

22 DECEMBER 2020

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## DEED OF NOVATION AND AMENDMENT

the THE

TRANSPORT FOR WALES	(1)
WELSH MINISTERS	(2)
KEOLIS AMEY WALES CYMRU LIMITED	(3)
AMEY KEOLIS INFRASTRUCTURE / SEILWAITH AMEY KEOLIS LIMITED	(4)

This Deed is dated ...22 DECEMBER..... 2020

## PARTIES

- (1) **TRANSPORT FOR WALES**, (company number 09476013) whose principal place of business is at 3 Llys Cadwyn, Pontypridd, Wales, CF37 4TH ("**TfW**");
- the* (2) ~~THE~~ **WELSH MINISTERS**, whose principal place of business is at Crown Buildings, Cathays Park, Cardiff, CF10 3NO ("**Welsh Ministers**");
- (3) **KEOLIS AMEY WALES CYMRU LIMITED** (Company Number: **11391059**), whose registered office is at 2 Callaghan Square, Cardiff, United Kingdom, CF10 5BT (the "**ODP**"); and
- (4) **AMEY KEOLIS INFRASTRUCTURE / SEILWAITH AMEY KEOLIS LIMITED** (Company 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 ("**InfraCo**"),

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

## RECITALS

- (A) The Authority and the ODP entered into the ODP Grant Agreement on 4 June 2018, which sets out the terms and conditions upon which the ODP was appointed as the Authority's operator and development partner for the ODP Services (the "**ODP Grant Agreement**").
- (B) The ODP and InfraCo subsequently entered into a long form sub-contract on 12 October 2018 pursuant to which the performance of certain of the ODP Services, including the Infrastructure Manager Services, the ODP Infrastructure Works and the Infrastructure Services (together, the "**InfraCo Services**") were sub-contracted to InfraCo (the "**InfraCo Sub-Contract**"). ODP and InfraCo have also entered into the Package Orders specified in Schedule 1 (Package Orders) in accordance with the procedure set out in the InfraCo Sub-Contract.

■ [REDACTED]  
[REDACTED]  
[REDACTED]

- (D) The ODP and the Authority have subsequently mutually agreed a termination of the ODP Grant Agreement and related package orders entered into between the Welsh Ministers and the ODP, with such termination to be effected by way of a deed of termination between the ODP and the Authority (the "**Termination Deed**").

- (E) The Parties now intend to enter into this deed of novation (the “**Deed**”) to agree:
- (i) to the novation of the InfraCo Sub-Contract and all Package Orders from the ODP to TfW at the Novation Time;
  - (ii) to certain necessary amendments to the InfraCo Sub-Contract and the Package Orders; and

■ [REDACTED]  
[REDACTED]  
[REDACTED]

in each case as provided in this Deed.

- (F) TfW and the Welsh Ministers consider that this approach is justified as a contract modification under:

- (i) in respect of the Infrastructure Services and ODP Infrastructure Works, Regulation 88(1)(a) and/or 88(1)(d)(i) of the Utilities Contracts Regulations 2016 (“UCR”) as the “step in” provisions contained in Schedule 3B of the ODP Grant Agreement amount to “clear, precise and unequivocal review clauses”;
- (ii) in respect of the Infrastructure Manager Services, Regulation 88(1)(d)(ii), on the basis that the change in contracting party (i.e. from the ODP to InfraCo) will be in consequence of the corporate restructuring which will take place as part of the mutually agreed termination arrangements referred to above; and
- (iii) in respect of the change in contracting party from the Welsh Ministers to TfW, Regulation 88(1)(e) as this change does not amount to a substantial modification within the meaning of Regulation 88(7).

## THE PARTIES AGREE AS FOLLOWS:

### 1 DEFINITIONS AND INTERPRETATION

1.1 In this Deed, unless the context otherwise requires:

- (a) words and expressions defined under the InfraCo Sub-Contract shall have the same meanings when used in this Deed unless otherwise defined in this Deed;
- (b) the term “**Collateral Warranty**” means the collateral warranty entered into between InfraCo, the Welsh Ministers and the ODP in respect of the InfraCo Sub-Contract, dated 4 June 2018 (as may be amended or replaced from time to time);

- (c) the term **"CVL Stations Underlease"** means the CVL stations lease granted by InfraCo as landlord and OpCo as tenant, dated 27 March 2020;
- (d) the term **"CVL Asset Lease"** means the lease of land for the permanent way and stations of the railway known as the Core Valley Lines entered into between TfW as Landlord and InfraCo as Tenant on 27 March 2020 (as may be amended from time to time);
- (e) the term **"Direct Agreement"** means the direct agreement entered into between the Welsh Ministers and InfraCo in respect of the InfraCo Sub-Contract, dated 12 October 2018;
- (f) the term **"Infrastructure Agreement"** means the amended InfraCo Sub-Contract as set out in Schedule 3 (Infrastructure Agreement) of this Deed, following the novation of the InfraCo Sub-Contract from ODP to TfW pursuant to this Deed;
- (g) the term **"Infrastructure Manager Agreement"** means the Infrastructure Manager Agreement entered into between InfraCo and Network Rail Infrastructure Limited dated 24 December 2019;
- (h) the term **"Novation Time"** means, subject to the conditions precedent being satisfied or waived in accordance with Clause 4 (Conditions Precedent to Novation), the occurrence of the Transfer Time;
- (i) the term **"OpCo Sub-Contract"** means the sub-contract between the ODP and OpCo dated 12 October 2018 under which the ODP sub-contracts to OpCo its obligations as provider of rail passenger services pursuant to the ODP Grant Agreement;
- (j) the term **"Package Orders"** means:
  - (i) all package orders listed in Schedule 1 (Package Orders) to this Deed; and
  - (ii) all package orders entered into between the ODP and InfraCo after the date of this Deed but prior to the Novation Time;
- (k) the term **"Track Access Agreement"** has the meaning given to it in the Infrastructure Agreement;
- (l) the term **"Transfer Time"** has the meaning given to it in the Termination Deed;
- (m) words and expressions defined in the Interpretation Act 1978 shall have the same meanings when used in this Deed;



- (n) the words "including", "include" and "in particular" are to be construed without limitation;
- (o) references to a person include its successors and assignees;
- (p) references in this Deed to clauses and schedules are to clauses and schedules of this Deed unless expressly specified to the contrary;
- (q) headings and references to headings shall be disregarded in construing this Deed;
- (r) references to an agreement or other document shall be construed as referring to that agreement or document as from time to time supplemented, varied, replaced, amended or assigned; and
- (s) words importing the masculine gender include the feminine gender and vice versa and words in singular include the plural and vice versa.

## **2 EFFECTIVENESS**

### **2.1 The Parties hereby agree that:**

- (a) this Deed shall come into effect when the Termination Deed has been duly executed by all parties thereto and has become unconditional in all respects, save for any conditions in the Termination Deed relating to this Deed becoming unconditional;
- (b) the novation of the InfraCo Sub-Contract and the Package Orders from the ODP to TfW shall take effect at the Novation Time;
- (c) with effect immediately prior to the occurrence of the Novation Time, the ODP and InfraCo agree that:
  - (i) paragraph 4A of Schedule 10.2 to the InfraCo Sub-Contract shall be deleted, such that the InfraCo Sub-Contract shall not terminate automatically on the termination of the ODP Grant Agreement at the Transfer Time; and
  - (ii) to the extent that any of the Package Orders would, in the absence of this clause 2.1(c)(ii), terminate automatically upon the termination of the ODP Grant Agreement, such automatic termination provisions shall be ineffective such that those Package Orders shall not terminate automatically on the termination of the ODP Grant Agreement at the Transfer Time.

## **3 NOVATION**

- 3.1 The Parties acknowledge and agree that with effect from the Novation Time:
- (a) with the exception of paragraph 4A of Schedule 10.2 to the InfraCo Sub-Contract which shall be amended pursuant to clause 2.1(c) above, the InfraCo Sub-Contract shall be amended as set out in the amended InfraCo Sub-Contract set out in Schedule 3 (Infrastructure Agreement) to this Deed (with such further amendments as are agreed by the Parties, including in accordance with clauses 9, 10 and 12 below) and, from the Novation Time, the InfraCo Sub-Contract shall be referred to as the Infrastructure Agreement;
  - (b) references in the Package Orders to, and the incorporation into the Package Orders of, clauses, schedules, appendices and provisions of the InfraCo Sub-Contract shall be deemed to be references to, or the incorporation of (as applicable), clauses, schedules, appendices and provisions of the Infrastructure Agreement;
  - (c) the ODP transfers all its rights and obligations under the InfraCo Sub-Contract and the Package Orders, whether arising at, before or after the Novation Time, to TfW; and
  - (d) InfraCo and TfW agree to perform all of their respective obligations under the Infrastructure Agreement and the Package Orders and be bound by their terms in every way as if InfraCo and TfW (in place of the ODP) were the original parties to the Infrastructure Agreement and the Package Orders.
- 3.2 The Welsh Ministers shall procure that TfW shall comply with its obligations pursuant to the Infrastructure Agreement, this Deed, the CVL Asset Lease and the Package Orders. The obligations of the Welsh Ministers under this clause 3.2 shall not be released, reduced or adversely affected by any modification, amendment or supplement to the Infrastructure Agreement, this Deed, the CVL Asset Lease or the Package Orders from time to time.
- 3.3 The Welsh Ministers shall deal with any documents, materials and other information (whether technical or commercial) supplied to the Welsh Ministers (including under or in relation to the ODP Grant Agreement or the Infrastructure Agreement) in accordance with Schedule 17 to the Infrastructure Agreement as if Welsh Ministers were a party to the Infrastructure Agreement in place of TfW.
- 3.4 TfW, the ODP and InfraCo:
- (a) acknowledge and agree that certain amendments will be required to be made to the Package Orders with effect from the Novation Time to reflect the novation of the InfraCo Sub-Contract; and

- (b) shall agree (acting reasonably and in good faith) the amendments referred to in clause 3.4(a) promptly following the date of this Deed.

#### **4 CONDITIONS PRECEDENT TO NOVATION**

4.1 At or prior to the Novation Time, the following Conditions Precedent shall be satisfied or waived (acting reasonably):

- (a) the critical direct agreements and collateral warranties (in a form satisfactory to TfW) as set out in Schedule 2 (Direct Agreements and Collateral Warranties) Part 1 have been entered into by the relevant parties;
- (b) InfraCo has procured a valid guarantee bond for the benefit of TfW relating to the provision of Principal Infrastructure Services and AKI Infrastructure Works (as such terms are defined in the Infrastructure Agreement) in connection with the CVL Transformation and/or associated projects in the form appended to Schedule 3B of the InfraCo Sub-Contract (as amended in the Infrastructure Agreement), save that the Condition Precedent described in this Clause 4.1(b) shall be deemed to have been waived in the event that a guarantee bond relating to the provision of Principal Infrastructure Services and AKI Infrastructure Works (as such terms are defined in the Infrastructure Agreement) in connection with the CVL Transformation and/or associated projects remains in place in respect of the ODP Grant Agreement and will remain in place after the Novation Time,

(each a "**Condition Precedent**" and together the "**Conditions Precedent**").

4.2 The ODP and InfraCo shall obtain TfW's prior written consent before entering into any Package Order between the date of this Deed and the Novation Time. For the avoidance of doubt, any Package Order that is entered into between ODP and InfraCo to which TfW has not provided its written consent in accordance with this clause 4.2 shall only novate to TfW under the terms of this Deed at TfW's sole discretion (acting reasonably).

4.3 The Parties agree that any essential direct agreement and collateral warranties identified in Schedule 2 (Direct Agreements and Collateral Warranties) Part 2 which are not in place by the Novation Time shall be procured by InfraCo no later than sixty (60) days after such date in the form prescribed in the Infrastructure Agreement. In the event that InfraCo fails to procure such direct agreement and collateral warranties within such sixty (60) day period, InfraCo shall pay to TfW a sum of [REDACTED] each month (for each delayed essential direct agreement and collateral warranty) during the period commencing from the end of the sixty (60) period until the date on which the relevant essential direct agreement and collateral warranties are provided.

## 5 RELEASE OF OBLIGATIONS AND LIABILITIES

### 5.1 With effect on and from the Novation Time:

- (a) subject to clause 5.3, InfraCo and the ODP release each other from all obligations and liabilities to each other under the InfraCo Sub-Contract and the Package Orders including:

- (i) any future obligations and liabilities to each other; and
  - (ii) their obligations and liabilities to each other which accrued on or prior to the Novation Time,

in each case under the InfraCo Sub-Contract and the Package Orders; and

- (b) the Collateral Warranty and the Direct Agreement are terminated, and the parties thereto release and discharge each other from:

- (i) any future obligations and liabilities to each other; and
  - (ii) their obligations and liabilities to each other which accrued on or prior to the Novation Time,

in each case under the Collateral Warranty and the Direct Agreement.

### 5.2 With effect at and from the Novation Time, each of InfraCo and TfW shall have the right to enforce the Infrastructure Agreement and the Package Orders and pursue any claims and demands under the Infrastructure Agreement and the Package Orders against the other with respect to matters arising before, at or after the Novation Time as though TfW were the original party to the InfraCo Sub-Contract and the Package Orders instead of the ODP, provided always that:

- (a)

- (b) TfW and InfraCo shall have the benefit of all rights, remedies, reliefs and defences available to them under the Infrastructure Agreement and the Package Orders in relation to any rights and liabilities relating to matters prior to the Novation Time as if TfW and InfraCo had been the original parties to the InfraCo Sub-Contract and the Package Orders prior to the Novation Time; and

- (c) to the extent TfW brings a claim against InfraCo in relation to its rights and liabilities prior to the Novation Time, such claim shall be limited by, and subject to, any relevant provisions (including liability caps) as set out in the Infrastructure Agreement.

5.3 Nothing in this Deed shall release any obligation of the ODP to make payments to InfraCo in relation to VAT in connection with the Infrastructure Manager Services Payment.

## **6 INFRACO DUTY TO NOTIFY**

6.1 Prior to the Novation Time, InfraCo shall (acting reasonably) inform TfW of any actual act, omission, breach or non-performance by:

- (a) OpCo in connection with the OpCo Sub-Contract; or
- (b) ODP in connection with the ODP Grant Agreement or the Package Orders,

of which InfraCo has actual knowledge that would, or InfraCo considers is reasonably likely to, cause either TfW or InfraCo to be in breach of, or cause costs, losses or damages to be suffered under, the Infrastructure Agreement, provided that:

- (i) to the extent there is any breach or non-performance by InfraCo of this clause, TfW's sole remedy shall be to reduce any costs, losses or damages for which TfW would otherwise be responsible to InfraCo under the Infrastructure Agreement and TfW shall not be entitled to bring a claim for breach of contract in relation to any such breach; and
- (ii) InfraCo shall not be required pursuant to this clause to notify TfW of any act, omission, breach or non-performance of which TfW has knowledge (including as a result of any previous disclosure made to TfW by any person).

7 [REDACTED]

7.1 [REDACTED]  
[REDACTED]

- (a) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

- (b) [REDACTED]

- (i) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- (ii) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- (iii) [REDACTED]  
[REDACTED]  
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- (iv) [REDACTED]  
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- (v) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- (vi) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**8 SCHEDULE 3B OF THE INFRASTRUCTURE AGREEMENT**

8.1 The Parties acknowledge and agree that, notwithstanding anything to the contrary in the Infrastructure Agreement, InfraCo's obligation to provide a bond pursuant to Schedule 3B of the Infrastructure Agreement shall be suspended until such time as the bond provided pursuant to Schedule 3B of the ODP Grant Agreement has been cancelled, released and returned.

8.2 [REDACTED]

- (a) [REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

(b) [REDACTED]  
[REDACTED]  
[REDACTED]

8.3 The Parties acknowledge that prior to the date of this Deed certain changes have been agreed to Schedule 3B of the Infrastructure Agreement to reflect:

- (a) value engineering discussions; and
- (b) the COVID pandemic (including disruption that has impacted the status of the services and works referred to in Schedule 3B of the Infrastructure Agreement),

including amendments to the Milestones in Appendix 11 of Schedule 3B.

8.4 The Parties acknowledge and agree that the changes to Schedule 3B of the Infrastructure Agreement referred to in clause 8.3 above are without prejudice to other mechanisms and processes set out in the Infrastructure Agreement outside of Schedule 3B (including Schedule 9).

## 9 RAIL INTERFACE AGREEMENT

9.1 InfraCo shall, and TfW shall procure that TfWR shall, acting reasonably, develop and enter into a rail interface agreement between InfraCo and TfWR (the "**Rail Interface Agreement**") prior to the Novation Time that:

- (a) takes effect on and from the Novation Time;
- (b) develops and finalises the commercial principles set out in the document titled "Dependencies & Cost Assumptions 17.12.20;
- (c) contains services to be provided by TfWR which shall be specified and provided to a standard that shall be as agreed between TfWR, TfW and InfraCo, on the basis that such services shall enable InfraCo to comply with, and deliver, its associated obligations in the Infrastructure Agreement; and
- (d) facilitates the migration from OpCo of any services which are agreed to be provided by InfraCo or its suppliers.

9.2 The Parties acknowledge and agree that InfraCo has provided for [REDACTED] [REDACTED] (indexed by RPI) in aggregate to contribute to the provision of the services under the Rail Interface Agreement. To the extent that InfraCo is required to incur costs in excess of [REDACTED] ([REDACTED]) pursuant to

the Rail Interface Agreement, the Parties agree it shall be deemed to be a Qualifying Change under the Infrastructure Agreement.

- 9.3 To the extent that InfraCo is required to provide any services to TfWR under the Rail Interface Agreement, TfWR will pay InfraCo for such services and, to the extent any such service impacts on InfraCo's rights, obligations or cost under the Infrastructure Agreement, InfraCo and TfW shall jointly work together to:

- (a) take such cost and risk into account when agreeing on the cost of services TfWR shall pay InfraCo; and/or
- (b) determine that the requirement of InfraCo to provide such services shall be a Change under the Infrastructure Agreement,

provided that InfraCo shall not be required to provide any such service to the extent that it would be in breach of its network licence.

- 9.4 To the extent that the Rail Interface Agreement is not entered into prior to the termination of the ODP Grant Agreement, or the Rail Interface Agreement does not reflect the principles set out above, the Parties acknowledge and agree that it shall be deemed to be a Qualifying Change.

- 9.5 The Parties shall work together in good faith to further develop the 'Restructuring Costs' payable under Appendices 4 and 5 of Schedule 8.5 of the Infrastructure Agreement and the list set out in Appendix 1 of Schedule 14.1 of the Infrastructure Agreement to reflect any services which are to be migrated to AKI pursuant to Clause 9.1(d).

## **10 TRACK ACCESS AGREEMENT COSTS**

- 10.1 Without prejudice to InfraCo's responsibilities under the Infrastructure Agreement to maintain all policies, processes, agreements and consents (including track access and connection agreements) that ORR may require from time to time including any amendments to those arrangements required as result of the termination of the ODP Grant Agreement, the Parties agree that:

- (a) the Authority shall compensate InfraCo as a pass through cost all of InfraCo's costs under Schedule 4 (Engineering Access State, Timetable Planning Rules and Restrictions of Use) of any Track Access Agreement entered into by InfraCo as may be administered by the Infrastructure Manager Agreement (including those arising from maintenance possessions, other than in respect of freight operators) to the extent that:
  - (i) such costs are not otherwise recoverable by InfraCo; and



- (ii) InfraCo has complied with its relevant roles, responsibilities and obligations under the Track Access Agreement and the Infrastructure Agreement to the extent that they relate to Schedule 4 of the Track Access Agreement;
- (b) the Authority shall compensate InfraCo as a pass through cost all of InfraCo's costs under or in respect of Schedule 8 (Performance Regime) of any Track Access Agreement entered into by InfraCo ("**TAA Schedule 8 Costs**") as may be administered by the Infrastructure Manager Agreement that do not arise from InfraCo's performance of the Infrastructure Manager Services (as defined in the Infrastructure Agreement), to the extent that:
  - (i) such costs are not otherwise recoverable by InfraCo; and
  - (ii) InfraCo has complied, with its relevant roles, responsibilities and obligations under the Track Access Agreement and the Infrastructure Agreement to the extent that they relate to Schedule 8 (Performance Regime) of any Track Access Agreement,

provided that in order to calculate the TAA Schedule 8 Costs as described above, the Parties will work together acting reasonably and in good faith to agree and implement by 1 March 2021 a simplified methodology to recognise that absolute clarity of the source of the TAA Schedule 8 Costs will not be practical and that compromises will need to be agreed that do not unduly favour either Party; and

- (c) they will work together acting reasonably and in good faith to agree and implement by 1 March 2021 a funding arrangement (for maintenance possessions only) to reflect the fact that the passenger operator on the CVL will not be required to pay an Access Charge Supplement to InfraCo for Restrictions of Use on the CVL (and will no longer be paying such Access Charge Supplement to Network Rail), if such arrangements are required for regulatory compliance or the Parties agree this is necessary.

