount of Actual Costs less Actual Revenue in any Service Year does not exceed the net amount of Budgeted Costs less Budgeted Revenue for that Service Year, unless otherwise agreed by the Authority;
- (b) where **PRSS is a negative number**, the Authority shall be contractually entitled to receive that amount from TfWRL in relation to the relevant Reporting Period.

2.3 Without prejudice to TfWRL's entitlement to the Periodic Rail Services Subsidy in accordance with paragraph 2.2(a), the parties acknowledge and agree that:

- (a) TfWRL shall be paid the Rail Services Subsidy Drawdown in accordance with paragraph 3; and

- (b) to the extent that the Rail Services Subsidy Drawdown paid by the Authority in a Reporting Period is less or more than the actual payments less actual receipts incurred by TfWRL in that period, such surplus or deficit shall be taken into account in the next Statement of Expected Cash Flows to be prepared by TfWRL in accordance with paragraph 3.1.

### **3 PAYMENT OF SUBSIDY DRAWDOWNS**

- 3.1 No later than the end of the second week of each Reporting Period following the second Service Year, TfWRL shall provide to the Authority a Statement of Expected Cash Flows covering the remainder of the then current Reporting Period and the next Reporting Period (if any).
- 3.2 Each Statement of Expected Cash Flows shall show in reasonable detail each Subsidy Drawdown required by TfWRL to meet its financial commitments as they fall due and the date by which receipt of those Subsidy Drawdown will be required.
- 3.3 TfWRL shall provide the Authority with such further information as the Authority may request from time to time to allow the Authority to assess the Statement of Expected Cash Flows, within such time as the Authority may reasonably specify for that purpose (and this paragraph shall apply such that the number of requests which the Authority may make is not limited).
- 3.4 The Parties, acting reasonably, will seek to agree the amounts and payment dates for each Subsidy Drawdown that will enable TfWRL to meet its financial commitments as they fall due.
- 3.5 If the Parties fail to agree the amounts and payment dates for any Subsidy Drawdown pursuant to paragraph 3.4 then the Authority shall reasonably determine such matters, and pay any Subsidy Drawdowns accordingly.
- 3.6 The Authority shall pay each Subsidy Drawdown on the payment dates agreed in accordance with paragraph 3.4 or determined by the Authority in accordance with paragraph 3.5.
- 3.7 When agreeing the amount of any Subsidy Drawdown, the Parties shall seek to ensure that at no point during the Rail Services Term, TfWRL's cash balances will fall below the Floor Cash Position.
- 3.8 Each Subsidy Drawdown payment shall be made:
  - (a) by automatic electronic funds transfer in pounds sterling to such bank account in the United Kingdom as the payee of such payment may have previously specified to the payer in writing; and
  - (b) so that cleared funds are received in that account on or before the due date for payment.

- 3.9 It is acknowledged by the Parties that, for administrative convenience, two or more Subsidy Drawdowns may be combined into a single funds transfer.

#### **Disputes under Schedule 8**

- 3.10 If either TfWRL or the Authority disputes the amount of a Subsidy Drawdown, the dispute shall, unless TfWRL and the Authority otherwise agree, be resolved in accordance with the provisions of clause 11 (Dispute Resolution Procedure) and clause 17 (Governing Law and Jurisdiction) of this Agreement. Any such dispute shall not affect the obligation of the Authority to pay a Subsidy Drawdown agreed or determined in accordance with this Schedule 8.1 (Rail Services Payments).

#### **No Double Recovery**

- 3.11 Neither Party shall be entitled to recover (by way of an adjustment to previous payments or otherwise) more than once in respect of the same amount. In particular, no amount shall be included in more than one of the following categories of Subsidy Drawdown:
- (a) Rail Services Subsidy Drawdown;
  - (b) Capital Subsidy Drawdown; or
  - (c) Lease Costs Subsidy Drawdown.

#### **Force Majeure and Payments**

- 3.12 Following the occurrence of a Force Majeure Event, the amounts of Subsidy Drawdown shall continue to be calculated in accordance with this Schedule 8.1 (Rail Services Payments) and the payment of Subsidy Drawdown shall continue unaffected.