10.2 The Parties agree that they do not intend to seek any amendments to the Track Access Agreement to implement any of the matters in this paragraph 10, provided that the Authority shall procure that TfWR does not seek to submit any additional cost claims pursuant to any Track Access Agreement in relation to in respect possessions related to CVL Transformation (as defined in the Infrastructure Agreement).

10.3 The Parties agree that the provisions of paragraph 10.1(a) to (c) will apply retrospectively from the date of termination of the ODP Grant Agreement, and the Parties acknowledge and agree that they shall work together in good faith and acting reasonably to agree by the date of termination of the ODP Grant Agreement the mechanism and arrangement

for the funding of any costs incurred by InfraCo arising from CVL Transformation (as defined in the Infrastructure Agreement) or any Renewals (as defined in the Infrastructure Agreement) in connection with Schedule 4 (Engineering Access State, Timetable Planning Rules and Restrictions of Use) of any Track Access Agreement entered into by InfraCo as may be administered by the Infrastructure Manager Agreement during the period prior to termination of the ODP Grant Agreement.

- 10.4 Capitalised terms defined in this paragraph shall, to the extent applicable, have the meanings given to them in the relevant Track Access Agreement.

## **11 LABOUR RESOURCE AGREEMENTS**

- 11.1 Subject to clause 11.2, the Parties agree that the wording set out in Part 1 (Agreed Drafting) of Schedule 5 (Labour Resource Agreements) shall be included in the agreements listed in Part 2 (List of Agreements) of Schedule 5 prior to such agreements being entered into.

- 11.2 Notwithstanding any other provision of the Infrastructure Agreement, the Parties acknowledge and agree that:

- (a) Amey OWR Limited and Amey Rail Limited shall not be required to provide any collateral warranties in connection with the Infrastructure Agreement or any of its schedules; and
- (b) the new clause 12 (Milestone Delay Payments), and any definitions and consequential drafting, set out in Part 1 of Schedule 5 is not to be included in the Labour Resource Agreement between InfraCo and Amey Rail Limited.

## **12 AUTHORITY DEPENDENCIES**

- 12.1 TfW and InfraCo acknowledge and agree that the Authority Dependencies set out in Schedule 18.2, Appendix 1 of the Infrastructure Agreement as at the date of this Deed constitute an initial list of the Authority Dependencies and that TfW and InfraCo shall following the date of this Deed work together acting reasonably and in good faith to agree any additional Authority Dependencies (including weather monitoring data to provide data in relation to temperature, wind speed, rain levels and sensors for areas at risk of flooding or landslip and to make such data available to InfraCo) prior to the date of termination of the ODP Grant Agreement which were:

- (a) OpCo obligations pursuant to the OpCo Sub-Contract; and/or
- (b) ODP obligations pursuant to the OpCo Sub-Contract or the ODP Grant Agreement,

which in each case if not performed would have an impact on InfraCo's ability to perform its obligations under the Infrastructure Agreement.

### **13 CVL STATIONS UNDERLEASE**

- 13.1 TfW shall procure that the CVL Station Underlease will transfer from OpCo to TfWR on the date of termination of the ODP Grant Agreement and TfWR will assume the rights, obligations, responsibilities and liabilities of OpCo under such CVL Station Underlease.

### **14 DISPUTE RESOLUTION PROCEDURE**

- 14.1 TfW and InfraCo shall resolve disputes arising out of or in connection with this Deed in accordance with Clause 11 of the InfraCo Sub-Contract.

### **15 ENTIRE AGREEMENT**

- 15.1 In relation to its subject matter, this Deed sets out the entire agreement between the Parties and shall be in substitution for and shall supersede any prior agreement, arrangement or understanding (whether oral or written) relating to the subject matter of this Deed.

### **16 COUNTERPARTS**

- 16.1 This Deed may be executed in any number of counterparts and by the different Parties on separate counterparts, each of which when so executed and delivered shall be an original but all counterparts shall together constitute one and the same instrument.

### **17 GOVERNING LAW**

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

### **18 JURISDICTION**

- 18.1 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Deed or its subject matter or formation.



This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a deed by )  
**TRANSPORT FOR WALES** acting )  
by ..... )  
)

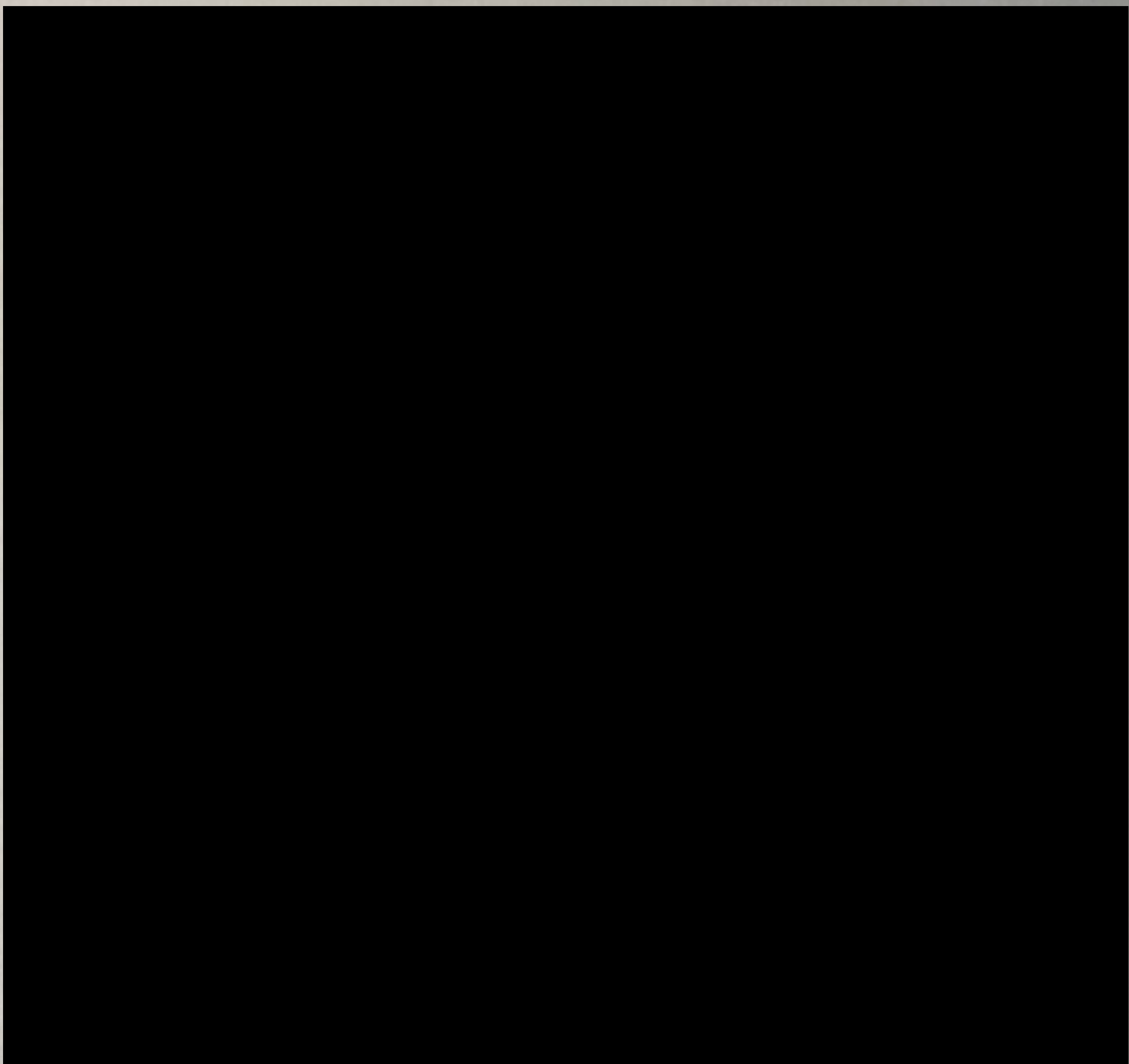
Signature of director

Signature of witness

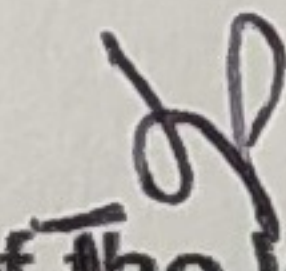
Name of witness

Address of witness

Occupation of witness



**THE WELSH MINISTERS**

Executed as a deed by applying the seal of  the Welsh Ministers.

The application of the seal of the Welsh  
Ministers is AUTHENTICATED by:

.....  
who is duly authorised for that purpose by the Director of Legal Services by authority of the Welsh  
Ministers under Section 90 (2) of the Government of Wales Act 2006.



This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a deed by )  
**TRANSPORT FOR WALES** acting )  
by ..... )  
)

Signature of director .....

Signature of witness .....

Name of witness .....

Address of witness .....

.....

.....

Occupation of witness .....

#### THE WELSH MINISTERS

Executed as a deed by applying the seal of the Welsh Ministers.

*Ver* The application of the seal of ~~The~~ Welsh  
Ministers is AUTHENTICATED by:



who is duly authorised for that purpose by the Director of Legal Services by authority of the Welsh Ministers under Section 90 (2) of the Government of Wales Act 2006.

*J. M. Rees*



Executed as a deed by )  
KEOLIS AMEY WALES CYMRU LIMITED )  
acting by ..... )

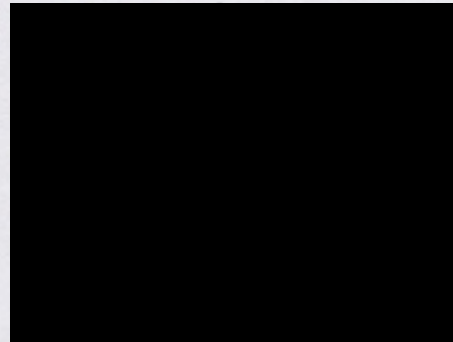
Signature of director

Signature of witness

Name of witness

Address of witness

Occupation of witness



Executed as a deed by )  
AMEY KEOLIS INFRASTRUCTURE / )  
SEILWAITH AMEY KEOLIS LIMITED )  
acting by ..... )

Signature of director

Signature of witness

Name of witness

Address of witness

Occupation of witness

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.....



Executed as a deed by )  
**KEOLIS AMEY WALES CYMRU LIMITED** )  
acting by ..... )  
)

Signature of director .....

Signature of witness .....

Name of witness .....

Address of witness .....

.....

.....

Occupation of witness .....

Executed as a deed by )  
**AMEY KEOLIS INFRASTRUCTURE /** )  
**SEILWAITH AMEY KEOLIS LIMITED** )  
acting by ..... )  
)

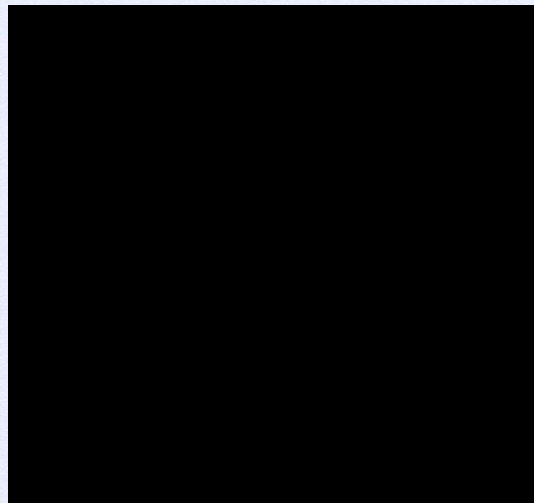
Signature of director

Signature of witness

Name of witness

Address of witness

Occupation of witness



**Schedule 1 – Package Orders**

	<b><u>CVL Transformation Package Order</u></b>
1.	Contract No. 01 Trial Holes and Surveys Works Package: 01 OLE (excluding RHY and CRY)
	<b><u>Renewal Package Orders</u></b>
1.	Contract No. PR003.2.1 Works Package: Track Renewals Packages 1 to 5
2.	Contract No. PR003.4.1 Works Package: Permanent Way Renewals Package 1
3.	Contract No. PR003.4.2 Works Package: Permanent Way Renewals Packages 2-4
4.	Contract No. PR003.4.3 Works Package: Permanent Way Renewals Package 5
	<b><u>ODP Infrastructure Works</u></b>
1.	Works Package: 01 OLE (excluding RHY and CRY) Contract No. 01 Trial Holes and Surveys – Tier 1
2.	Works Package: 01 OLE (excluding RHY and CRY) Contract No. 01 Trial Holes and Surveys – Tier 2



## **Schedule 2 - Direct Agreements and Collateral Warranties**

The supplier names given in Parts 1 and 2 of this Schedule 2 are provided for information only and are subject to change by InfraCo.

### **Part 1**

<b>Contract reference</b>	<b>Service</b>	<b>Supplier</b>
<b>IM001B</b>	<b>Civil Framework</b>	[REDACTED] [REDACTED]
<b>IM006A</b>	<b>Vegetation Management</b>	[REDACTED]
<b>IM008B</b>	<b>Undertaking Services</b>	[REDACTED] [REDACTED]
<b>IM021</b>	<b>Intra-Group Services Agreement (Key Personnel)</b>	[REDACTED]

### **Part 2**

<b>Contract reference</b>	<b>Services</b>	<b>Supplier</b>
<b>IM002</b>	<b>EAMS Support Contract</b>	[REDACTED] [REDACTED]
<b>IM009</b>	<b>Passport Advantage Agreement</b>	[REDACTED] [REDACTED]
<b>IM010</b>	<b>[REDACTED] Licence Agreement</b>	[REDACTED]
<b>IM031A</b>	<b>Fencing Repair and Management</b>	[REDACTED] [REDACTED]

IM062	JBA Handheld	<div></div> <div></div>
TR2	Land & Mineral	<div></div>
TR3	Andromeda	<div></div>
TR4	Instalaciones Inabensa	<div></div>
IM XXX	Amey TPT	<div></div> <div></div>

### **Schedule 3 - Infrastructure Agreement**

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# INFRASTRUCTURE AGREEMENT

TRANSPORT FOR WALES (1)

AMEY KEOLIS INFRASTRUCTURE / SEILWAITH AMEY (2)  
KEOLIS LIMITED

## **CONTENTS**

<b>Clause</b>	<b>Heading</b>	<b>Page</b>
1	INTERPRETATION .....	6
2	AGREED DOCUMENTS .....	9
3	DEFINITIONS.....	9
4	COMMENCEMENT .....	50
5	DURATION OF THE INFRASTRUCTURE AGREEMENT .....	51
6	GENERAL OBLIGATIONS.....	52
7	ASSIGNMENT .....	55
8	CHANGE OF CONTROL .....	56
9	COMPLIANCE WITH LAWS .....	56
10	CUMULATIVE RIGHTS AND REMEDIES .....	56
11	DISPUTE RESOLUTION PROCEDURE .....	57
12	NOTICES.....	59
13	SET-OFF .....	60
14	MISCELLANEOUS PROVISIONS .....	61
15	NOT USED .....	63
16	ENTIRE AGREEMENT .....	63
17	GOVERNING LAW AND JURISDICTION.....	64
18	NO PARTNERSHIP, AGENCY OR JOINT VENTURE .....	64
19	LANGUAGE.....	64
20	COUNTERPARTS.....	65
	Schedule 1 – Not used .....	66
	Schedule 2.1 - Asset Vesting and Transfer.....	67
	Schedule 2.2 - Security of Access Agreements and Leases .....	68
	Schedule 3A - Infrastructure Manager Services .....	70

Schedule 3B - Infrastructure Services and AKI Infrastructure Works .....	71
Schedule 4 – Not Used .....	72
Schedule 5 – Not Used .....	73
Schedule 6.1 - Rail Services Specific Obligations – NOT USED.....	74
Schedule 7.2 – National Rail Passenger Surveys, Customer Report and CCI Scheme – NOT USED.....	76
Schedule 7.3 – Service Quality Regime – NOT USED .....	77
Schedule 7.4 – Ticketless Travel Regime – NOT USED .....	78
Schedule 7.5 - CVL Restrictions of Use.....	79
Appendix 1 to Schedule 7.5 – Notification Factors .....	92
Appendix 2 to Schedule 7.5 – Payment Rates.....	93
Schedule 8 - Payments .....	94
Schedule 8.1 – NOT USED.....	94
Schedule 8.2 - Profit Share Mechanism – NOT USED .....	95
Schedule 8.3 - Track Access Adjustments and Station Charge Adjustments – NOT USED.....	96
Schedule 8.4 - Revenue Support Adjustment – NOT USED .....	97
Schedule 8.5 - Infrastructure Manager Services Payments.....	98
Appendix 1 to Schedule 8.5 - Fixed Charge Tables.....	108
Appendix 2 to Schedule 8.5 - Firm Charge Tables .....	112
Appendix 3 to Schedule 8.5 - Emerging Charges Tables .....	116
Schedule 8.6 – Grant Funding Arrangements – Not Used .....	122
Schedule 9 – Changes and Variations.....	123
Schedule 9.1 – Financial and Other Consequences of Change .....	123
Appendix 1 to Schedule 9.1 .....	128
Appendix 2 to Schedule 9.1 .....	129
Schedule 9.2 – Identity of the Final Tender Financial Model .....	133
Schedule 9.3 - Variations to the Infrastructure Agreement and Incentivising Beneficial Changes .....	134
Schedule 10 - Remedies, Events of Default and Termination Events .....	138
Schedule 10.1 - Procedure for remedying a Contravention of the Infrastructure Agreement...	138
Schedule 10.2 - Events of Default and Termination Events .....	142
Appendix 1 to Schedule 10.2 – Agreed Form of Deed of Novation – Not used.....	148
Schedule 10.3 - Force Majeure and Business Continuity .....	149
Schedule 10.4 – Liability .....	153
Schedule 11 - InfraCo Performance Meetings and Management Information.....	155
Schedule 11.1 - InfraCo Performance Meetings .....	155
Appendix 1 to Schedule 11.1 – JTRG Controls .....	159
Schedule 11.2 - Management Information .....	160
Appendix 1 to Schedule 11.2 - Resource Plan .....	173
Appendix 2 to Schedule 11.2 – NOT USED - .....	174

Schedule 12 - Financial Covenants and Bonds .....	175
Appendix 1 to Schedule 12 .....	182
Form of Performance Bond .....	182
Schedule 13 - Rail Industry Initiatives, Innovation Obligations and Sustainability and Ethical Procurement.....	188
Schedule 13.1 – Rail Industry Initiatives .....	188
Schedule 13.2 - Innovation Obligations .....	191
Appendix 1 to Schedule 13.2 – Not Used .....	192
Schedule 13.3 - Sustainability and Ethical Procurement .....	193
Part 1 to Schedule 13.3 - Scope .....	193
Appendix 1 to Part 1 Schedule 13.3 – Not Used .....	194
Appendix 2 to Part 1 Schedule 13.3 – Not Used .....	195
Part 2 to Schedule 13.3 – Economic and Ethical Procurement .....	196
Part 3 to Schedule 13.3 - Social.....	198
Appendix 1 to Part 3 of Schedule 13.3 – InfraCo Commitments .....	203
Part 4 to Schedule 13.3 - Environment .....	205
Appendix 1 to Part 4 of Schedule 13.3 - Sustainability and Ethical Procurement reporting.....	209
Appendix 2 to Part 4 of Schedule 13.3 - Environment Targets.....	216
Part 5 of Schedule 13.3 - Culture.....	218
Schedule 14 - Preservation of Assets .....	220
Appendix 1 to Schedule 14.1 - List of systems, Assets and Equipment not transferring .....	223
Appendix 1 to Schedule 14.3 - List of Key Contracts.....	233
Schedule 15 - Obligations Associated with Termination .....	237
Schedule 15.1 – Reletting Provisions.....	237
Schedule 15.2 - Last Twelve (12) or Thirteen (13) months of the Infrastructure Agreement Term or termination of certain InfraCo Services and other conduct of business provisions .....	243
Schedule 15.3 - Handover Package.....	247
Appendix 1 to Schedule 15.3 - Form of Handover Package.....	248
Schedule 15.4 - Provisions Applying on and after Termination .....	250
Appendix 2 – Form of Transfer Agreement.....	257
Schedule 16.1 – NOT USED.....	272
Schedule 16.2 - Transfer of Undertakings (Protection of Employment) Regulations 2006 .....	273
Schedule 17 - Confidentiality and Freedom of Information .....	277
Schedule 18.....	284
Appendix 1 to Schedule 18.2 - Authority Dependencies.....	285
Appendix 2 to Schedule 18.2 - Exceptional Items.....	286

Appendix 1 to Schedule 18.3 – Process for the Acceptance of Document	
Deliverables.....	288



**THIS AGREEMENT** is dated

12 October 2018

**BETWEEN:**

- (1) **TRANSPORT FOR WALES**, with company number 9476013 whose registered office is at 3 Llys Cadwyn, Taff Street, Pontypridd, Rhondda Cynon Taf, CF37 4TH (the “**Authority**”); and
- (2) **AMEY KEOLIS INFRASTRUCTURE / SEILWAITH AMEY KEOLIS LIMITED** (Company 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 “**InfraCo**”).

**WHEREAS:**

- (A) The Secretary of State agreed pursuant to an Agency Agreement dated 11 October 2016 (“**Agency Agreement I**”) that the Welsh Ministers may exercise on his behalf and as his agent, the Secretary of State’s power under the Act to select bidders to be issued with the Invitation to Participate in Dialogue (“**ITPD**”), issue the ITPD to each of those bidders, enter into competitive dialogue with the bidders who respond to the ITPD, proceed to assess and down-select such bidders as part of the procurement process. Accordingly, on 11 October 2016 the Welsh Ministers invited prospective ODPs to submit outline solution proposals for the provision of the ODP Services.
- (B) The Secretary of State agreed pursuant to an Agency Agreement dated 28 September 2017 (“**Agency Agreement II**”) that the Welsh Ministers may exercise on his behalf and as his agent, the Secretary of State’s power under the Act to issue an invitation to tender under section 26(3) of the Act (referred to in the procurement process as an Invitation to Submit Final Tenders (“**ITSFT**”). Accordingly, following a competitive dialogue process the Welsh Ministers issued the ITSFT on 28 September 2017 and invited prospective ODPs to submit final proposals for the provision of the ODP Services.
- (C) The Secretary of State agreed pursuant to an Agency Agreement dated on or about the date of the Infrastructure Agreement (“**Agency Agreement III**”) that the Welsh Ministers may exercise on his behalf and as his agent, the Secretary of State’s power (inter alia) under section 26(1) the Act to select the person who is to be the ODP (referred to in the Act as the franchisee) in relation to this ODP Grant Agreement from among those who submitted tenders in response to the ITSFT and to award the ODP Grant Agreement.
- (D) On the basis of the ODP’s response to the ITSFT, the Welsh Ministers selected the ODP as its preferred service provider and appointed the ODP to provide the ODP Services.
- (E) The Welsh Ministers and Keolis Amey Wales Cymru Limited (the “**ODP**”) entered into the ODP Grant Agreement on 4 June 2018 (the “**ODP Grant Agreement**”). The ODP and

InfraCo subsequently entered into a long form sub-contract for the ODP's obligations relating to the Infrastructure Manager Services, the Infrastructure Works and the Infrastructure Services as defined under the ODP Grant Agreement (together, the "**InfraCo Services**") on 12 October 2018 (the "**InfraCo Sub-Contract**").

- (F) The ODP and the Welsh Ministers have subsequently mutually agreed a termination of the ODP Grant Agreement, with such termination to be effected by way of a deed of termination between the ODP and the Authority (the "**Termination Deed**").
- (G) On the date of termination of the ODP Grant Agreement, InfraCo shall provide InfraCo Services to the Authority through an agreed novation of InfraCo Sub-Contract from the ODP to the Authority, such novation also providing for necessary amendments to InfraCo Sub-Contract.
- (H) The Authority considers that this approach is justified as a contract modification under:
  - (i) in respect of the Infrastructure Services and Infrastructure Works, Regulation 88(1)(a) and/or 88(1)(d)(i) of the Utilities Contracts Regulations 2016 ("**UCR**") as the "step in" provisions contained in Schedule 3B of the ODP Grant Agreement amount to "clear, precise and unequivocal review clauses";
  - (ii) in respect of the Infrastructure Management Services, Regulation 88(1)(d)(ii) of the UCR, on the basis that the change in contracting party (i.e. from the ODP to InfraCo) will be in consequence of the corporate restructuring which will take place as part of the mutually agreed termination arrangements referred to above; and
  - (iii) in respect of the change in contracting party from Welsh Ministers to the Authority, Regulation 88(1)(e) of the UCR as this change does not amount to a substantial modification within the meaning of Regulation 88(7).
- (I) The following provisions of this Infrastructure Agreement represent the agreed amended and re-stated InfraCo Sub-Contract following the novation of the same from ODP to the Authority to give effect to the matters referred to in Recital (G).

## **1 INTERPRETATION**

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

- (a) words and expressions defined in Part I of the Act have the same meanings when used therein provided that, except to the extent expressly stated, "**railway**" shall not have the wider meaning attributed to it by section 81(2) of the Act;

- (b) words and expressions defined in the Interpretation Act 1978 have the same meanings when used in the Infrastructure Agreement;
- (c) references to “Parties” shall mean the Authority and InfraCo (and references to a “**Party**” shall mean the Authority or InfraCo as the context requires);
- (d) the words “**include**”, “**including**” and “**in particular**” are to be construed without limitation;
- (e) references to any “**person**” include its successors, transferees or assignees;
- (f) the words “**subsidiary**”, “**subsidiary undertaking**” and “**parent undertaking**” each have the same meaning in the Infrastructure Agreement as in section 1162 of the Companies Act 2006;
- (g) references in any of the agreements comprising the Infrastructure Agreement to Recitals, clauses, Schedules, Parts of Schedules, paragraphs of Schedules and Appendices to Schedules are to Recitals, clauses, Schedules, Parts of Schedules, paragraphs of Schedules and Appendices to Schedules of that agreement, unless expressly specified to the contrary, and the Schedules and Appendices form part of the agreement in which they appear;
- (h) references in any Schedule in any of the agreements comprising the Infrastructure Agreement to a Part, paragraph or Appendix are references to a Part, paragraph or Appendix of that Schedule (or the relevant Part of a Schedule), unless expressly specified to the contrary;
- (i) headings and references to headings shall be disregarded in construing the Infrastructure Agreement;
- (j) references to any enactment include any subordinate legislation made from time to time under such enactment and are to be construed as references to that enactment as for the time being amended or modified or to any enactment for the time being replacing or amending it and references to any subordinate legislation are to be construed as references to that legislation as for the time being amended or modified or to any legislation for the time being replacing or amending it;
- (k) references to an agreement or any other document shall be construed as referring to that agreement or document as from time to time supplemented, varied, replaced, amended, assigned or novated;
- (l) references to any particular provisions of any agreement or any other document shall be construed to include any other provisions of, or incorporated in, that agreement or other

document which the Authority reasonably considers have an equivalent effect or are intended to fulfil the same function;

- (m) amendments to or variations of contracts or arrangements include assignments, novations or other transfers of rights and/or obligations (in whole or in part) under such contracts or arrangements;
- (n) words importing the masculine gender include the feminine and vice-versa, and words in the singular include the plural and vice-versa;
- (o) wherever provision is made for the giving or issuing of any notice, endorsement, consent, approval, waiver, certificate or determination by any person, unless otherwise specified, such notice, endorsement, consent, approval, waiver, certificate or determination shall be in writing and the words “**notify**”, “**endorse**”, “**consent**”, “**approve**”, “**waive**”, “**certify**” or “**determine**” and other cognate expressions shall be construed accordingly;
- (p) references to materials, information, data and other records shall be to materials, information, data and other records whether stored in electronic, written or other form;
- (q) Not used;
- (r) Not used;
- (s) references to “**railway passenger services**” are to be construed subject to section 40 of the Railways Act 2005;
- (t) Not used
- (u) Not Used;
- (v) the amount of any payment or the value of any supply is expressed in this Infrastructure Agreement exclusive of VAT and where any payment or taxable supply falls to be made pursuant to this Infrastructure Agreement VAT properly chargeable thereon will against provision of a proper VAT invoice therefor be paid in addition by the recipient of the supply for which the payment (if any) is or is deemed to be consideration.

For the avoidance of doubt, the Parties acknowledge and agree that the Infrastructure Manager Services Payments due under Schedule 8.5 of this Infrastructure Agreement is consideration for a taxable supply and the Authority shall pay InfraCo the amount of any such VAT chargeable thereon against provision of a proper VAT invoice therefor.

- (w) the words “**shall not be liable**” are to be construed as meaning that no contravention of the Infrastructure Agreement and no Event of Default shall arise as a result of the occurrence of the matter to which such words relate;

- (x) references to a **“contravention of the Infrastructure Agreement”** or a **“contravention”** (and cognate expressions) are to be construed as meaning a breach of the Infrastructure Agreement;
  - (y) wherever provision is made for InfraCo to **“procure”** or **“ensure”** the delivery of an obligation under the Infrastructure Agreement, unless otherwise specified, that provision shall be construed as a primary obligation on InfraCo to deliver that obligation; and
  - (z) references to **“profit”** shall be construed as meaning profit before corporation tax, determined in accordance with GAAP;
- 1.2 Where there is a requirement on InfraCo to **“fully and effectively co-operate”** with one (1) or more other parties with regard to an objective, that requirement relates to the quality of co-operation to be provided by InfraCo taking into account and subject to the response of the other parties concerned. It does not indicate an obligation on InfraCo beyond co-operation, relating to the funding of detailed design and development of an infrastructure project, actual delivery or subsequent operation (including in each case performance cost and revenue effects). It does indicate that InfraCo shall participate actively in relation to the relevant objective including through the application of management time and internal resources, correspondence and attendance at meetings, in each case as InfraCo reasonably considers in all of the circumstances to be an appropriate use of its resources and effective to achieve the relevant objective.

## 2 AGREED DOCUMENTS

- 2.1 References to documents **“in the agreed terms”** are references to documents initialled by or on behalf of the Authority and InfraCo.
- 2.2 As at the date of this Infrastructure Agreement, the documents **“in the agreed terms”** are the FTFM and the Record of Assumptions.

## 3 DEFINITIONS

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

<b>"Access Agreement"</b>	has the meaning given to the term "access agreement" in Section 83(1) of the Act;
<b>"Act"</b>	means the Railways Act 1993 (as modified, amended or replaced by the Transport Act 2000 and/or the Railways Act 2005) and any regulations or orders made thereunder;

<b>"Additional Services"</b>	<b>Infrastructure</b>	those services referred to in Part C of Appendix 2 (Scope) of Schedule 3B which may be instructed by the Authority to be undertaken by InfraCo in accordance with and pursuant to Part C of Appendix 5 to Schedule 3B and any Package Order;
<b>"Affected Party"</b>		has the meaning given to it in paragraph 6.3 of Schedule 12 (Financial Covenants and Bonds);
<b>"Affiliate"</b>		<p>means, in respect of any person, any person by which that person is Controlled or which is Controlled by that person, or any person which is Controlled by any other Affiliate of that person and for the purpose of this definition:</p> <p>(a) Network Rail or NR shall not be construed as being an affiliate of the Authority; and</p> <p>(b) the Joint Venture Party shall not be construed as being an affiliate of InfraCo;</p>
<b>"Agreement"</b>		means clauses 1 to 20 and Schedules 1 to 18 including any Appendices as varied from time to time;
<b>"Aggregated Change"</b>	<b>Qualifying</b>	<p>means two (2) or more Changes which:</p> <p>(a) are notified or agreed (in the case of a Change which is a Variation pursuant to paragraph 1.1 of Schedule 9.3 (Variations to the Infrastructure Agreement and Incentivising Beneficial Changes)); and/or</p> <p>(b) a Party has become aware of (in the case of any other kind of Change),</p> <p>in an Infrastructure Manager Year (the "Aggregation Year") which individually do not exceed the Threshold Amount for the Aggregation Year taken alone but do exceed it when taken together. For the avoidance of doubt, where the Changes arise in different Infrastructure Manager Years, for the purposes of determining whether in aggregate they exceed the Threshold Amount there will be an Aggregated Qualifying Change where the aggregate of the net present</p>

	values of those Changes exceeds the Threshold Amount for the Aggregation Year;
<b>"AKI Infrastructure Works"</b>	has the meaning given to it in Appendix 1 of Schedule 3B;
<b>"Annual Audited Accounts"</b>	means the accounts of InfraCo which: <ul style="list-style-type: none"> <li>(a) comply with paragraph 9.5(b) of Schedule 11.2 (Management Information); and</li> <li>(b) are delivered to the Authority by InfraCo in accordance with paragraph 9.4(c) of Schedule 11.2 (Management Information) and certified by InfraCo's auditors as true and fair;</li> </ul>
<b>"Annual Business Plan"</b>	means the plan to be provided by InfraCo to the Authority in accordance with paragraph 10.2 of Schedule 11.2 (Management Information);
<b>"Annual Financial Statements"</b>	means the final draft financial statements of InfraCo which: <ul style="list-style-type: none"> <li>(a) comply with paragraph 9.5(b) of Schedule 11.2; (Management Information); and</li> <li>(b) are delivered to the Authority by InfraCo in accordance with paragraph 9.4(b) of Schedule 11.2 (Management Information);</li> </ul>
<b>"Annual Management Accounts"</b>	means the management accounts of InfraCo which: <ul style="list-style-type: none"> <li>(a) comply with paragraph 9.5(a) of Schedule 11.2 (Management Information); and</li> <li>(b) are delivered to the Authority by InfraCo in accordance with paragraph 9.4(a) of Schedule 11.2 (Management Information);</li> </ul>
<b>"Apprentice"</b>	means a formal arrangement for a person aged sixteen (16) or over to earn a wage and work alongside experienced staff to gain job-specific skills through a recognised and approved apprenticeship scheme including but not limited to the Apprenticeship Matching Service;

<b>“Apprentice Rate”</b>	means the national minimum wage rate as applicable to Apprentices;
<b>“Apprenticeship Matching Service”</b>	means the apprenticeship matching service organised by Careers Wales;
<b>“Arts Council of Wales”</b>	means the Arts Council of Wales, registered charity number 1034245;
<b>“Authority’s Representative”</b>	means a person appointed from time to time by the Authority to fulfil certain duties, including to manage the Infrastructure Agreement on behalf of the Authority and to monitor InfraCo’s performance of its obligations under the Infrastructure Agreement;
<b>"Average Weekly Earnings"</b>	means the United Kingdom average weekly earnings measure excluding bonuses as published from time to time by the Office for National Statistics or, if such measure shall cease to be published or if, in the reasonable opinion of the Authority, there is a material change in the basis of such measure, such other alternative index as the Authority may, after consultation with InfraCo, determine to be appropriate in the circumstances;
<b>“BAME”</b>	means black, Asian and minority ethnic;
<b>"Bank"</b>	means a person which has a permission under Part 4A of the Financial Services and Markets Act 2000 to carry on the regulated activity of accepting deposits thereunder and which is reasonably acceptable to the Authority;
<b>"Bank Holiday"</b>	means any day other than a Saturday or Sunday on which banks in the City of London or Cardiff are not open for business;
<b>"BES 6001 Responsible Sourcing of Construction Products"</b>	means the British standard concerning “Responsible Sourcing of Construction Products”;
<b>"Bond Provider"</b>	means any person or persons who may provide or be an obligor under a Performance Bond or Asset Maintenance Performance Bond from time to time and who shall, unless the Authority otherwise agrees, be:



- (a) a Bank;
- (b) an insurance company; or

in each case with the Relevant Credit Rating;

**"Bond Year"**

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

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

**"Brand Guidelines"**

has the meaning given to it in clause 6.6;

**"Brand Licence"**

means any licence between:

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

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

**"British Transport Police"**

means the British Transport Police Authority and the British Transport Police Force created pursuant to Section 18 and Section 20 of the Railways and Transport Safety Act 2003 (or any successor or successors to its statutory policing functions);

**"Buildings Research Establishment Environmental Assessment Method" or "BREEAM"**

means the internationally recognised environmental assessment method and rating system for buildings developed by Building Research Establishment Limited or any other standard which is generally recognised as having replaced it;

**"Business Action Plan"**

means an action plan produced by InfraCo in relation to the delivery of any aspect of InfraCo Services (including in respect of any outcome anticipated by its Business Plan,

in accordance with paragraph 10.2 of Schedule 11.2 (Management Information));

**“Business Continuity Plan” or “BCP”**

means a disaster management and business continuity plan required to be produced, maintained and implemented by InfraCo in accordance with the requirements of paragraph 25 of Schedule 3A;

**“Business Plan”**

means the Initial Business Plan or any Annual Business Plan, as the context requires, to be delivered in accordance with paragraphs 10.1 and 10.2(c) of Schedule 11.2 (Management Information);

**“Business Wales”**

means the Welsh Government’s service, which supports the sustainable growth of SMEs across Wales by offering access to information, guidance and business support;

**“Capital Expenditure”**

has the meaning given to it in paragraph 3.4 of Schedule 9.3 (Variations to the Infrastructure Agreement and Incentivising Beneficial Changes);

**“Careers Wales”**

means Career Choices Dewis Gyrfa Ltd, registered company number 07442837, a wholly owned subsidiary of the Welsh Government;

**“Central Government Body”**

means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

- (a) Government Department;
- (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- (c) Non-Ministerial Department; or
- (d) Executive Agency;

**“CEEQUAL”**

means an evidence-based sustainability assessment, rating and awards scheme for civil engineering, infrastructure, landscaping and works in public spaces;

**“Change”**

means if and whenever any of the following occurs:

- (a) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- (i) [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED]
- (ii) [REDACTED]  
[REDACTED]  
[REDACTED]
- (b) a Charge Variation;
- (c) a Change of Law;
- (d) [REDACTED]
- (e) a Variation to the terms of this Infrastructure Agreement pursuant to paragraph 1.1 of Schedule 9.3 (Variations to this Infrastructure Agreement and Incentivising Beneficial Changes);
- (f) any two or more of the foregoing that the Authority groups together in accordance with any procedures issued by it pursuant to paragraph 1.4 of Schedule 9.3 (Variations to the Infrastructure Agreement and Incentivising Beneficial Changes) occur;
- (g) any of the circumstances set out in paragraph 7.2 of Schedule 2.2 (Security of Access Agreements and Leases) occur;