### **4 CAPITAL SUBSIDY**

- 4.1 Subject to paragraph 4.2, TfWRL shall be contractually entitled to receive Capital Subsidy at any time during the Rail Services Term provided that the total amount of Actual Capex in any Service Year does not exceed the Budgeted Capex for that Service Year, unless otherwise agreed by the Authority.
- 4.2 TfWRL shall provide to the Authority such supporting evidence and documentation as the Authority may require to provide assurance of the validity of Actual Capex. Such evidence and documentation may include (without limitation) supplier invoices and documentation evidencing internal costs capitalised.
- 4.3 TfWRL acknowledges and agrees that where:

- (a) any amount is included in relevant payments made by TfWRL as a result of it capitalising Costs; and
- (b) such Costs have previously been taken into account when calculating any Revenue Subsidy or Lease Costs Subsidy ,

there shall be an adjustment to the Revenue Subsidy or Lease Costs Subsidy (as the case may be) to ensure that no amount is categorised as both Capital Expenditure and as a Cost in compliance with paragraph 3.11.

4.4 Without prejudice to TfWRL's entitlement to the Capital Subsidy in accordance with paragraph 4.1, the parties acknowledge and agree that:

- (a) TfWRL shall be paid the Capital Subsidy Drawdown in accordance with paragraph 3; and
- (b) to the extent that the Capital Subsidy Drawdown paid by the Authority in a Reporting Period is less or more than the relevant payments made by TfWRL in that period, such surplus or deficit shall be taken into account in the next Statement of Expected Cash Flows to be prepared by TfWRL in accordance with paragraph 3.1.

#### **4A LEASE COSTS SUBSIDY**

4A.1 TfWRL shall be contractually entitled to receive the Lease Costs Subsidy from the Authority at any time during the Rail Services Term provided that the total amount of Actual Lease Costs in any Service Year does not exceed the Budgeted Lease Costs for that Service Year, unless otherwise agreed by the Authority.

4A.2 Without prejudice to TfWRL's entitlement to the Lease Costs Subsidy in accordance with paragraph 4A.1, the parties acknowledge and agree that:

- (a) TfWRL shall be paid the Lease Costs Subsidy Drawdown in accordance with paragraph 3; and
- (b) to the extent that the Lease Costs Subsidy Drawdown paid by the Authority in a Reporting Period is less or more than the relevant payments made by TfWRL in that period, such surplus or deficit shall be taken into account in the next Statement of Expected Cash Flows to be prepared by TfWRL in accordance with paragraph 3.1.

4A.3 The Parties acknowledge that the accounting entries to recognise or amend IFRS16 Right of Use Assets are subject to a ring-fenced capital budget at a Central Government budgeting level and TfWRL shall:

- (a) provide the Authority with budgets (initial and revised) and periodic reporting which details all IFRS 16 accounting entries and related funding, to assist the Authority in its obligation to prepare consolidated financial information on a Central Government budgeting basis; and
- (b) support the Authority in monitoring against this budget and shall not exceed the budget without prior written permission from the Authority.

4A.4 For the avoidance of doubt, TfWRL is not contractually entitled to Lease Costs Subsidy for the recognition or amendment of IFRS 16 Right of Use Assets under IFRS 16 since funding is received instead for the depreciation of these assets.

## 5 THE BUDGET

### Setting the Budget

- 5.1 The Budget shall be agreed in accordance with the following process:
- (a) TfWRL shall submit to the Authority its proposed budget in respect of the next Service Year in accordance with timescales requested by the Authority;
  - (b) as soon as reasonably practicable following provision of the proposal referred to in paragraph (a), TfWRL and the Authority shall hold a meeting at a time and location notified to TfWRL by the Authority to review and discuss such proposal;
  - (c) TfWRL shall submit to the Authority further iterations of the proposed budget in respect of the next Service Year as the Authority may require, together with such supporting information as the Authority may require;
  - (d) following completion of the activities in paragraphs 5.1(a) to 5.1(c), the Authority shall notify TfWRL in writing of the budget that shall apply in respect of next Service Year and such budget shall be the “**Annual Budget**” for the purposes of this Agreement;

### Budget review and adjustment

- 5.2 Without limiting the requirement for any other meeting, the Parties shall hold a forecast Budget review meeting (a “**Periodic Budget Forecast Review Meeting**”) at a time and location notified to TfWRL by the Authority following provision of the information referred to in paragraph 5.3. Periodic Budget Forecast Review Meetings shall be held in each Reporting Period during the first two Service Years, and thereafter each Quarter (or at such other frequency as the Authority may determine from time to time). The purpose of the meeting shall be to review and seek to agree:

- (a) revisions (if any) to the then current Budget for the remaining Reporting Periods of the Budget; and
- (b) the content of any necessary or desirable corresponding addendum to the Supporting Materials.