- (h) InfraCo is entitled to REM Expenditure (as defined in the Infrastructure Management Staffing Agreement) or InfraCo benefits from a REM Cost Saving (as defined in the Infrastructure Management Staffing Agreement) in accordance with clause 14.5 of the Infrastructure Management Staffing Agreement;
- (i) the circumstances set out in paragraph 8.1 of Schedule 9.1 (Financial and Other Consequences of Change) occur;

**“Change of Control”**

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

**“Change of Law”**

means the coming into effect after the date of the Infrastructure Agreement of:

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

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

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

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

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

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

**“Charge Variation”**

means a variation:

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

**“Charging Review”**

means:

- (a) the exercise by the ORR of its powers under:
  - (i) Part 7 of Schedule 7 of the Track Access Agreement to which InfraCo is a Party on the Start Date or any Replacement Agreement which is or is deemed to be a Relevant Agreement in accordance with the definition of that term;

- (ii) Condition F12.4 (Review of Long Term Charge) of the Station Access Conditions in relation to any station which is not an Independent Station; or
  - (iii) Condition 42.5 of the Independent Station Access Conditions in relation to any station which is an Independent Station or a Station;
- (b) the following by the ORR of the procedure in Schedule 4A of the Act;
- (c) the exercise by the ORR of any of its powers or the following of any other procedure, which, in the Authority's reasonable opinion:
  - (i) has an equivalent effect to; or
  - (ii) is intended to fulfil the same function as,

any of the powers referred to in paragraphs (a) or (b) in relation to any Relevant Agreement provided that, without limitation, the exercise by ORR of any of its approval rights under Condition F12 of the Station Access Conditions shall not be considered to have an equivalent effect to or fulfil the same function as any of the powers referred to in paragraphs (a) or (b). For this purpose, Relevant Agreement includes any Relevant Agreement which is not the subject of any previous Charging Review; or
- (d) any amendment to a Relevant Agreement, or entry into a new Relevant Agreement which is approved by the ORR to the extent that it relates to an Incremental Output Statement Charge or a scheme to which that charge relates;

**“Climate Change Strategy for Wales”**

means the Climate Change Strategy for Wales dated October 2010;

**“Closure”**

means a discontinuance or closure under Part 4 of the Railways Act 2005 of any of the Passenger Services or of

	any network on which the Passenger Services may be operated or of any of the Stations or of any part of such network or Station;
<b>“CO2e”</b>	means CO2 equivalent including other greenhouse emissions;
<b>“Code of Practice”</b>	means the code of practice for protecting the interests of users of railway passenger services or station services who have disabilities, as prepared, revised from time to time (with the approval of the Disabled Persons Transport Advisory Committee) and published by the Secretary of State pursuant to Section 71B of the Act and which is available at <a href="https://www.gov.uk/government/publications/accessible-railway-stations-design-standards">https://www.gov.uk/government/publications/accessible-railway-stations-design-standards</a> (or such other applicable web address that is adopted by the Authority from time to time);
<b>“Collateral Agreement”</b>	means an agreement which is required to be entered into by InfraCo with Network Rail or any other entity as a condition to any Access Agreement of which InfraCo is the beneficiary;
<b>“Computer System”</b>	means computer hardware and computer software, including licensed third party software and data protocols;
<b>“Concept Design”</b>	has the meaning given to it in Appendix 1 of Schedule 3B (Infrastructure Services and AKI Infrastructure Works);
<b>“Confidential Information”</b>	has the meaning given to it in paragraph 1 of Schedule 17 (Confidentiality and Freedom of Information);
<b>“Connection”</b>	means a connection (however described) between any of the Passenger Services provided by InfraCo and any other railway passenger service provided by it or any other Train Operator or any bus, ferry or shipping service and cognate phrases shall be construed accordingly;
<b>“Construction Demolition Sector Plan”</b>	means the Construction and Demolition Sector Plan dated November 2012;

<b>“Construction Wales Innovation Centre”</b>	means the CITB funded training centre based within the University of Wales;
<b>“Contract Manager”</b>	means a person appointed from time to time by InfraCo to fulfil certain duties including to manage the Infrastructure Agreement on behalf of InfraCo and to facilitate the performance by InfraCo of its obligations under the Infrastructure Agreement;
<b>“Control”</b>	<p>means, in respect of a person, that another person (whether alone or with others and whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, contract or otherwise):</p> <p>(a) possesses or is, or will be at a future date, entitled to acquire:</p> <ul style="list-style-type: none"> <li>(i) thirty percent (30%) or more of the share capital or issued share capital of, or of the voting power in, that person or any other person which Controls that person;</li> <li>(ii) such part of the issued share capital of that person or any other person which controls that person as would, if the whole of the income of such person were distributed, entitle him or her to receive thirty percent (30%) or more of the amount so distributed; or</li> <li>(iii) such rights as would, in the event of the winding-up of that person or any other person which controls that person or in any other circumstances, entitle him or her to receive thirty percent (30%) or more of the assets of such person which would then be available for distribution,</li> </ul> <p>and <b>“Controlled”</b> shall be construed accordingly;</p>
<b>“Core Valley Lines” or “CVL”</b>	means the railway network known as the Cardiff Core Valley Lines, which connects with the NR Network at two separate connection points:



(i) at the Core Valley Lines' west boundary, between Ninian Park (exclusive) and Waun-gron Park stations on the Up and Down Treforest lines at 1m 20ch (ELR = RAD); and

(ii) at the Core Valley Lines' east boundary, between Cardiff Central (exclusive) and Cardiff Queen Street stations on the Up and Down Llandaff lines at 0m 13ch (ELR = CEJ),

and includes the following railway lines (locations inclusive unless specified otherwise):

(a) Rhymney to the Core Valley Lines east boundary at (ii) above;

(b) Heath Junction to Coryton;

(c) Ystrad Mynach to Cwmbargoed;

(d) Merthyr Tydfil to Queen Street, North Junction;

(e) Aberdare to Abercynon;

(f) Aberdare to Hirwaun;

(g) Treherbert to Pontypridd;

(h) Radyr to Core Valley Lines west boundary at (i) above; and

(i) Cardiff Queen Street to Cardiff Bay;

**“CRM Data”**

means Personal Data (including any or all of name, address, e-mail address and ticket purchasing history, credit and debit card details) collected by or on behalf of InfraCo relating to persons travelling on or purchasing tickets for travel on the Passenger Services or other services for the carriage of passengers by railway;

**“CVL Asset”**

means the land, property, buildings and other assets and infrastructure demised by the CVL Asset Lease from time to time and shall mean each individual asset as the context shall require;

<b>“CVL Asset Lease”</b>	means the lease in respect of the CVL Assets entered into between the lessor and InfraCo in accordance with Schedule 3A (Infrastructure Manager Services), and as amended from time to time under the CVL Asset Lease;
<b>“CVL Asset Transfer”</b>	means the transfer of the CVL Asset from Network Rail to the Authority and the lease of the CVL Asset from the Authority to the ODP;
<b>“CVL Asset Transfer Date”</b>	the date on which the CVL Asset transfers to Authority ownership and the infrastructure manager role shifts from Network Rail to the ODP;
<b>“CVL Network Code”</b>	means the document known as the CVL Network Code (as subsequently replaced or amended from time to time);
<b>“CVL Rail Services”</b>	means the passenger rail services on the Core Valley Lines;
<b>“CVL Services”</b>	means: <ul style="list-style-type: none"> <li>(a) the Infrastructure Services; and</li> <li>(b) the Infrastructure Manager Services;</li> </ul>
<b>“CVL Station Underlease”</b>	means the CVL station underlease between InfraCo and TfWRL
<b>“CVL Transformation”</b>	has the meaning given to it in Appendix 1 of Schedule 3B (Infrastructure Services and AKI Infrastructure Works);
<b>“Data Protection Requirements”</b>	means all applicable data protection and privacy legislation in force from time to time in the UK including the Data Protection Act 2018 and any legislation implementing or adopting the General Data Protection Regulation ((EU) 2016/679); the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended;
<b>“Data Site Information”</b>	has the meaning given to it in paragraph 3.5 of Schedule 15.1 (Reletting Provisions);

<b>“Depot”</b>	means a depot in respect of which InfraCo has entered into a Depot Lease;
<b>“Depot Access Conditions”</b>	has the meaning given to it in the relevant Access Agreement to which it relates;
<b>“Depot Lease”</b>	means: <ul style="list-style-type: none"> <li>(a) any lease of a depot to which InfraCo is a party as at the Start Date; or</li> <li>(b) any other lease of a depot in relation to which InfraCo becomes the Facility Owner at any time during the Infrastructure Services Term;</li> </ul>
<b>“Disabled Persons Transport Advisory Committee”</b>	means the committee with that name established under Section 125 of the Transport Act 1985 and its statutory successors;
<b>“Direct Agreement”</b>	means any agreement made, or to be made, from time to time between the Authority and the counterparty of a Key Contract in relation to such Key Contract, including any agreement entered into by the Authority under Schedule 14.3 (Key Contracts);
<b>“Dispute Resolution Rules”</b>	means the procedures for the resolution of disputes known as “The Railway Industry Dispute Resolution Rules”, as amended from time to time in accordance with the terms thereof. The rules are available at <a href="http://accessdisputesrail.org/RIDR/RIDR%20Rules.pdf">http://accessdisputesrail.org/RIDR/RIDR%20Rules.pdf</a> (or such other applicable web address that is adopted by the Railway Industry Dispute Resolution Committee from time to time);
<b>“DOTAS”</b>	has the meaning given to it in paragraph 6.3 of Schedule 12 (Financial Covenants and Bonds);
<b>“Emergency Events”</b>	has the meaning given to it in paragraph 1(e) of Schedule 10.3 (Force Majeure and Business Continuity);
<b>“Environmental Information Regulations”</b>	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or any Central Government Body in relation to such Regulations;

<b>“ERTMS”</b>	means the European Rail Traffic Management System;
<b>“ERTMS Programme”</b>	means the Network Rail cross rail industry programme for delivering the national implementation of ERTMS;
<b>“Event of Default”</b>	means any of the events set out in paragraph 1 of Schedule 10.2 (Events of Default and Termination Events);
<b>“Expiry Date”</b>	means the seventh (7th) anniversary of the date the ODP Grant Agreement is terminated;
<b>“Facility Owner”</b>	has the meaning given to the term facility owner in Section 17(6) of the Act;
<b>“Fair Trade Nation”</b>	means that status obtained by Wales following its achievement of the “Fair Trade National Milestones”;
<b>“Final Tender Financial Model” or “FTFM”</b>	<p>means the financial model in the agreed terms marked FTFM provided to the Authority on the date of the Infrastructure Agreement in accordance with Schedule 9.2 (Identity of the Final Tender Financial Model) including:</p> <ul style="list-style-type: none"> <li>(a) not used;</li> <li>(b) Record of Assumptions;</li> <li>(c) CVL Concept Design costing model;</li> <li>(d) Infrastructure maintenance model;</li> <li>(e) operating manuals; and</li> <li>(f) any other supplementary materials;</li> </ul>
<b>“Financial Action Plan”</b>	means any action plan produced by InfraCo pursuant to paragraph 9.2(d)(vii) of Schedule 11.2 (Management Information), where the level of its financial performance specified in the Management Accounts is materially worse than forecast by InfraCo in its current Business Plan;
<b>“Financial Conduct Authority”</b>	means the UK Financial Conduct Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS and with company registered number 01920623 or such other regulatory body which may succeed or replace it from time to time;

<b>“Force Majeure Event”</b>	means any of the events described as such in paragraph 1 of Schedule 10.3 (Force Majeure and Business Continuity) where the conditions specified in paragraph 2 of Schedule 10.3 (Force Majeure and Business Continuity) are satisfied;
<b>“Freedom of Information Act”</b>	means the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant Central Government Body in relation to the Freedom of Information Act 2000;
<b>“Full Time Equivalent Job”</b>	means a permanent paid job which is expected to exist for at least twelve (12) months. It is to be based on minimum of thirty (30) hours per week. Where the post involves working less than thirty (30) hours per week (subject to a minimum of sixteen (16) hours per week) then the hours worked may be divided by thirty (30) to give the proportion of a Full Time Equivalent Job safeguarded or provided. This does not include jobs which have been relocated;
<b>“Future Generations Act”</b>	means the Well-being of Future Generations (Wales) Act 2015;
<b>“GAAP”</b>	means generally accepted accounting principles in the United Kingdom, as derived from and including the accounting requirements of the Companies Act 2006, ‘Financial Reporting Standards 100, 101 and 102’, abstracts issued by the Urgent Issues Task Force of the Accounting Standards Board and, where appropriate, International Financial Reporting Standards and the listing rules of the Financial Conduct Authority, in each case, as amended from time to time;
<b>“GDPR”</b>	means the Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and any legislation amending, supplementing or replacing the GDPR including but not limited to the Data Protection Bill (once enacted);

<b>“General Anti-Abuse Rule”</b>	has the meaning given to it in paragraph 6.3 of Schedule 12 (Financial Covenants and Bonds);
<b>“Good Industry Practice”</b>	means using the standards, practices, methods and procedures and exercising that degree of skill, care, prudence, efficiency, foresight and timeliness as would be reasonably and ordinarily be expected from an service provider, manager, operator or other person engaged in the supply of similar services as under this Infrastructure Agreement;
<b>“Graduate Scheme”</b>	means a training or employment schemes open to applicants with a recently acquired degree-level higher education or equivalent skills and experience;
<b>“Green Growth Wales Paper”</b>	means the Welsh Government prospectus for green growth Wales;
<b>“Halifax Abuse Principle”</b>	has the meaning given to it in paragraph 6.3 of Schedule 12 (Financial Covenants and Bonds);
<b>“Handover Package”</b>	means a package containing the information and objects specified in Appendix 1 (Form of Handover Package) to Schedule 15.3 (Handover Package) and such other information and objects as the Authority may reasonably specify from time to time;
<b>“IFRS”</b>	means International Financial Reporting Standards;
<b>“Incremental Output Statement Charge”</b>	means the charge to which that description is commonly given, first introduced into Relevant Agreements in April 2001;
<b>“Independent Station”</b>	means any station of which Network Rail (or any other person other than a Train Operator) is the Facility Owner;
<b>“Independent Station Access Conditions”</b>	has the meaning given to it in the Access Agreement to which it relates;
<b>“Industrial Action”</b>	means any concerted action taken in connection with the employment of those persons listed in paragraphs 1(f)(i) to 1(f)(v) of Schedule 10.3 (Force Majeure and Business Continuity) (whether or not that action involves any breach of such employees’ conditions of employment, and

including any action taken in furtherance of a dispute, or with a view to improving the terms of employment of the relevant employees or by way of support for any other person) subject always, in the case of any unofficial industrial action, to InfraCo being able to demonstrate the occurrence of such unofficial industrial action to the reasonable satisfaction of the Authority;

**“Information Commissioner”**

means the United Kingdom’s supervisory authority responsible for monitoring the application of GDPR and as appointed pursuant to Chapter VI GDPR;

**“InfraCo Access Station”**

means any station at which the Passenger Services call (other than any Station);

**“InfraCo Financial Year”**

means any period of twelve (12) months during the Infrastructure Services Term, beginning on 1 January and ending on 31 December, except that the first and last InfraCo Financial Years may be for a period of less than twelve (12) months and the first InfraCo Financial Year shall begin on the Start Date and the last InfraCo Financial Year shall end on the last day of the Infrastructure Services Term;

**“InfraCo's Infrastructure Manager Representative”**

means an InfraCo Services Employee who has a senior responsibility for the delivery of the Infrastructure Manager Services;

**“InfraCo Services”**

means the services being provided under this Infrastructure Agreement including Infrastructure Services, AKI Infrastructure Works and Infrastructure Manager Services as amended from time to time where agreed by the Parties in writing in accordance with this Infrastructure Agreement;

**“InfraCo Services Documents”**

means:

- (a) this Infrastructure Agreement; and
- (b) any other agreement signed by InfraCo at the time of the award of InfraCo Services which is in the possession of the Authority and which is notified

by the Authority to InfraCo as being required for publication;

**“InfraCo Services Employee”**

means:

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

**“InfraCo Services Payment”**

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

**“InfraCo Services Performance Meeting”**

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

**“Infrastructure Agreement”**

means this agreement which has been entered into between the Authority and InfraCo;

**“Infrastructure Agreement Term”**

means the period commencing on the date of this Infrastructure Agreement and ending on the Expiry Date or, if earlier, the date of termination of the Infrastructure



	Agreement pursuant to Schedule 10 (Remedies, Events of Default and Termination Events);
<b>“Infrastructure Management Staffing Agreement”</b>	means the Staffing Agreement relating to the provision of operations and maintenance personnel entered into between Transport for Wales, the ODP and InfraCo, dated on or about 28 March 2020;
<b>“Infrastructure Manager In-Life Reporting Template”</b>	means the report to be provided by InfraCo in accordance with paragraph 1.7 of Schedule 9.1;
<b>“Infrastructure Manager Services”</b>	has the meaning given to it in Schedule 3A (Infrastructure Manager Services);
<b>“Infrastructure Manager Services Payments”</b>	means those payments due to InfraCo in respect of Infrastructure Manager Services as calculated in accordance with Schedule 8.5;
<b>“Infrastructure Manager Year” or “IM Year”</b>	means any period of twelve (12) months during the Infrastructure Services Term, beginning on 1 April and ending on 31 March, except that the first and last Infrastructure Manager Years may be for a period of less than twelve (12) months and the first Infrastructure Manager Year shall begin on the Start Date and the last Infrastructure Manager Year shall end on the last day of the Infrastructure Services Term;
<b>“Infrastructure Services”</b>	has the meaning given to it in Schedule 3B (Infrastructure Services and AKI Infrastructure Works);
<b>“Infrastructure Services Term”</b>	means the period commencing on the Start Date and ending on the Expiry Date or, if earlier, the date of termination of the Infrastructure Agreement pursuant to Schedule 10 (Remedies, Events of Default and Termination Events);
<b>“Infrastructure Works”</b>	has the meaning given to it in Appendix 1 to Schedule 3B;
<b>“In-Life Reporting Template”</b>	means the In-Life Reporting Template to be developed by InfraCo in accordance with paragraph 1.7 of Schedule 9.1;
<b>“Initial Business Plan”</b>	means the business plan to be provided by InfraCo to the Authority as described in paragraph 10.1 of Schedule 11.2 (Management Information);

<b>“Initial Performance Bond”</b>	means the performance bond issued or to be issued on or prior to the date of this Infrastructure Agreement by a Bond Provider to the Authority which complies with the requirements of paragraph 4.2 of Schedule 12 (Financial Covenants and Bonds);
<b>“Intellectual Property Rights”</b>	means all intellectual and industrial property rights of any kind including (without limitation) patents, supplementary protection certificates, rights in Know-How, registered trade marks, registered designs, unregistered design rights, unregistered trade marks, rights to prevent passing off or unfair competition and copyright (whether in drawings, plans, specifications, designs and computer software or otherwise), database rights, topography rights, any rights in any invention, discovery or process, and applications for and rights to apply for any of the foregoing, in each case in the United Kingdom and all other countries in the world and together with all renewals, extensions, continuations, divisions, reissues, re-examinations and substitutions;
<b>“Interest Rate”</b>	means a rate equivalent to two percent (2%) per annum above the base lending rate published by Royal Bank of Scotland plc (or such other bank as the Authority may, after consultation with InfraCo, determine from time to time) during any period in which an amount payable under the Infrastructure Agreement remains unpaid;
<b>“Interface Agreement”</b>	means the interface agreement to be entered into between InfraCo and TfWRL which, amongst other things, contains services to be provided by TfWRL to InfraCo;
<b>“International Labour Organisation”</b>	means the International Labour Organisation, an agency of the United Nations;
<b>“International Organisation for Standardisation”</b>	means the international standard setting body known as “ISO” or any such successor body;
<b>“Investigation”</b>	means the investigation referred to in the Pensions Regulator’s letter of 10 November 2017 to The Rail Delivery Group;