TfWRL shall ensure that the representatives of TfWRL at the Periodic Budget Forecast Review Meeting shall include the Finance Director of TfWRL or other appropriate senior finance leader of TfWRL as may reasonably be approved for this purpose by the Authority.

- 5.3 TfWRL shall, prior to the date of each Periodic Budget Forecast Review Meeting have provided to the Authority the relevant information required pursuant to paragraph 9.2 of Schedule 11.2 (Management Information) in relation to the previous Reporting Period, together with a draft periodic budget prepared using the cost and revenue categories and the capital expenditure categories determined by the Authority (acting reasonably), updated to reflect Actual Costs, Actual Revenues and Actual Capex as reflected in the latest Management Accounts and revised Budgeted Costs and Budgeted Capex for the remainder of the relevant Services Year and shall provide the Authority with all further information as the Authority may request from time to time for the purposes of the operation of this paragraph 5, within such time as the Authority may reasonably specify for that purpose (and this paragraph shall continue to apply such that the number of requests which the Authority may make is not limited).
- 5.4 If the Parties fail to agree the matters referred to in paragraph 5.2 at the relevant Periodic Budget Forecast Review Meeting, the Authority shall reasonably determine such matters.
- 5.5 Such revisions to the Budget and addenda to the Supporting Materials as agreed or determined shall take effect from the first day of the Reporting Period immediately following the date on which the Periodic Budget Forecast Review Meeting (at which such matters were discussed) took place provided that, if such revisions or addenda are not agreed by the first day of that Reporting Period, the relevant revisions and addenda shall take effect from the first day of the Reporting Period which falls at least 10 Weekdays after those revisions and addenda are agreed or determined.
- 5.6 Each revision to the Budget and/or addenda to the Supporting Materials shall (unless the Parties otherwise agree):
  - (a) adopt the same format and structure as the original version in agreed terms (or where the preceding version has included any changes from that format and structure expressly agreed by the Parties for this purpose) from the preceding version;
  - (b) make no assumptions or include any costs, revenue or other adjustments which are not consistent with the definitions of Costs, Capital Expenditure and Revenue (except as may be otherwise expressly agreed by the Parties for that purpose);



- (c) adopt the same accounting principles and standards as the original version (as these may be expressly varied by agreement between the Parties for this purpose or, in the case of accounting standards, as these may be reasonably revised by the Authority to take account of changes to GAAP in the United Kingdom); and
- (d) otherwise facilitate easy comparison with the definitions of Costs, Capital Expenditure and Revenue and with the information reported in the Management Accounts, Annual Management Accounts and the Annual Audited Accounts.

5.7 Each time it is agreed or determined that the Budget is to be revised and/or an addendum is to be added to the Supporting Materials, the Authority shall be entitled to:

- (a) make the agreed or determined revisions to the Budget and/or Supporting Materials (or procure this is done on its behalf) and provide copies of those revised documents to TfWRL; or
- (b) require TfWRL to provide the agreed or determined revisions to the Budget and/or Supporting Materials for approval by the Authority, which TfWRL shall do and provide revised versions to the Authority within such time as the Authority shall specify for this purpose.

5.8 For the purpose of this paragraph 5, the Authority shall be entitled to consider any information provided to the Authority by TfWRL and any other sources of information which the Authority considers to be relevant and the Authority shall be entitled to request such information from TfWRL as the Authority requires in connection with the matters referred to in this paragraph 5. Without prejudice to the generality of the foregoing, in considering any revisions to the Budget, regard shall be had to the definitions of Costs, Revenue and Capital Expenditure so as to ensure that the revisions to the Budget are consistent with those definitions.

5.9 The Parties shall at all times act in good faith, reasonably and in a timely manner in the interpretation and application of the provisions for agreeing revisions to the Budget and any addendum to the Supporting Materials.