**“Invitation to Submit Final Tender” or “ITSFT”**

means the Invitation to Submit Final Tender issued by the Authority on 28 September 2017 as part of the procurement process pursuant to which the Infrastructure Agreement was entered into;

**“ISO50001:2011”**

means the standard that is set by the International Organisation for Standardisation which specifies requirements for establishing, implementing, maintaining and improving an energy management system, whose purpose is to enable an organization to follow a systematic approach in achieving continual improvement of energy performance, including energy efficiency, energy use and consumption or any equivalent standard which is generally recognised as having replaced it;

**“ISO50001 Energy Review”**

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

**“ISO 22301”**

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

**“Joint Venture Party”**

means the joint venture between the Authority, Keolis S.A. (or its Affiliates) and Amey Rail Limited (or its Affiliates) for the purpose of providing services to TfWRL for the Wales and Borders franchise;

**“Key Contacts List”**

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

- (a) all directors (statutory or otherwise);
- (b) all managers with responsibility for a department/function within InfraCo's business;

- (c) all managers in the operations, commercial, personnel and public affairs departments or in each case their nearest equivalents;

**“Key Contract”**

means:

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

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

**“Key Personnel”**

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

**“Know-How”**

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

**“Law”**

includes any enactment, subordinate legislation, rule, regulation, order, directive or other provision, including those of the European Community, and any judicial or administrative interpretation or application thereof, which has, in each case, the force of law in the United Kingdom or any part of it (including the Act, the Transport Act, the Transport Safety Act 2003 and the Railways Act 2005);

**“Legislation”**

means any enactment or subordinate legislation, rule, regulation, order, directive or other provision including those of the European Community, which has, in each

case, the force of Law in the United Kingdom or any part of it, but excluding any order under Section 1 of the Transport and Works Act 1992;

**“Licences”**

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

**“Living Wage”**

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

**“Local Authority”**

means:

- (a) in England, a county council, a district council, a unitary authority, a passenger transport executive, a London borough council, the common council of the City of London, or a council which is established under the Local Government Act 1992 and which is either an authority responsible for expenditure on public passenger transport services within the meaning of Section 88 of the Transport Act 1985 or a local authority for the purposes of Section 93 of the Transport Act 1985;
- (b) in Wales, a county council, a district council or a council which is established under the Local Government Act 1972 or the Local Government (Wales) Act 1994;
- (c) in Scotland, the Strathclyde Passenger Transport Executive, or a district council or a unitary authority which is established under the Local Government (Scotland) Act 1973 or the Local Government, etc. (Scotland) Act 1994;

- (d) in London, the Mayor of London and Transport for London established under the Greater London Authority Act 1999;
- (e) a combined authority created pursuant to the Local Democracy, Economic Development and Construction Act 2009;
- (f) any local enterprise partnership;
- (g) any other body or council replacing any of the above from time to time; and
- (h) any other body or instrument of local or regional government specified by the Authority from time to time;

**“Local Suppliers”**

means a supplier of good or services operating or based within Wales or the area served relating to InfraCo Services;

**“Long Term Charge”**

has the meaning given to it in the Station Access Conditions;

**“Management Accounts”**

means, in relation to any Reporting Period, InfraCo’s management accounts which:

- (a) comply with paragraph 9.5(a) of Schedule 11.2 (Management Information); and
- (b) are required to be delivered to the Authority by InfraCo in accordance with paragraphs 9.2(a) and 9.2(b) of Schedule 11.2 (Management Information);

**“Marks”**

means such trade marks as InfraCo may apply to any asset used by it which are applied prior to the expiry of the Infrastructure Agreement Term and are not the subject of a Brand Licence;

**“Minister of the Crown”**

has the meaning given to it in Section 8(1) of the Minister of the Crown Act 1975;

**“Natura 2000”**

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

(Natural Habitats &c.) Regulations 2007, and any Special Protection Area (“SPA”) as defined under the EC Birds Directive (EC Directive 2009/147/EC) and any other site afforded the same protection as SACs and SPAs by the Authority;

**“Network Rail” or “NR”**

means in respect of:

- (a) the network or any relevant facility:
  - (i) Network Rail Infrastructure Limited, a company registered in England with registered number 02904587 whose registered office is 1 Eversholt Street, London NW1 2DN; and
  - (ii) any successor in title to the network or any relevant railway facility; or
- (b) any new or other sections of network or any relevant new or other railway facilities, the owner (if different);

**“New Station”**

means:

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

**“Occasion of Tax Non-Compliance”**

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

**“OpCo”**

means KEOLIS AMEY OPERATIONS / GWEITHREDIADAU KEOLIS AMEY LIMITED (Company

number 11389531) whose registered address is at 2  
Callaghan Square, Cardiff, United Kingdom, CF10 5BT;

**“Operating Assets”**

means all assets (including Intellectual Property Rights or intangible assets) employed by InfraCo in performance of InfraCo’s obligations under this Infrastructure Agreement (excluding, for the avoidance of doubt, the CVL Assets)

**“ORR”**

means the Office of Rail and Road established by Section 15 of the Railways and Transport Safety Act 2003 and having duties and obligations as set out in the Act;

**“Package Order”**

has the meaning given to it in Appendix 1 of Schedule 3B (Infrastructure Services and AKI Infrastructure Works);

**“Parent”**

means:

- (a) Keolis S.A., (Company Number: 552 111 809) whose registered office is at: 20-22 rue Le Peletier, 75009 Paris, France; and
- (b) Amey UK PLC (Company Number: 4736639) whose registered office is at: Chancery Exchange, 10 Fumival Street, London, United Kingdom, EC4A 1AB;

**“Passengers’ Council”**

means the passengers’ council established under Section 19 of the Railways Act 2005 (as amended by The Passengers’ Council (Non-Railway Functions) Order 2010). The Passengers’ Council shall be generally known as “Transport Focus” from 30 March 2015;

**“Passenger Services”**

means the passenger services as specified in any Timetable in relation to the CVL;

**“Payment Date”**

means the date for the payment of InfraCo Services Payments in accordance with paragraph 7.3 of Schedule 8.5 (Infrastructure Manager Services Payments);

**“Performance Bond”**

means the Initial Performance Bond and any Replacement Performance Bond, which in each case, shall comply with the requirements of paragraph 4.2 of Schedule 12 (Financial Covenants and Bonds);



<b>“Person-week”</b>	means the equivalent of one person working a minimum of thirty (30) hours per week (where the post involves working less than thirty (30) hours per week (subject to a minimum of sixteen (16) hours per week) then the hours worked may be divided by thirty (30) to give the proportion of a Person-week provided);
<b>“Personal Data”</b>	has the same meaning as in GDPR and includes Special Category Personal Data as defined therein;
<b>“Polluter Pays Principle”</b>	means the principle according to which the polluter should pay for measures to reduce pollution according to the extent of either the damage done to society or the exceeding of an acceptable level (standard) of pollution;
<b>“Preliminary Design and Discovery Phase”</b>	has the meaning given to it in Schedule 3B (Infrastructure Services and AKI Infrastructure Works)
<b>“Principal Infrastructure Services”</b>	means those services referred to in Part A of Appendix 2 (Scope) of Schedule 3B which are to be carried out by InfraCo in accordance with the Conditions of Contract for Infrastructure Services;
<b>“Process for the Acceptance of Document Deliverables”</b>	means the process for the Authority to accept documents to be delivered by InfraCo to the Authority as set out in Appendix 1 to Schedule 18.3;
<b>“Property Lease”</b>	means any Depot Lease, any lease in respect of any lease in respect of Shared Facilities or any Station Lease and any agreement or lease of a similar or equivalent nature (whether in respect of any such facility or otherwise) which InfraCo may enter into with a person who has an interest in a network or a railway facility which is to be used for or in connection with the provision or operation of InfraCo Services, including the CVL Asset Lease (once granted);
<b>“Protected Employee”</b>	means a Relevant Employee whose contract of employment transfers to InfraCo or a subcontractor pursuant to the Transfer Regulations on or phased with the CVL Asset Transfer Date and who remains wholly or mainly employed in the provision of InfraCo Services;

<b>“Protected Proposal”</b>	has the meaning given to it in paragraph 2 of Schedule 9.3 (Variations to the Infrastructure Agreement and Incentivising Beneficial Changes);
<b>“Public Authority”</b>	means any UK national, European Union, state or local government, any political subdivision thereof or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or other similar entity and includes the Network Rail, RSSB and ORR;
<b>“Public Sector Operator”</b>	means any person (other than a InfraCo or Rail Services operator in relation to the services provided or operated under its Infrastructure Agreement) who provides railway passenger services or operates any station or light maintenance depot pursuant to or under Section 30 of the Act or Section 6 of the Railways Act 2005;
<b>“Qualifications Wales”</b>	is the regulator of non-degree qualifications and the qualifications systems in Wales established by the Qualifications Wales Act 2015;
<b>“Qualifying Change”</b>	<p>means a Change which:</p> <p>(a) results in adjustments in Infrastructure Manager Services Payments in accordance with Schedule 9 (Changes and Variations), over the remaining life of the Infrastructure Agreement that have a net present value as at the date of the Change in excess of the relevant Threshold Amount for the Infrastructure Manager Year during which the relevant Change arises. For the purposes of ascertaining a net present value of the amount of any adjustment in any Infrastructure Manager Services Payment, the amount of the adjustment shall be discounted at the prevailing discount rate per annum (in real terms) stated in HM Treasury’s “Green Book Appraisal Guidelines”, counting back from the date of receipt of that adjusted Infrastructure Manager Services Payment to the date of the Change. As at the date of the Infrastructure</p>

	<p>Agreement that rate is three point five percent (3.5%); or</p> <p>(b) the Infrastructure Agreement expressly provides shall be a Qualifying Change; or</p> <p>(c) the Infrastructure Management Staffing Agreement provides shall be a Qualifying Change in clause 14.5 of that Agreement;</p>
<b>“Qualifying Change Proposal”</b>	has the meaning given to it in paragraph 1 of Appendix 2 to Schedule 9.1 (Financial and Other Consequences of Change);
<b>“Rail Safety and Standards Board” or “RSSB”</b>	means Rail Safety and Standards Board Limited, a company registered in England with registered number 04655675 whose registered office is at The Helicon, 4 <sup>th</sup> Floor, One South Place, London, EC2M 2RB;
<b>“Rail Services”</b>	means the CVL Rail Services and the Wales and Cross-Border Line Services;
<b>“Rail User Groups”</b>	means a representative organisation of passengers normally associated with a specific line or geography;
<b>“Railway Group”</b>	means the committee responsible for cross industry co-ordination in respect of rail safety legislation and industry safety standards chaired by the Rail Safety and Standards Board;
<b>“Railways Pension Scheme”</b>	means the pension scheme established by the Railways Pension Scheme Order 1994 (No. 1433);
<b>“Record of Assumptions” or “ROA”</b>	<p>means a document in the agreed terms marked ROA prepared by InfraCo (and/or, where Schedule 9.1 (Financial and Other Consequences of Change) applies) as may be revised in accordance with Schedule 9 (Changes and Variations) providing:</p> <p>(a) detailed assumptions, explanations of assumptions and parameters underlying the Final Tender Financial Model;</p> <p>(b) details of how InfraCo Services Payments have been calculated (including by reference to a defined annual profit margin);</p>

- (c) a description of the functionality, operation and structure of the Final Tender Financial Model; and
- (d) a description of each input cell, its requirements and its inter-relationship with the Final Tender Financial Model;

**“Redactions”**

has the meaning given to it in paragraph 10.1 of Schedule 17 (Confidentiality and Freedom of Information);

**“Relevant Agreement”**

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

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

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

**“Relevant Credit Rating”**

means a credit rating of:

- (a) BBB (or better) by Standard and Poor’s Corporation or Fitch Ratings Limited in respect of long term senior debt; or
- (b) A3 (or better) by Moody’s Investors Service Inc. in respect of long term senior debt; or

if any credit rating specified in paragraph (a) or (b) ceases to be published or made available or there is a material change in the basis of any such credit rating, such other rating or standard as the Authority may, after consultation

	with InfraCo, determine to be appropriate in the circumstances;
<b>“Relevant Tax Authority”</b>	has the meaning given to it in paragraph 6.3 of Schedule 12 (Financial Covenants and Bonds);
<b>“Relevant Term”</b>	has the meaning given to it in paragraph 3.1(a) of Schedule 10.1 (Procedure for remedying a Contravention of the Infrastructure Agreement);
<b>“Remedial Agreement”</b>	has the meaning given to it in paragraph 5.1 of Schedule 10.1 (Procedure for remedying a Contravention of the Infrastructure Agreement);
<b>“Remedial Plan”</b>	has the meaning given to it in paragraph 3.1(b) of Schedule 10.1 (Procedure for remedying a Contravention of the Infrastructure Agreement), as does ‘Remedial Plan Period’;
<b>“Remedial Plan Notice”</b>	has the meaning given to it in paragraph 2 of Schedule 10.1 (Procedure for remedying a Contravention of the Infrastructure Agreement);
<b>“Remedial Plan Period”</b>	has the meaning given to it in paragraph 3.1(b) of Schedule 10.1;
<b>“Replacement Agreement”</b>	means an agreement entered into as a replacement for any Relevant Agreement;
<b>“Replacement Performance Bond”</b>	means any performance bond issued or to be issued following the issue of the Initial Performance Bond by a Bond Provider to the Authority which complies with the requirements of paragraph 4.2 of Schedule 12 (Financial Covenants and Bonds);
<b>“Reporting Period”</b>	means: <ul style="list-style-type: none"> <li>(a) not used; or</li> <li>(b) for all other purposes, a period of twenty eight (28) days, provided that: <ul style="list-style-type: none"> <li>(i) the first such period during the Infrastructure Services Term</li> </ul> </li> </ul>

shall exclude any days up to but not including the Start Date;

- (ii) the first and last such period in any Reporting Year may be varied by up to seven (7) days by notice from the Authority to InfraCo;
- (iii) each such period shall start on the day following the last day of the preceding such period; and
- (iv) the last such period during the Infrastructure Services Term shall end at the end of the Infrastructure Agreement Term;

**“Reporting Year”**

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

**“Request for Information”**

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

**“Retail Prices Index”**

means the retail prices index for the whole economy of the United Kingdom and for all items as published from time to time by the Office for National Statistics as “RPI” or, if such index shall cease to be published or there is, in the reasonable opinion of the Authority, a material change in the basis of the index or if, at any relevant time, there is a delay in the publication of the index, such other retail prices index as the Authority may, after consultation with InfraCo, determine to be appropriate in the circumstances;

**“Resource Plan”**

means the Resource Plan as set out in Appendix 1 to Schedule 11.1 (Resource Plan);

**“Route”**

means any route that forms part of the CVL;

**“RSSB”**

means the Rail Safety and Standards Board;

**“Safety Authorisation”**

means the authorisation issued by the ORR under the Safety Regulations authorising InfraCo’s safety

	management system (as defined in those regulations) and the provisions adopted by InfraCo to meet the requirements that are necessary to ensure safe design, maintenance and operation of the relevant infrastructure on the Routes;
<b>“Safety Regulations”</b>	means the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (as amended pursuant to the Railways and Other Guided Transport Systems (Safety) (Amendment) Regulations 2006);
<b>“Scope 1, 2 and 3 Emissions”</b>	<p>means in respect of each:</p> <p>Scope 1: these are emissions that arise directly from sources that are owned or controlled by InfraCo, for example from fuels used to heat or power premises or power rolling stock or vehicles;</p> <p>Scope 2: these are the emissions generated by purchased electricity consumed by InfraCo and its contractors and supply chain; and</p> <p>Scope 3: these emissions are a consequence of the activities of InfraCo and its contractors and supply chain but occur from sources not owned or controlled by these organisations. This includes emissions associated with waste, water, business travel, commuting and procurement;</p>
<b>“Secretary of State”</b>	means the Secretary of State for Transport whose principal address is 33 Horseferry Road, London, SW1P 4DR;
<b>“Security Interest”</b>	means any mortgage, pledge, lien, hypothecation, security interest or other charge or encumbrance or any other agreement or arrangement having substantially the same economic effect;
<b>“Sell2Wales”</b>	means the Sell2Wales information and procurement portal set up by the Welsh Government;
<b>“Service Group”</b>	in respect of the Wales and Cross-Border Lines Services, has the meaning given to it in the Track Access

Agreement or as specified by the Authority from time to time;

**“Shared Facilities”**

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

**“SKA Rating Standard”**

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

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

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

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

The three categories are:

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

**“SME”**

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

**“Spares”**

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

**“Specifically Included Change of Law”**

has the meaning given to it in the definition of Change of Law;



<b>“Specification of Apprenticeship Standards for Wales”</b>	means the standards for apprenticeship published from time to time by the Welsh Government;
<b>“Stakeholder”</b>	means those third parties with an interest in the Infrastructure Manager Services delivery including, but not limited, to: <ul style="list-style-type: none"> <li>(a) trade unions;</li> <li>(b) Rail User Groups;</li> <li>(c) Welsh Language Commission;</li> <li>(d) Disability Wales;</li> <li>(e) third sector enterprises;</li> <li>(f) British Transport Police;</li> <li>(g) TrawsCymru;</li> <li>(h) Wales Council for Voluntary Action;</li> <li>(i) the Passengers’ Council; and</li> <li>(j) any relevant Local Authority and organisations who can reasonably be considered to have a legitimate and proper interest in the Passenger Services;</li> </ul>
<b>“Start Date”</b>	means 02.00 on 14 October 2018;
<b>“Station”</b>	means: <ul style="list-style-type: none"> <li>(a) any station in respect of which InfraCo has entered into a Station Lease; or</li> <li>(b) any New Station at which InfraCo becomes the Facility Owner;</li> </ul>
<b>“Station Access Conditions”</b>	has the meaning given to it in the relevant Access Agreement to which it relates;
<b>“Station Change”</b>	has the meaning given to the term “Proposal for Change” under the Station Access Conditions;

<b>“Station Lease”</b>	means: <ul style="list-style-type: none"> <li>(a) any lease of a station that InfraCo is a party to as at the Start Date; or</li> <li>(b) a lease of any other station to which InfraCo becomes the Facility Owner at any time during the Infrastructure Services Term;</li> </ul>
<b>“Successor Operator”</b>	means an entity succeeding or intended by the Authority to succeed (and whose identity is notified to InfraCo by the Authority) InfraCo in the provision of the InfraCo Services including, where the context so admits, InfraCo where it is to continue to provide or operate InfraCo Services following termination of the Infrastructure Agreement;
<b>“Sustainable Development Manager”</b>	means the role described in paragraph 3 of Part 1 of Schedule 13.3;
<b>“Sustainable Development Plan”</b>	means the plan set out at paragraph 4.1 of Part 1 of Schedule 13.3;
<b>“Sustainable Development Strategy”</b>	means InfraCo’s strategy for sustainable development as agreed or determined pursuant to paragraph 4.2(b) of Part 1 of Schedule 13.3, including as a minimum: the matters listed in paragraph 4.2(a), key aims, resources, risks and details of how sustainable development will be embedded in the governance of InfraCo and investment decisions (as revised from time to time);
<b>“Taking Wales Forward”</b>	means the Welsh Government’s programme for government dated 4 November 2016;
<b>“Taxation”</b>	means any kind of tax, duty, levy or other charge whether or not similar to any in force at the date of the Infrastructure Agreement and whether imposed by a local, governmental or other competent authority in the United Kingdom or elsewhere;
<b>“Tendering/Reletting Process”</b>	means either of the processes described in paragraph 1.1 and 1.2 of Schedule 15.1 (Reletting Provisions);

<b>“Termination Event”</b>	has the meaning given to it in paragraph 2 of Schedule 10.2 (Events of Default and Termination Events);
<b>“Termination Notice”</b>	means a notice from the Authority to InfraCo terminating the Infrastructure Agreement following an Event of Default or a Termination Event in accordance with Schedule 10.2 (Events of Default and Termination Events);
<b>“Third Sector Enterprises”</b>	means for-profit or not-for-profit businesses trading for social or environmental purposes;
<b>“TfWRL”</b>	means Transport for Wales Rail Ltd a company registered in England and Wales with company number 12619906 and with its registered office at 3 Llys Cadwyn, Pontypridd, Wales, CF37 4TH;
<b>“Threshold Amount”</b>	has the meaning given to it in Appendix 1 (Definition of Threshold Amount) to Schedule 9.1 (Financial and Other Consequences of Change);
<b>“Timetable”</b>	<p>means the timetable which reflects the working timetable issued by Network Rail at the conclusion of its timetable development process, containing the departure and arrival times of:</p> <ul style="list-style-type: none"> <li>(a) all Passenger Services which call at Stations and/or InfraCo Access Stations; and</li> <li>(b) principal Connections at those stations and other stations;</li> </ul>
<b>“Timetable Planning Rules”</b>	has the meaning given to it in the CVL Network Code;
<b>“Towards Zero Waste Strategy”</b>	means Wales’ overarching waste strategy document dated 1 February 2016;
<b>“tPR Change”</b>	<p>means where:</p> <ul style="list-style-type: none"> <li>(a) [REDACTED]</li> </ul>

(b) [REDACTED]

(c) [REDACTED]

**“Track Access Agreement”** means each Access Agreement between the Infrastructure Manager and any rail operating company which permits the rail operating company to operate on the CVL;

**“Train Operator”** means the operator of railway passenger services pursuant to a franchise agreement to which the Secretary of State is a party or a Public Sector Operator;

**“Transfer Agreement”** means a transfer agreement between InfraCo and a Successor Operator to be entered into pursuant to this Infrastructure Agreement, being substantially in the form of Appendix 2 (Form of Transfer Agreement) to Schedule 15.4 (Provisions Applying on and after Termination), but subject to such amendments as the Authority may reasonably make thereto as a result of any change of circumstances (including any Change of Law) affecting such transfer agreement between the date of the Infrastructure Agreement and the date on which the InfraCo Services are transferred to a Successor Operator and subject further to paragraph 3.2 of Schedule 15.4 (Provisions Applying on and after Termination);

**“Transport Act”** means the Transport Act 2000;

<b>“TSI”</b>	means any Technical Standard for Interoperability with which InfraCo is required to comply pursuant to Directives EU 96/48 and EU 2001/16 and related legislation;
<b>“Turnover”</b>	means, in relation to any period, the aggregate revenue (excluding any applicable Value Added Tax) accruing to InfraCo from receipt of InfraCo Services Payments during such period;
<b>“Value Added Tax”</b>	means value added tax as provided for in the Value Added Tax Act 1994;
<b>“Variation”</b>	means a variation to the terms of the Infrastructure Agreement pursuant to paragraph 1 of Schedule 9.3 (Variations to the Infrastructure Agreement and Incentivising Beneficial Changes);
<b>“VAT”</b>	<p>means:</p> <ul style="list-style-type: none"> <li>(a) value added tax as provided for in the VATA 1994; or</li> <li>(b) any other tax of a similar nature to (a) that is by Law substituted for (a) (whether in the UK generally or in any part of the UK),</li> </ul> <p>in each case at the applicable rate current from time to time;</p>
<b>“Warning Notice”</b>	has the meaning given to it in paragraph 8.1 of Schedule 10.1 (Procedure for remedying a Contravention of the Infrastructure Agreement);
<b>“Waste Management Plan”</b>	has the meaning given to it in paragraph 4.1 of Part 4 of Schedule 13.3;
<b>“Welsh Government’s Code of Practice for Ethical Employment in Supply Chains”</b>	means the code of practice established by Welsh Government to support the development of more ethical supply chains to deliver contracts for the Welsh public sector and third sector organisations in receipt of public funds;
<b>“Weekday”</b>	means any day other than a Saturday, a Sunday or a Bank Holiday;

**"Yield Management Data"**

means data collected by or on behalf of InfraCo for the purpose of or in connection with managing or setting the prices at which any tickets for travel on the Passenger Services are sold and/or any quotas and/or restrictions applying to such tickets including:

- (a) the number of passengers travelling upon any particular Passenger Service;
- (b) the ticket types held by such passengers;
- (c) the prices paid by such passengers for such tickets; and
- (d) the dates and/or times between which such tickets were made available to purchase at such prices;

**4 COMMENCEMENT**

4.1 All the clauses of this Infrastructure Agreement and the following Schedules of this Infrastructure Agreement shall take effect and be binding upon each of the Authority and InfraCo immediately upon signature of this Infrastructure Agreement:

- (a) Not Used.
- (b) Not Used.
- (c) Not Used.
- (d) Not used.
- (e) Not used
- (f) Schedule 2.1 (Asset Vesting and Transfer);
- (g) Not used;
- (h) Not used.
- (i) Schedule 3A (Infrastructure Manager Services);
- (j) Schedule 3B (Infrastructure Services and AKI Infrastructure Works);
- (k) Not used.
- (l) Not used.

- (m) Not used.
- (n) Not used.
- (o) Not used.
- (p) Not used.
- (q) Schedule 8.5 (Infrastructure Manager Services Payments);
- (r) Not used.
- (s) Schedule 9 (Changes and Variations);
- (t) Schedule 10 (Remedies, Events of Default and Termination Events);
- (u) paragraphs 1 (Corporate Information), 3 (Identification of Key Personnel and Provision of Organisation Chart), 5 (Maintenance of Records), 6 (Right to Inspect) and 8 (Additional Reports) of Schedule 11.2 (Management Information);
- (v) Not used.
- (w) Not used.
- (x) Schedule 15.1 (Reletting Provisions);
- (y) paragraph 1.1 (Handover Package Status) of Schedule 15.3 (Handover Package);
- (z) Schedule 17 (Confidentiality and Freedom of Information); and
- (aa) Not used.

4.2 The other provisions of this Infrastructure Agreement shall take effect and become binding upon the Parties on the Start Date.

## **5 DURATION OF THE INFRASTRUCTURE AGREEMENT**

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

5.2 **Not Used**

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

- (a) The Authority shall have the right on or before 14 September 2018 to serve notice on InfraCo that the Start Date shall be a date later than 0200 on 14 October 2018. Such amended Start Date shall be 0200 on the first day of a Reporting Period and the latest such date that the Start Date can be amended to is 0200 on 14 April 2019. The

Authority may in such notice also require that the Expiry Date is amended to a later date. Such amended Expiry Date shall be 0200 on the first day of a Reporting Period and the same number of Reporting Periods after the unamended Expiry Date as the number of Reporting Periods that the amended Start Date is after the unamended Start Date.

- (b) Where the Authority exercises its rights pursuant to clause 5.3(a) to amend the Start Date and/or the Expiry Date, the Authority shall be entitled to make such other amendments to the terms of this Infrastructure Agreement as are reasonably consequential upon such amendments.

## **6 GENERAL OBLIGATIONS**

6.1 InfraCo shall perform its obligations:

- (a) in respect of the Infrastructure Manager Services under this Infrastructure Agreement in accordance with the standards set out in Schedule 3A (Infrastructure Manager Services) of this Infrastructure Agreement; and
- (b) in respect of the Infrastructure Services and Infrastructure Works under this Infrastructure Agreement in accordance with Schedule 3B (Infrastructure Services and Infrastructure Works) of this Infrastructure Agreement.

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

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

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

6.5 By no later than 1 September 2019, InfraCo shall procure that Amey Consulting shall employ a minimum of fifty (50) persons exclusively by Amey Consulting to develop the CVL Transformation shall be located at an office in Cardiff.

6.6 Not used

6.7 In respect of any Personal Data processed by InfraCo the Parties acknowledge and agree that such Personal Data shall be processed by InfraCo as Data Controller. InfraCo agrees that it shall at all times comply with the Data Protection Requirements to the extent that such legislation applies to it.



- 6.8 InfraCo shall promptly notify the Authority of any actual or suspected, accidental or unlawful destruction or accidental loss, unauthorised or accidental disclosure of or access to the Personal Data by itself (a “**Security Breach**”) (InfraCo hereby acknowledges that whilst the Authority is not Data Controller in respect of the Personal Data, the Authority's legitimate interests given its duties under the Act may be affected in the event of a Security Breach and as such the Authority wishes to be notified of the same).
- 6.9 From the date of termination of the ODP Grant Agreement, InfraCo shall not cause or permit the Personal Data to be transferred to any location outside the European Economic Area without the prior written permission of the Authority (save to the extent any such transfer occurred prior to the date of termination of the ODP Grant Agreement) and in any case, where written permission is given by the Authority, InfraCo shall ensure that any transfer is compliant with the Data Protection Requirements and is made on the basis of an adequacy decision given by the relevant regulatory body in the UK or the European Commission (to the extent applicable to the UK) or otherwise subject to the appropriate safeguards as permitted pursuant to the Data Protection Requirements. InfraCo shall provide all such evidence as may be reasonably required by the Authority to demonstrate that these clauses 6.7 to 6.9 have been complied with.

#### **COVID-19 RELATED SUPPORT**

- 6.10 The Parties acknowledge and agree that this Clause:
- (a) does not apply to the impact of the COVID-19 pandemic or its consequences on the Infrastructure Services and AKI Infrastructure Works, which shall be dealt with as a compensation event under clause 60.1 of Part A of Appendix 5 of Schedule 3B to this Infrastructure Agreement and clause 60.1 of Part A of Appendix 6 of Schedule 3B to this Infrastructure Agreement; and
  - (b) applies to all other aspects of this Infrastructure Agreement, including the Infrastructure Manager Services.
- 6.11 The Parties recognise that InfraCo may be prevented (wholly or in part) from performing the obligations referred to in Clause 6.10(b), and/or incur costs as a result of the COVID-19 pandemic or its consequences, both before and after the date of termination of the ODP Grant Agreement.
- 6.12 In such circumstances, InfraCo and each of its subcontractors shall take reasonable steps to mitigate the adverse impact of the COVID-19 pandemic upon cost and performance of the Infrastructure Manager Services.
- 6.13 If, despite taking reasonable steps as required under Clause 6.12, InfraCo's performance of the obligations referred to in Clause 6.10(b) are adversely affected and/or InfraCo incurs costs, InfraCo shall, without prejudice to any claims notified by InfraCo prior to the

date of termination of the ODP Grant Agreement, advise the Authority of such within sixty (60) Weekdays, providing reasonable evidence of the same. To the extent that InfraCo complies with Clause 6.12 and further to such notification, and to the extent InfraCo is able to demonstrate to the Authority (the Authority acting reasonably and in good faith) that it is being or has been prevented (wholly or in part) from performing the obligations referred to in Clause 6.10(b), has incurred costs then:

- (a) InfraCo shall be deemed not to be in breach of this Infrastructure Agreement nor otherwise liable under this Infrastructure Agreement (including for late or non-performance of Infrastructure Manager Services); and
- (b) InfraCo shall be entitled to submit a claim for a reasonable adjustment to the Infrastructure Manager Services Payment to take account of:
  - (i) any reasonable delay to the performance of such obligations; and/or
  - (ii) its reasonable additional costs incurred (taking into account any savings to InfraCo as a result of the COVID-19 pandemic or its consequences),

in each case arising from the COVID-19 pandemic or its consequences.

- (c) The data and evidence to inform such a claim shall be submitted progressively by InfraCo ensuring that all information relating to the claim is fully recorded and maintained, and contains all relevant detail.

6.14 The Authority shall act reasonably and in good faith regarding any claims submitted pursuant to Clause 6.13 on a case by case basis.

6.15 Nothing in Clauses 6.10 to 6.14 shall in itself create a precedent or, save to the extent stated in Clauses 6.10 to 6.14, operate to waive or reduce InfraCo's obligations under or in connection with this Infrastructure Agreement.

6.16 Clauses 6.10 to 6.15 and InfraCo's rights provided in this Clause constitute InfraCo's sole rights in relation to any claim for increased costs arising from the COVID-19 pandemic relating to the Infrastructure Manager Services and shall operate to the exclusion of any and all other rights and remedies it may otherwise have in connection with the same, and is without prejudice to any other express rights or remedies of InfraCo set out in this Infrastructure Agreement.

#### **REMOVAL OF VERTICALLY INTEGRATED STRUCTURE**

6.17 The Authority shall procure that TFWRL performs its obligations under the Interface Agreement and the CVL Station Underlease.

- 6.18 To the extent that TfWRL breaches its obligations under the Interface Agreement or the CVL Station Underlease, the Authority acknowledges and agrees that InfraCo shall not be responsible for any failure to perform any of its obligations under this Infrastructure Agreement or the CVL Asset Lease where such failure is a result of the TfWRL breach under the Interface Agreement or the CVL Station Underlease, provided always that:
- (a) InfraCo used and continues to use reasonable endeavours to mitigate and minimise the effect of such breach on its performance under this Infrastructure Agreement; and
  - (b) the TfWRL breach of the Interface Agreement or the CVL Station Underlease did not occur as a result of any breach by InfraCo of the Interface Agreement or any other agreement between InfraCo and the Authority or TfWRL.
- 6.19 The Parties acknowledge that the procurement and payment for traction electricity supplies on the CVL was, prior to termination of the ODP Grant Agreement, a responsibility allocated to OpCo and not InfraCo.
- 6.20 The Authority shall, or shall procure that TfWRL shall, procure and ensure the ongoing availability of the traction electricity supply required for the CVL, prior to the date the traction electricity supply is first needed by or on behalf of InfraCo or TfWRL, and shall ensure that all payments are made to the traction electricity supplier in relation to the provision of any such traction electricity.
- 6.21 As soon as reasonably practicable after the date of termination of the ODP Grant Agreement, the Authority shall assess (and InfraCo shall provide reasonable assistance to such assessment) whether any alternative approach to procuring traction electricity is likely to be more efficient or desirable than the approach described in clause 6.20. If the Authority wishes to proceed with any such alternative option, or if the ORR requires an alternative option to be implemented, then the impact of the implementation of any such option on InfraCo shall be deemed to be a Qualifying Change.
- 6.22 If the Authority fails to deliver the Authority Dependencies in Appendix 1 to Schedule 18.2, the Authority acknowledges and agrees that this shall in relation to the Infrastructure Manager Services only be a Change.

## **7 ASSIGNMENT**

- 7.1 InfraCo shall not without the prior written consent of the Authority assign, hold in trust for any other person, or grant a Security Interest in or over, the Infrastructure Agreement or any part hereof or any benefit or interest or right herein or hereunder.

## **8 CHANGE OF CONTROL**

- 8.1 A “**Change of Control**” is a change occurring in the shareholding of InfraCo by the Parents during the Infrastructure Agreement Term in excess of thirty (30) per-cent (other than internal reorganisations).
- 8.2 Otherwise than in accordance with the prior consent of the Authority given pursuant to clause 8.3, a Change of Control shall constitute an Event of Default pursuant to paragraph 1.3 of Schedule 10.2 (Events of Default and Termination Events).
- 8.3 InfraCo may, at any time, apply in writing to the Authority for its consent to a Change of Control (as such term is defined pursuant to clause 8.1), such consent not to be unreasonably withheld.
- 8.4 For the purposes of clause 8.2, the only grounds on which it would be reasonable for the Authority to withhold consent are if as a result of the Change of Control:
- (a) a person or organisation with which the Authority does not wish to be associated for ethical or reputational reasons or whose activities are incompatible with any of the principal activities contemplated by the Infrastructure Agreement becomes an Affiliate of InfraCo; or
  - (b) a person or organisation whose activities do, in the reasonable opinion of the Authority, pose or could pose an inappropriate security threat to the Authority’s critical national infrastructure; or
  - (c) the Authority decides (acting reasonably, having reviewed any information provided, including any financial information and made appropriate inquiries) that InfraCo is no longer in a position to deliver InfraCo Services.

## **9 COMPLIANCE WITH LAWS**

InfraCo shall at all times perform InfraCo Services and all its other obligations under the Infrastructure Agreement in accordance with all applicable Laws.

## **10 CUMULATIVE RIGHTS AND REMEDIES**

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

## **11 DISPUTE RESOLUTION PROCEDURE**

- 11.1 If a dispute arises in relation to any aspect of the Infrastructure Agreement, either Party shall give to the other written notice of the dispute, setting out its nature and full particulars including whether the Party considers the dispute has arisen in respect of the Infrastructure Works, Infrastructure Manager Services or Infrastructure Services (the **"Dispute Notice"**).
- 11.2 On service of the Dispute Notice, a representative of InfraCo and a representative of the Authority responsible for operational management of the relevant disputed InfraCo Service shall consult in good faith in an attempt to come to an agreement in relation to the disputed matter.
- 11.3 If the relevant representatives of InfraCo and the Authority are for any reason unable to resolve the dispute in accordance with clause 11.2 within seven (7) days (or such other time agreed between the Parties), InfraCo's and the Authority's representatives shall escalate the dispute to the managing director of InfraCo and a representative of the Authority of appropriate seniority to further consult in good faith in attempt to come to an agreement to the disputed matter.
- 11.4 If the managing director of InfraCo and the Authority's senior representative are subsequently unable to resolve the dispute in accordance with clause 11.3 within seven (7) days (or such other time agreed between the Parties), the relevant dispute resolution procedure pursuant to clauses 11.5 to 11.10 shall apply.
- 11.5 Any dispute arising out of or in connection with the Infrastructure Manager Services under the Infrastructure Agreement shall be dealt with in accordance with clauses 11.5 to 11.9.
- 11.6 Wherever the Infrastructure Agreement provides that the Authority may reasonably determine any matter, InfraCo may, unless the Infrastructure Agreement expressly provides otherwise, dispute whether a determination made by the Authority is reasonable, but the Authority's determination shall prevail unless and until it is agreed or found to have been unreasonable.
- 11.7 Where either Party is entitled, pursuant to the terms of the Infrastructure Agreement, to refer a dispute arising out of or in connection with the Infrastructure Agreement for resolution or determination in accordance with the Dispute Resolution Rules, then such dispute shall, unless the Parties otherwise agree and subject to any duty of the Authority under section 55 of the Act, be resolved or determined by arbitration pursuant to the Dispute Resolution Rules.
- 11.8 Where, in the absence of an express provision in the Infrastructure Agreement entitling it to do so, either Party wishes to refer a dispute arising out of or in connection with the

Infrastructure Agreement to arbitration pursuant to the Dispute Resolution Rules, the following process shall apply:

- (a) the Party seeking to refer to arbitration shall serve a written notice upon the other Party stating (i) the nature and circumstances of the dispute, (ii) the relief sought including, to the extent possible, an indication of any amount(s) claimed, and (iii) why it is considered that the dispute should be resolved by way of arbitration rather than litigation;
- (b) the other Party shall respond within twenty (20) Weekdays of service of the notice confirming whether or not referral of the dispute to arbitration is agreed. In the absence of any response, the referral to arbitration shall be deemed not to have been agreed;
- (c) in the event that the Parties agree to refer the dispute to arbitration then it shall be resolved or determined in accordance with the Dispute Resolution Rules;
- (d) in the event that the Parties do not agree to refer the dispute to arbitration then it shall be resolved or determined in accordance with clause 17 (Governing Law and Jurisdiction); and
- (e) nothing in this clause 11.8 shall preclude either Party from commencing, continuing or otherwise taking any step by way of litigation in pursuit of the resolution or determination of the dispute unless an agreement is reached to refer the dispute to arbitration.

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

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

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

**11.11 Disputes under other agreements**

- (a) InfraCo shall notify the Authority of any disputes to which it is a party under any other agreement in circumstances where the relevant dispute could have an adverse effect on InfraCo's ability to comply with its obligations under the Infrastructure Agreement or on

the provision of InfraCo Services and which have been submitted for resolution either to the courts or to any other procedure for dispute resolution provided for under such agreements.