## **6 REVIEW OF TFWR'L'S PERFORMANCE AGAINST BUDGET**

### **Finance Review Meeting**

6.1 Without limiting the requirement for any other meeting, the Parties shall hold a finance review meeting in each Reporting Period or such other frequency as the Authority may determine from time to time ("**Periodic Finance Review Meeting**") at such time(s) and location(s) notified to TfWRL by the Authority following provision of the information referred to in paragraph 6.2 and:

- (a) the purpose of the Periodic Finance Review Meeting shall be to review the financial performance of TfWRL. This shall include:
  - (i) a review and discussion of variances arising in the preceding Reporting Period between:
    - (A) Actual Costs, Actual Capex and Actual Revenue; and
    - (B) Estimated Costs, Budgeted Capex and Estimated Revenue;
  - (ii) a review of the Actual Capex arising as a result of TfWRL capitalising Costs (such review to consider each relevant project and/or asset);
  - (iii) a review and discussion of TfWRL's management of its:
    - (A) working capital; and
    - (B) Forecast Closing Cash Positionfor that Reporting Period in which the Periodic Finance Review Meeting is taking place and any Emergency Working Capital Payment to be paid in the Reporting Period following the Reporting Period in which the Periodic Finance Review Meeting is taking place; and
  - (iv) actions to be taken in respect of TfWRL's financial performance; and
- (b) TfWRL shall ensure that the representatives of TfWRL at the meeting shall include the Finance Director of TfWRL or other appropriate senior finance leader of TfWRL as may reasonably be approved for this purpose by the Authority.

6.2 TfWRL shall, prior to the date of each Periodic Finance Review Meeting have provided to the Authority the relevant information required pursuant to paragraph 9.2 of Schedule 11.2 (Management Information) in relation to the previous Reporting Period together with a statement of TfWRL's Forecast Closing Cash Position applicable to that Reporting Period, in accordance with the timescales set out therein, and shall provide the Authority with all further information as the Authority may request from time to time for the purposes of the operation of paragraph 6.1, within such time as the Authority may reasonably specify for that purpose (and this paragraph shall continue to apply such that the number of requests which the Authority may make is not limited).

6.3 The Authority shall be entitled to consider any information provided to it by TfWRL and any other sources of information which the Authority consider to be relevant and the Authority shall be entitled to request such information from TfWRL as the Authority requires for the purposes of the operation of this paragraph 6. TfWRL shall provide the information within such time as

the Authority may reasonably specify for the purpose (and this paragraph shall continue to apply such that the number of requests which the Authority may make is not limited).

6.4 If:

- (a) the Parties fail to agree the matters referred to in paragraph 6.1(a) at the relevant Periodic Finance Review Meeting; or
- (b) TfWRL fails to provide the relevant information required pursuant to Schedule 11.2 (Management Information), in accordance with the timescales set out therein, or otherwise in accordance with this paragraph 6,

the Authority shall (without prejudice to its other rights) be entitled (but not obliged) to determine the relevant matters in accordance with this paragraph 6 and all other applicable provisions of this Schedule 8.1 (Rail Services Payments) but by reference to the relevant information available to the Authority at the time of such determination.

## **7 PERIODIC ADJUSTMENTS**

7.1 Not used

## **8 FINAL ADJUSTMENTS**

8.1 Not used

## **9 EMERGENCY WORKING CAPITAL PAYMENTS**

9.1 Not used.

9.2 Not used.

9.3 Not used.

9.4 If at any time, TfWRL becomes aware that in its reasonable opinion prior to the payment of the next Subsidy Drawdown, TfWRL's available cash balance:

- (i) will be insufficient to meet its liabilities that will fall due prior to the payment of the next Subsidy Drawdown; or
- (ii) that TfWRL's available cash balance will fall below the Floor Cash Position;

(the "**Working Capital Shortfall**"), then TfWRL shall immediately:

- (a) notify the Authority that a Working Capital Shortfall is likely to occur during that Reporting Period; and