- (b) Such notification shall be made both:
  - (i) at the time of such submission (and such notification shall include reasonable details of the nature of the dispute); and
  - (ii) at the time of the resolution of the dispute (whether or not subject to appeal) (and such notification shall include reasonable details of the result of the dispute, any associated award and whether it is subject to appeal).
- (c) InfraCo shall provide such further details of any dispute referred to in clause 11.10 (Disputes under the Infrastructure Agreement) as the Authority may reasonably request from time to time.

## **12 NOTICES**

### **12.1 Notices**

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

<b>Name:</b>	Transport for Wales
<b>Address:</b>	3 Llys Cadwyn, Taff Street, Pontypridd, Rhondda Cynon Taf, CF37 4TH
<b>Email:</b>	To be provided
<b>Attention:</b>	Director of Rail Operations
<b>Name:</b>	AMEY KEOLIS INFRASTRUCTURE / SEILWAITH AMEY KEOLIS LIMITED

**Address:** Transport for Wales CVL Infrastructure Depot Ty  
Trafnidiaeth, Treforest Industrial Estate, Gwent Road,  
Pontypridd, United Kingdom, CF37 5UT

**Email:** [REDACTED]

**Attention:** Company Secretary

- (b) Any other notice, notification or other communication under or in connection with the Infrastructure Agreement shall be in writing and shall be delivered:
- (i) in accordance with clause 12.1(a); or
  - (ii) by electronic data transfer,
  - (iii) except that it shall be marked for the attention of the Contract Manager or the Authority's Representative.

## 12.2 Deemed Receipt

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

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

## 13 SET-OFF

- 13.1 Save as otherwise expressly provided under the Infrastructure Agreement or required by law, all sums payable under the Infrastructure Agreement shall be paid in full and without any set-off or any deduction or withholding including on account of any counter-claim.
- 13.2 Notwithstanding clause 13.1 the Authority shall be entitled to set-off against any amounts payable by it under the Infrastructure Agreement:
- (a) any amount or liability payable or due to it under or in relation to the Infrastructure Agreement (whether such amount or liability is present, contingent and/or future, liquidated or unliquidated);



- (b) any amount or liability payable or due to it under or in relation to the CVL Asset Lease (whether such amount or liability is present, contingent and/or future, liquidated or unliquidated); and
- (c) any monetary penalty payable under the Act.

## **14 MISCELLANEOUS PROVISIONS**

### **14.1 Waivers**

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

### **14.2 Time Limits**

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

- (a) that obligation shall be deemed to continue after the expiry of such time limit if such Party fails to comply with that obligation (or secure such result, as appropriate) within such time limit;
- (b) the Parties shall consult on the relevant Party's failure to perform the obligation within the specified time limit; and
- (c) the relevant Party shall, as applicable, continue to use all reasonable endeavours or reasonable endeavours to do or procure that the relevant thing is done as soon as reasonably practicable thereafter.

#### **14.3 Partial Invalidity**

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

#### **14.4 Further Assurance**

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

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

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

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

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

#### **14.7 Enforcement Costs**

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

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

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

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

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

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

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

### **15 NOT USED**

### **16 ENTIRE AGREEMENT**

- 16.1 This Infrastructure Agreement contains the entire agreement between the Parties in relation to the subject matter of the Infrastructure Agreement and supersede all prior agreements and arrangements between the Parties other than any confidentiality agreements or undertakings which InfraCo may have entered into with the Authority in connection with its proposal to secure the provision of InfraCo Services under the Infrastructure Agreement.

- 16.2 InfraCo hereby acknowledges that it is not entering into the Infrastructure Agreement in reliance on any warranties, representations or undertakings howsoever or to whomsoever made except in so far as such warranties, representations or undertakings are contained in the Infrastructure Agreement.
- 16.3 InfraCo hereby acknowledges and agrees with the Authority the disclaimers of liability which are contained in Volume 1 of the Invitation to Submit Final Tender and the section entitled “**Important Notice**” contained in any document supplied by or on behalf of the Authority in connection with the Infrastructure Agreement, the process leading to the entering into of the Infrastructure Agreement, or InfraCo Services including the Invitation to Submit Final Tender issued in connection therewith.
- 16.4 InfraCo irrevocably and unconditionally waives any right which it may otherwise have to claim damages in respect of and/or to rescind this Infrastructure Agreement on the basis of any warranty, representation (whether negligent or otherwise, and whether made prior to and/or in this Infrastructure Agreement) or undertaking howsoever or to whomsoever made unless and to the extent that such warranty, representation or undertaking was made fraudulently.

## **17 GOVERNING LAW AND JURISDICTION**

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

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

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

## **19 LANGUAGE**

- 19.1 Any notice given under or in connection with this Infrastructure Agreement shall be in English. All other documents provided under or in connection with this Infrastructure Agreement shall be in English, or accompanied by a certified English translation.
- 19.2 If the Agreement is translated into the Welsh language, or any other language, the English language version of this Infrastructure Agreement and its Schedules shall prevail if there is a conflict between such translated version(s).

## **20 COUNTERPARTS**

- 20.1 This Infrastructure Agreement may be executed in any number of counterparts, all of which when executed and delivered shall constitute one and the same instrument. Any Party may enter into this Infrastructure Agreement by executing any such counterpart.

**Schedule 1 – Not used**

## **Schedule 2.1 - Asset Vesting and Transfer**

### **1 VESTING OF PROPERTY LEASES AT THE START DATE**

- 1.1 InfraCo shall not without the prior written consent of the Authority (such consent not to be unreasonably withheld), whether generally or on a case-by-case basis:
- (a) enter into any new Property Lease; or
  - (b) effect any amendment to any Property Lease, except to the extent that InfraCo is required to do so by virtue of any station or Depot Access Conditions to which it is a party.
- 1.2 Not used.
- 1.3 Not Used.
- 1.4 InfraCo shall, unless terminated in accordance with its terms, be a party to the CVL Asset Lease in accordance with Schedule 3A.1 which is a Property Lease for the purposes of the Infrastructure Agreement.
- 1.5 Not Used.
- 1.6 In respect of any assignment or amendment of any Property Lease(s) to which section 31 of the Act applied on its grant, each of the Authority and InfraCo acknowledge that it is their intention that section 31 of the Act shall continue to apply to such assigned or amended lease.
- 1.7 InfraCo shall use all reasonable endeavours to update the relevant Station Specific Appendices:
- (a) as soon as possible and in any event within one (1) calendar year of entering into the initial Station Lease(s) of the CVL; and
  - (b) as soon as possible from time to time,
- to ensure that all Station Specific Appendices of the CVL accurately record all fixtures and fittings in relation to all relevant Stations at all times.

**Schedule 2.2 - Security of Access Agreements and Leases**

**1      NOVATION OF ACCESS AGREEMENTS DURING THE INFRASTRUCTURE SERVICES TERM**

1.1      Not Used;

**2      CVL ASSET LEASE**

2.1      The Parties agree that if:

- (a)      any amounts payable for rates, taxes, assessments, duties, charges, impositions and/or outgoings in respect of the Premises (as such term is defined in the CVL Asset Lease) shall be a Change and such Change shall be deemed to be a Qualifying Change;
- (b)      the Authority exercises any of its rights set out in clause 8 (Redevelopment etc.) of the CVL Asset Lease then there shall be a Change and such Change shall be deemed to be a Qualifying Change;
- (c)      [REDACTED]  
[REDACTED]  
[REDACTED]
- (d)      a Superior Lease (as defined in the CVL Asset Lease) is forfeited, terminated or expires as described in clause 5.5(e) of the CVL Asset Lease, then there shall be a Change and such Change shall be deemed to be a Qualifying Change;
- (e)      if the Tenant (as defined in the CVL Asset Lease) is no longer entitled to advertise on the Premises (as defined in the CVL Asset Lease) or collect revenue from advertising displayed on any Advertising Structure (as defined in the CVL Asset Lease) as described in clause 10.8 of the CVL Asset Lease then there shall be a Change and such Change shall be deemed to be a Qualifying Change;
- (f)      the Authority exercises any of its rights set out in clause 8A (Location Specific provisions) of the CVL Asset Lease then there shall be a Change and such Change shall be deemed to be a Qualifying Change;
- (g)      the Authority exercises any of its rights set out in clause 10.8 (c) (Advertising Structures) of the CVL Asset Lease then there shall be a Change and such Change shall be deemed to be a Qualifying Change; and
- (h)      the Authority shall pay to InfraCo an amount equal to any tax costs (including Land Transaction Tax) which arise as a result of changes to the CVL Asset Lease or other related land arrangements, which shall be payable within ten (10) Weekdays following a reasonable request by InfraCo.



### **3 FREEHOLD ACQUISITIONS**

- 3.1 InfraCo shall not without the prior written consent of the Authority (such consent not to be unreasonably withheld), acquire any freehold property which is part of a network or railway facility to be used for or in connection with the Core Valley Lines network where such property is in the vicinity of the Core Valley Lines network.
- 3.2 not used.

### **4 TAFFS WELL LEASE**

- 4.1 The Parties acknowledge and agree that it is intended that:
- (a) the Taffs Well depot site (excluding the CVL integrated control centre site) shall be leased by the Authority to the rail service successor operator (the "**Taffs Well Lease**") on terms to be agreed and the CVL integrated control centre site shall be leased by the Authority to InfraCo as a supplemental lease to CVL Asset Lease (the "**Taffs Well ICC Lease**"); and
  - (b) any changes to the Taffs Well leasing structure detailed at paragraph 4.1(a) above shall be a Change and such Change shall be deemed to be a Qualifying Change.

**Schedule 3A - Infrastructure Manager Services**

**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: InfraCo'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 Infrastructure 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 Infrastructure 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 Not Used.
- 1.2 The Authority and InfraCo shall use reasonable endeavours to agree the form of station access conditions and Network Code required for granting and allowing access to all stations and rail network forming part of the CVL Assets. Provided always that such station 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, and, subject to paragraph 1.4, InfraCo 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 InfraCo reasonably believes that it or they contain any Material CVL Asset Title Restriction; and
  - (b) confirmation from the Authority that InfraCo has received the whole or the final part of such title (as applicable) to notify the Authority where InfraCo believes that there is a Material CVL Asset Title Omission.
- 1.4 Notwithstanding the periods available for InfraCo notification in paragraph 1.3, InfraCo 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. For the avoidance of doubt, InfraCo further acknowledges that the receipt of information or confirmation from the Authority as set out in paragraph 1.3(a) and (b) shall include any previous receipt of information and/or any confirmation by Welsh Ministers to ODP under the ODP Grant Agreement.
- 1.5 InfraCo and the Authority shall meet at least once every Reporting Period (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. InfraCo 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 InfraCo 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 InfraCo 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, InfraCo 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 Connection Agreements as set out in paragraph 3 of this Schedule 3A.2.
- 2.2 Not Used.
- 2.3 InfraCo shall throughout the Infrastructure Agreement Term maintain all policies, processes, agreements and consents agreed with ORR 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 InfraCo shall throughout the Infrastructure 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.
- 2.5 Subject to paragraph 2.6 below, the maximum aggregate liability of InfraCo howsoever arising in connection with the Infrastructure Manager Services in any IM Year shall in no circumstances exceed [REDACTED] Indexed (except to the extent any such liability cannot be limited as a matter of law).
- 2.6 If and to the extent that a liability of InfraCo is covered by an insurance policy which the Authority is required to take out or maintain under this Infrastructure Agreement, and InfraCo receives proceeds pursuant to such policy, the payment of such sums equivalent to the proceeds shall not count towards or act to reduce the unexpended amount of the limitation on InfraCo's liability stated in paragraph 2.5.

### **3 CONNECTION AGREEMENTS**

- 3.1 The Parties acknowledge and agree that InfraCo has entered into:
- (a) a connection agreement with Network Rail dated 27 March 2020 in respect of the connection point between the national rail network and the Radyr line of the CVL network; and
  - (b) a connection agreement with Network Rail dated 27 March 2020 in respect of the connection point between the national rail network and the CVL network at Cardiff Queen Street,
- (together, the "**Connection Agreements**").
- 3.2 InfraCo shall maintain the Connection Agreements throughout the Infrastructure Agreement Term and manage any changes to the Connection Agreements 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, InfraCo 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 InfraCo shall develop and provide to the Authority, within two (2) months of the date of the ODP Grant 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 InfraCo 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 InfraCo shall be required to implement the agreed CVL Assets Operational Management Plan for the remainder of the Infrastructure 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 InfraCo 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) InfraCo 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), InfraCo 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 InfraCo uses in relation to the CVL Asset Data for any purpose related to this Infrastructure Agreement.
- (c) Where InfraCo is unable (using reasonable endeavours) to provide any licence pursuant to paragraph 1.1(b), any contracts or licences relating to InfraCo's right to use all the software InfraCo uses in relation to the CVL Asset Data for any purpose related to this Infrastructure Agreement shall be deemed to be designated as Key Contracts.
- (d) InfraCo shall ensure that the CVL Asset Data shall be capable of being accessed by the Authority online at all times.
- (e) InfraCo 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) InfraCo 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) InfraCo 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 InfraCo 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 InfraCo from time to time.
- (b) InfraCo shall appoint an Infrastructure Manager Representative and such person shall have full authority to act on behalf of InfraCo for all purposes in respect of the Infrastructure Manager Services. Except as previously notified in writing before such act is carried out by InfraCo, the Authority and the Authority's Infrastructure Manager Representative shall be entitled to treat any act of InfraCo's Infrastructure Manager Representative as being expressly authorised by InfraCo 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) InfraCo'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 twenty four (24) months following the commencement of the Infrastructure Manager Phase, InfraCo shall obtain ISO 55001 certification and shall maintain such certification for the remainder of the Infrastructure Agreement Term.
- (b) InfraCo 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 InfraCo developed standards; and
  - (v) sufficient to ensure that InfraCo can deliver InfraCo 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 InfraCo shall use reasonable endeavours to ensure that:
  - (i) InfraCo complies with the Authority's spending objectives and other policy requirements as notified in writing by the Authority to InfraCo 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) not used; and
  - (iv) the CVL Assets are capable of meeting the CVL Hand Back Conditions.
- (b) Notwithstanding any other express obligations of InfraCo to review certain plans and strategies in accordance with this Agreement, InfraCo 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) InfraCo shall throughout the Infrastructure 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) InfraCo shall:
  - (i) no later than twelve (12) weeks following the date of the 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, InfraCo shall, in respect of its Infrastructure Manager Services obligations, be a member of the Rail Safety and Standards Board.
- (d) InfraCo's Safety Management System shall be compliant with ISO 31000:2009. InfraCo shall be required to provide to the Authority the latest iteration of InfraCo's Safety Management System upon request.

#### **1.7 Environmental Management**

- (a) InfraCo shall throughout the Infrastructure 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) InfraCo shall:
  - (i) no later than six (6) weeks following the date of this Infrastructure 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) InfraCo 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.
- (d) InfraCo 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 InfraCo shall fully record and document where such mitigations are decided not to be taken (including InfraCo's rationale for such decision) and InfraCo 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 Infrastructure 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 InfraCo 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 Connection Agreements 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 InfraCo 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 InfraCo 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 InfraCo's future role as Infrastructure Manager of the CVL Assets to allow InfraCo 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 InfraCo 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 InfraCo 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 InfraCo shall update its Schedule of Inspections to reflect such requirements; and
  - (g) as soon as reasonably practicable after the date of the Infrastructure 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 InfraCo 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 InfraCo shall be compensated by the Authority for:

- (a) carrying out Discovery Phase Services; and
- (b) InfraCo'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 InfraCo for Principal Infrastructure Services being delivered by InfraCo in accordance with Appendix 5 Part B Annex 1 of Schedule 3B (Infrastructure Services and InfraCo Infrastructure Works).

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

4.1 During the Infrastructure Manager Phase InfraCo 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 the ODP Grant Agreement, InfraCo shall provide a draft Risk Based Management Framework (copied to the Independent Reporter), which shall:

- (a) set out how InfraCo 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 InfraCo 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 InfraCo shall be required to implement the Risk Based Management Framework for the remainder of the Infrastructure 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 InfraCo 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, InfraCo 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 InfraCo 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 InfraCo 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 the 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 InfraCo 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, InfraCo 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 InfraCo; 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 InfraCo 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 InfraCo 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 InfraCo 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 acknowledge that:

- (a) the Authority and the ODP jointly appointed the Independent Reporter under the ODP Grant Agreement for an initial five (5) year term (such Independent Reporter's Appointment included the ability to extend the term of the appointment) (the "**Independent Reporter Agreement**"); and
- (b) the Independent Reporter Agreement was subsequently novated from the ODP to InfraCo.

- 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 InfraCo and the Authority (and their respective Affiliates).
- 8.4 The Independent Reporter's Appointment shall specify the duties of the Independent Reporter owed to the Authority and InfraCo. 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 InfraCo;
  - (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 InfraCo and the Authority;
  - (c) assessing and determining any payment adjustments to be applied to InfraCo in accordance with Schedule 8.5 (Infrastructure Manager Service Payments);
  - (d) assessing whether InfraCo 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 Infrastructure 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 InfraCo 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 InfraCo 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 Infrastructure Agreement.
- 8.6 InfraCo 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 InfraCo 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 InfraCo.

- 8.7 In the event of the Independent Reporter's Appointment being terminated otherwise than following full performance, the Authority and InfraCo 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 InfraCo 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 InfraCo 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 InfraCo 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) InfraCo's share of the Independent Reporter costs is less than the amount identified in the Final Tender Financial Model for such costs InfraCo 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 InfraCo 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) InfraCo 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, InfraCo 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 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 InfraCo'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 Infrastructure 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) InfraCo 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) InfraCo'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 InfraCo 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 InfraCo 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 InfraCo shall be entitled to propose adjustments to any Firm Charges, provided always that:

- (a) InfraCo has identified a Material Discovery in a relevant CVL Asset to which a Firm Charge relates;
- (b) all cost estimates and changes shall be proposed on the basis of the Schedule of Rates and InfraCo 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) InfraCo 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) InfraCo 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 InfraCo's design of the CVL Transformation to be addressed by the Parties in Schedule 3B (Infrastructure Services and AKI 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 adjustments to any Firm Charge 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 Infrastructure Agreement Term at the adjusted amounts in accordance with InfraCo'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) InfraCo'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 InfraCo 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 InfraCo in accordance with paragraph 13.2.

13.2 The Parties agree that InfraCo 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 InfraCo'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 InfraCo or its agents or sub-contractors or InfraCo's own contravention of this Agreement;
    - (iv) where InfraCo'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 InfraCo upon the basis of the Schedule of Rates and InfraCo 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) InfraCo 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 InfraCo's design of the CVL Transformation to be addressed by the Parties in Schedule 3B (Infrastructure Services and InfraCo 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 InfraCo 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 InfraCo for any additional incremental costs directly incurred in connection with InfraCo's additional use of plant and sub-contractors resource to manage and mitigate the impact of an Extreme Weather Event provided that InfraCo 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, InfraCo 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 (following installation of such equipment);

- (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 InfraCo 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 InfraCo becoming aware of any Material Discoveries or Excluded Risks InfraCo shall:

- (a) Not used;
- (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 Infrastructure Agreement Term:

- (a) where an Excluded Risk arises and InfraCo is entitled to receive 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 InfraCo shall be entitled to an adjustment as a Material Discovery; and
- (b) where an Excluded Risk arises and InfraCo is not entitled to receive 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 above an excess amount of [REDACTED] per Excluded Risk occurrence, provided always that InfraCo shall solely be responsible for costs suffered up to such excess amount.