- (b) provide in or with that notice supporting information (including relevant accounts and calculations) evidencing the likely Working Capital Shortfall and the amount of additional working capital that TfWRL considers it will require to ensure that the Working Capital Shortfall is remedied; and
  - (c) provide such further supporting information as the Authority shall reasonably require.
- 9.5 The Parties shall agree or where the parties fail to agree, the Authority shall reasonably determine the amount required to remedy the Working Capital Shortfall (an “**Emergency Working Capital Payment**”) and when such Emergency Working Capital Payment is required to be paid for that purpose.
- 9.6 The Authority shall pay to TfWRL any Emergency Working Capital Payment in accordance with the timescales agreed or determined in accordance with paragraph 9.5.
- 9.7 If TfWRL fails to provide any information required by this paragraph 9, or any information in accordance with its obligations in Schedule 11.2 (Management Information) to enable the Authority to calculate the amount of any Emergency Working Capital Payment the Authority shall (without prejudice to the Authority’ other rights) be entitled (but not obliged) to determine the amount of any Emergency Working Capital Payment in accordance with this paragraph 9 but by reference to the relevant information available to the Authority at the time of such determination.

9.8 Not used.

## **10 FINAL WORKING CAPITAL ADJUSTMENT (FWCA)**

10.1 Not used.

10.2 Not used.

10.3 TfWRL shall calculate the Final Working Capital Adjustment (FWCA) (if any) payable by one Party to the other at the end of the Rail Services Term and provide its calculations to the Authority in sufficient detail to allow the Authority to verify the value of the FWCA. The FWCA shall represent the difference between:

- (a) the aggregate entitlements of TfWRL during the Rail Services Term to
    - (i) Periodic Rail Services Subsidy (calculated in accordance with Paragraph 2);
    - (ii) Capital Subsidy (calculated in accordance with Paragraph 4); and
    - (iii) Lease Costs Subsidy (calculated in accordance with Paragraph 4A)
- and

(b) the aggregate Subsidy Drawdown paid by the Authority to TfWRL during the Rail Services Term.

10.4 The value of FWCA, to be calculated in accordance with paragraph 10.3, and the date upon which FWCA is to be paid, shall be agreed between the Parties (acting reasonably) or in the absence of agreement, determined by the Authority, acting reasonably.

10.5 TfWRL or the Authority (as applicable) shall make a payment to the other Party in respect of FWCA on the payment date agreed or determined by the Authority in accordance with paragraph 10.4.

10.6 If TfWRL fails to provide any information in accordance with its obligations in Schedule 11.2 (Management Information) to enable the Authority to calculate the Final Working Capital Adjustment the Authority shall (without prejudice to its other rights) be entitled (but not obliged) to determine the amount of FWCA in accordance with this paragraph 10 but by reference to the relevant information available to the Authority at the time of such determination.

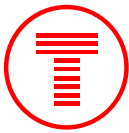
## **11 FURTHER AUTHORITY RIGHTS IN RELATION TO ACCOUNTING MATTERS**

11.1 Where the Authority reasonably considers that in calculating any matter which impacts the calculation of a Subsidy, any particular item or transaction has not been accounted for on a reasonable basis (including where the accounting treatment looks to the form rather than the substance, of the item or transaction) and having regard to all circumstances, including GAAP (as may be amended from time to time), the Authority shall be entitled to require it to be accounted for on such other basis as the Authority may reasonably determine and notify to TfWRL provided that the Authority shall not be entitled pursuant to this paragraph to alter the accounting policies of TfWRL from those set out in the Supporting Materials.

11.2 Where the Annual Audited Accounts are subject to adjustment or restatement the Authority shall have a discretion to require the recalculation of Subsidy for the relevant Service Year.

**12 NOT USED**

**13 NOT USED**



## **Schedule 2**

### **Further Amendments**

- 1 At Clause 3.1:
  - (a) the definition of Payment Date shall be deleted;
  - (b) the definition of Rail Services Payment shall be deleted.
  
- 2 At Clause 11.12, the reference to "Paragraph 3.6" shall be replaced with a reference to "Paragraph 3.10".
  
- 3 Paragraph 11.2(c) of Schedule 13.1 (*Rail Industry Initiatives*) shall be deleted and replaced with the following:

*"Any amounts payable by TfWRL to the Authority pursuant to this paragraph 11.2 shall be paid within thirty (30) days of receipt by TfWRL of any such amounts from Network Rail."*
  
- 4 All references to Rail Services Payments throughout the OLR Grant Agreement shall be deleted and replaced with a reference to the Periodic Rail Services Subsidy.