- 15.3 InfraCo 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, InfraCo 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 Infrastructure 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 InfraCo 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 InfraCo 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 InfraCo's opinion acting reasonably) affect the design of the CVL Transformation and/or Associated Projects, InfraCo shall:
  - (i) act in a manner which delivers the best overall value to the Authority over the Infrastructure 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 design of the CVL Transformation and/or Associated Projects.

15.5 Where InfraCo 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) not used;
- (c) delay to any Completion or Key Date; or
- (d) a change to the Accepted Programme,

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

15.6 InfraCo shall keep a separate detailed account of the impacts of Material Discoveries that impact on 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, InfraCo 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 InfraCo'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 InfraCo in order to mitigate the impact of any works required;
- (d) any measures InfraCo 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).

15.9 The Parties shall, acting reasonably and in good faith, work together to agree, by no later than four (4) weeks following the termination of the ODP Grant Agreement revisions to the Material Discovery notification process, payment mechanism and protocols to achieve:

- (a) improved clarity in relation to the information that InfraCo shall supply to support a Material Discovery, including:
  - (i) to demonstrate InfraCo's compliance with all the requirements of paragraphs 15.1 to 15.8 of this Schedule 3A inclusive;
  - (ii) to demonstrate that if a derogation has not been applied to mitigate the Material Discovery in accordance with paragraph 15.1(b), that this approach is consistent with the Risk Based Management Framework; and
  - (iii) any other information that the Authority may reasonably request;
- (b) an improved process for the contracting (if required) and the cost management of all works that qualify for charge adjustment that:
  - (i) considers the potential for the simplification of the internal governance of both Parties;
  - (ii) better supports compliance with the governance requirements of both Parties;
  - (iii) where governance allows, simplifies the process to contain administrative effort for both Parties;
  - (iv) if appropriate, simplifies the process and mechanism for payment in this respect;
  - (v) supports improved communications between the Parties on these issues; and
  - (vi) is integrated, where appropriate and required, with the improvements to be agreed for the Renewals Process in accordance with Annex 5 paragraph 7.1. a programme of submissions that will, as far as is reasonably practical, avoid significantly higher numbers of Material Discovery notifications in the three (3) month period prior to the 1 October 2021 Review Date;



- (c) early submission of Material Discovery notifications which require additional surveys and site investigations as far as reasonably practical; and
- (d) a staged process for submission and consideration of the Material Discovery notifications to provide clarity of timescales and responsibilities of the Parties and to agree the number of iterations of submission for each Material Discovery notification.

15A [REDACTED]

15A.1 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

(a) [REDACTED]  
[REDACTED]

(b) [REDACTED]  
[REDACTED]  
[REDACTED]

(c) [REDACTED]  
[REDACTED]  
  
[REDACTED]  
[REDACTED]

15A.2 [REDACTED]  
[REDACTED]

(a) [REDACTED]  
[REDACTED]  
[REDACTED]

(b) [REDACTED]  
[REDACTED]  
[REDACTED]

(c) [REDACTED]  
[REDACTED]

(i) [REDACTED]

(ii) [REDACTED]  
[REDACTED]  
[REDACTED]

(iii) [REDACTED]

(iv) [REDACTED]

1) [REDACTED]  
[REDACTED]

2) [REDACTED]  
[REDACTED]  
[REDACTED]

- 3) [REDACTED]  
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[REDACTED]
- 4) [REDACTED]  
[REDACTED]  
[REDACTED]
- 5) [REDACTED]  
[REDACTED]  
[REDACTED]
- 6) [REDACTED]  
[REDACTED]
- 7) [REDACTED]  
[REDACTED]; and
- 8) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
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[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

15A.3 [REDACTED]  
[REDACTED]  
[REDACTED]

15A.4 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

15A.4A [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
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[REDACTED]  
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[REDACTED]

15A.5 [REDACTED]  
[REDACTED]  
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[REDACTED]  
[REDACTED]

15A.6 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

15A.7 [REDACTED]

(a) [REDACTED]

(b) [REDACTED]

[REDACTED]

[REDACTED]

15A.8 [REDACTED]

(a) [REDACTED]

(b) [REDACTED]

(c) [REDACTED]

(d) [REDACTED]

(e) [REDACTED]

(i) [REDACTED]

(ii) [REDACTED]

15A.9 [REDACTED]

(a) [REDACTED]

(b) [REDACTED]

(c) [REDACTED]  
[REDACTED]  
[REDACTED]

(d) [REDACTED]  
[REDACTED]  
[REDACTED]

(e) [REDACTED]  
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(f) [REDACTED]  
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[REDACTED]  
[REDACTED]  
[REDACTED]

(i) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

(ii) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

15A.10 [REDACTED]  
[REDACTED]  
[REDACTED]

(a) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

(b) [REDACTED]  
[REDACTED]  
[REDACTED]

15A.11 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

15A.12 [REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

15A.13 [REDACTED]  
[REDACTED]  
[REDACTED]

15A.14 [REDACTED]  
[REDACTED]  
[REDACTED]  
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[REDACTED]

(a) [REDACTED]  
[REDACTED]

(b) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

15A.15 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

(a) [REDACTED]  
[REDACTED]  
[REDACTED]

(b) [REDACTED]  
[REDACTED]

(c) [REDACTED]  
[REDACTED]  
[REDACTED]

(d) [REDACTED]

(e) [REDACTED]  
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[REDACTED]

(f) [REDACTED]  
[REDACTED]

(g) [REDACTED]  
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[REDACTED]

(h) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

(i) [REDACTED]  
[REDACTED]

(j) [REDACTED]  
[REDACTED]

(k) [REDACTED]  
[REDACTED]

15A.16 [REDACTED]

15A.17 [REDACTED]

[REDACTED]

15A.18 [REDACTED]

15A.19 [REDACTED]

(a) [REDACTED]

(b) [REDACTED]

15A.20 [REDACTED]

## 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 InfraCo 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 InfraCo 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 InfraCo 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 InfraCo failing to deliver the Infrastructure Manager Services in accordance with its obligations under this Schedule 3A.3.

## 17 UNPLANNED RENEWALS

- 17.1 InfraCo 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 InfraCo'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 InfraCo 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 InfraCo 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 InfraCo

Infrastructure Works as a Package Order in Schedule 3B (Infrastructure Services and InfraCo Infrastructure Works); or

- (ii) where InfraCo and the Authority are unable to agree the terms of the implementation of the Unplanned Renewals to be delivered as InfraCo Infrastructure Works, the Authority shall have the right to determine such works are implemented by an IDP with InfraCo acting as a delivery partner in respect of the Unplanned Renewals implementation; or
- (b) reject the proposed Unplanned Renewal Request in writing to InfraCo, following which in respect of any additional incremental direct cost of enhanced maintenance requirements to be performed by InfraCo such cost shall be borne by InfraCo provided always InfraCo 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 InfraCo 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. InfraCo shall use reasonable endeavours, acting through its communications and marketing strategy and plans, to inform the public that InfraCo 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, InfraCo shall:

- (a) respond to initial enquiries from Neighbour Third Parties in an efficient way ensuring that InfraCo:
  - (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 InfraCo, the Authority (or where applicable the Lessor under the CVL Asset Lease) and a Neighbour Third Party, InfraCo 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 InfraCo staff grades as set out in the Schedule of Rates; and
    - (ii) exclusive of any InfraCo overheads and profit, the Parties acknowledging and agreeing that:
      - (A) subject to paragraph 18.4(c)(ii)(B) below, such costs of InfraCo are included in the Fixed Charge for Asset Operational Management under this Schedule 3A;
      - (B) discussions between the Parties regarding InfraCo's entitlement to charge overheads and profit on such costs are ongoing between the Parties and that they shall, acting reasonably and in good faith, work together to agree, the approach to budgeting for such overheads and profit and any additional incentivisation regime relating to third party revenue (and impact on IMI).
- 18.5 InfraCo 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 InfraCo 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 InfraCo 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 InfraCo that might exist in respect of meeting its obligations under this paragraph 18 (Asset Protection) where InfraCo is not a party to any relevant Asset Protection Agreement and/or InfraCo 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 InfraCo 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 eight (8), 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 InfraCo, may be proposed by InfraCo to be expended through additional Renewals undertaken by InfraCo if InfraCo 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 InfraCo shall advise the Authority in its revised Asset Management Plan, to be provided by InfraCo in accordance with paragraph 5.1 of Annex 2 to this Schedule 3A.3, if InfraCo 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 InfraCo shall obtain and maintain an Asset Management Performance Bond from the date on which the performance bond procured by InfraCo in respect of Schedule 3B is released in accordance with Schedule 3B until seven (7) Reporting Periods following the Expiry Date ("**Expiry of the Bond Requirement 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:
  - (i) subject to 20.1(c)(ii), three (3) years; or
  - (ii) if the Expiry of the Bond Requirement Date will occur during the three (3) year duration referred to in paragraph 20.1(c)(i), the period from the date that the Asset Management Performance Bond is required to be obtained and maintained until the Expiry of the Bond Requirement Date.

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 Infrastructure Agreement in accordance with Schedule 10 (Remedies, Events of Default and Termination Events); or
  - (ii) not used; or

- (iii) not used; and
  - (b) the Independent Reporter has provided certification that InfraCo 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 InfraCo under the Infrastructure Agreement.
- 20.3 InfraCo 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 InfraCo may replace the then current Asset Management Performance Bond referred to in paragraph 20.1 at any time. InfraCo 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.
- 20.6 The Parties acknowledge and agree that the Asset Management Performance Bonds referred to in this paragraph 20 shall not be required to cover those costs which are covered by the Performance Bond required to be provided by InfraCo to the Authority pursuant to paragraph 4 of Schedule 12 to the Infrastructure Agreement.

## **21 NOT USED**

## **22 CVL ASSET HAND BACK CONDITIONS**

- 22.1 Commencing from eighteen (18) months prior to the Expiry Date, InfraCo 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 InfraCo shall on the Expiry Date ensure that the CVL Assets comply with the following conditions:
  - (a) all Infrastructure Manager Services required to be undertaken by, or on behalf of, InfraCo, 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 InfraCo signage and InfraCo fixtures, fittings and furniture have been removed from the CVL Assets unless InfraCo 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 InfraCo have been removed.
- 22.3 Notwithstanding InfraCo's obligations in Schedule 15 (Obligations associated with Termination), InfraCo 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 Infrastructure 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 InfraCo 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 (and save in respect of any Renewals where InfraCo is not responsible for Renewal design or implementation):
- (a) the Authority appoints InfraCo to act as Principal Contractor in respect of the Infrastructure Manager Services;
  - (b) the Authority appoints InfraCo to act as a designer for the Infrastructure Manager Services;
  - (c) the Principal Designer is as stated in the relevant Contract Data for the Renewal; and
  - (d) InfraCo 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 InfraCo shall comply with its obligations under the CDM Regulations. InfraCo 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 InfraCo 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 InfraCo 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 the ITSFT Bid Submission;
- (d) Restriction of Use Plan; and
- (e) Asset Protection arrangements.

24.2 InfraCo 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 the ODP Grant Agreement, InfraCo 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) InfraCo 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 InfraCo 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 InfraCo 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 InfraCo shall be required to implement the Disaster Management and Business Continuity Plan for the remainder of the Infrastructure 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 InfraCo 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.

25.4 The Parties acknowledge that the Disaster Management and Business Continuity Plan currently in place at December 2020 requires review to reflect the impact of the termination

of the ODP Grant Agreement. InfraCo shall develop, in conjunction with the Authority, a Disaster Management and Business Continuity Plan for this Infrastructure Agreement by the date that is seven (7) days after termination of the ODP Grant Agreement, which shall thereafter constitute the Disaster Management and Business Continuity Plan for the purposes of this Infrastructure Agreement.

## 26 Infrastructure Manager KPIs

- 26.1 The Parties shall, acting reasonably and in good faith, work together to agree, by no later than 31 March 2021, a key performance incentive regime to incentivise InfraCo's performance of its Infrastructure Manager Services under this Infrastructure Agreement ("**IM KPI Regime**").
- 26.2 The detail of the IM KPI Regime will be based on a number of agreed principles, including:
- (a) the IM KPI Regime shall:
    - (i) be attainable and realistic but incentivise InfraCo to continually improve its performance;
    - (ii) be clear and based around a number of well-defined measures (the "**KPIs**") which shall be designed to ensure they do not drive the wrong behaviours, particularly around safety;
    - (iii) deliver value for money to the Authority;
    - (iv) not have a material adverse impact on InfraCo's costs (in relation to administration or governance) or, in the event additional costs are to be incurred by InfraCo in relation to the IM KPI Regime, InfraCo shall be entitled to a reasonable cost adjustment from the Authority in relation to such costs;
    - (v) be reviewed and revised annually (in accordance with paragraph 26.2(c)) and
    - (vi) be fully compatible with InfraCo's safety and regulatory requirements;
  - (b) the IM KPI Regime shall be based solely on additional payments to InfraCo to incentivise performance and shall provide InfraCo with the opportunity to obtain additional payments, over the period the IM KPI Regime is to apply, of up to [REDACTED] ("**IM KPI Payments**");
  - (c) the IM KPI Regime shall be agreed between the Parties in accordance with the principles set out in this paragraph 26 (*Infrastructure Manager KPIs*). In the event the Parties do not agree on the IM KPI Regime (or any annual revisions to the IM KPIs, including targets or benchmarking) either Party shall be entitled to refer the matter to the Independent Report to assist in determining the detail of the IM KPI Regime. Notwithstanding any referral of the matter to the Independent Reporter for resolution, the Parties agree the final determination in respect of the IM KPIs and any IM KPI Payments, shall be at the sole discretion of the Authority (acting reasonably) provided that any such determination in respect of the IMI KPI regime is consistent with the principles set out in this paragraph 26;
  - (d) without prejudice to any other rights the Authority has under this Infrastructure Agreement, -any failure by InfraCo to achieve any IM KPIs in any period will not result in any payment deductions, Warning Notices, contraventions of the Infrastructure Agreement and/or any Event of Default;

- (e) during IM Year two the agreed IM KPIs will be measured and monitored but solely for the purposes of benchmarking InfraCo's future performance and no IM KPI Payments will be made to InfraCo during this period;
- (f) following IM Year two, the IM KPI Regime will commence and operate until the end of IM Year eight allowing InfraCo the opportunity to obtain IM KPI Payments during each IM Year in this period; and
- (g) InfraCo shall fully co-operate and facilitate any reasonable requirement of the Authority to access and audit information required to validate InfraCo's performance in relation to the IM KPIs and any entitlement of InfraCo for any IM KPI Payment.

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

### **1 ASSET MANAGEMENT PLAN**

- 1.1 The Asset Management Plan to be provided by InfraCo 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, unless otherwise agreed by the Parties, be in the same format as the version agreed by InfraCo and the Authority and in place immediately prior to the date of termination of the ODP Grant Agreement.
- 2.2 No later than twenty four (24) months after the commencement of the Infrastructure Manager Phase, the Asset Management Plan shall comply with InfraCo's ISO 55001 certification.
- 2.3 The Asset Management Plan shall contain the following:
- (a) The InfraCo's Strategic Asset Management Plan, Portfolio Asset Management Plan and the Asset Class Asset Management Plans;
  - (b) InfraCo's Asset Management Strategy;
  - (c) InfraCo's Day to Day Asset Management services;
  - (d) InfraCo's Renewals plan with a timetable for such works and proposed budget for subsequent IM Years developed as part of the Renewals Process;
  - (e) InfraCo's Risk Based Management Framework;
  - (f) the Authority's budget;
  - (g) any other components or information required to meet the requirements of ISO 55001 certification; and
  - (h) any other information reasonably required by the Authority or the Independent Reporter.
- 2.4 InfraCo shall adopt an "open door" approach to information sharing with the Authority which shall grant the Authority full access to all InfraCo Services Employees and processes.

### **3 ASSET MANAGEMENT STRATEGY**

- 3.1 The Asset Management Plan shall set out InfraCo's Asset Management Strategy.
- 3.2 The Asset Management Strategy shall include an asset management policy for each CVL Asset Class setting out InfraCo'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 Infrastructure Agreement Term (being the "**Asset Management Strategy**").
- 3.3 The Asset Management Strategy shall be based on InfraCo'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, InfraCo 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 InfraCo shall include:
- (a) the assumptions made by InfraCo in respect of such payment adjustments including those in respect of inflation and interest rates which InfraCo 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) InfraCo'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 InfraCo in accordance with paragraph 4 of Annex 2 (Asset Management Reporting).
- 6.2 InfraCo shall use all reasonable endeavours to produce an Asset Management Plan which allows InfraCo to deliver the Infrastructure Manager Services within the Authority's budget and spending requirements.
- 6.3 InfraCo shall develop and maintain options for small infrastructure investment schemes (below [REDACTED]) which, following instructions from the Authority, may be implemented by InfraCo 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 InfraCo's initial proposal (including calculations based on Schedule 8.5 (Infrastructure Manager Service Payments)) of the Infrastructure Manager Service Payment InfraCo 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 InfraCo'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**

Not Used.

## ANNEX 2 – ASSET MANAGEMENT REPORTING

### 1 MONTHLY REPORTING

1.1 Notwithstanding InfraCo 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 InfraCo shall meet with the Authority at least once in every Reporting Period (or such other interval as the Authority may notify to InfraCo in writing) at a time and location notified to InfraCo by the Authority ("**CVL Asset Monthly Performance Meeting**") and InfraCo 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, InfraCo (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, InfraCo (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) InfraCo'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 InfraCo that the proposal will not result in InfraCo 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 INFRACO 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,

InfraCo 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 InfraCo from the commencement of that IM 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 InfraCo 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, InfraCo and the Independent Reporter shall meet, at a time and location notified to InfraCo by the Authority ("**CVL Asset Annual Performance Meeting**") to discuss:

- (a) the latest CVL Asset Monthly Report; and
- (b) any InfraCo 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 InfraCo and the Independent Reporter an indication of the budget available to InfraCo for Infrastructure Manager Services and Renewals and Enhancement works for each remaining IM Year.

- 4.2 The budget provided by the Authority in accordance with paragraph 4.1 shall be sufficiently detailed to allow InfraCo 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, InfraCo 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 InfraCo 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 InfraCo shall, as soon as reasonably practicable meet to discuss the relevant issue and InfraCo 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 InfraCo 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 InfraCo to meet its obligations under this Infrastructure Agreement,

then the Authority shall as soon as reasonably practicable:

- (i) serve a notice to InfraCo setting out any variations to the terms of the Infrastructure 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 InfraCo) directly resulting in InfraCo contravening any of its obligations under this Infrastructure Agreement provided always that any resulting required adjustments to the Infrastructure Manager Services Payment shall be dealt with as a Qualifying Change; or

- (ii) notify InfraCo 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 InfraCo,

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 InfraCo 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 InfraCo 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 InfraCo shall implement such Asset Management Plan.

## **6 ENHANCEMENTS**

6.1 InfraCo 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) InfraCo'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 InfraCo for the implementation of the Enhancement where the Enhancement provides a financial or performance benefit to InfraCo.

6.2 The Authority shall review and consider any Enhancements proposed by InfraCo 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 InfraCo 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 InfraCo'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 InfraCo during the first IM 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 – INFRACO'S CVL ASSET ASSUMPTIONS**

- 1      InfraCo'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 impedence to Railway operations, an example of such an impedence 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 InfraCo 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 InfraCo 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 InfraCo's Asset Knowledge Management systems within the timescales set out in InfraCo'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 InfraCo's Infrastructure Manager culture, but also of InfraCo's wider culture. For example, InfraCo shall:
    - (i) make data entry into its AKM systems collected by relevant InfraCo personnel a core business activity;
    - (ii) ensure all InfraCo Services Employees undertaking asset maintenance or management activities:
      - (A) are inducted on InfraCo'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 InfraCo Services Employees undertake and maintain good quality asset data, facilitated by the AKM systems; and
  - (h) InfraCo shall provide efficient ways for all InfraCo 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**

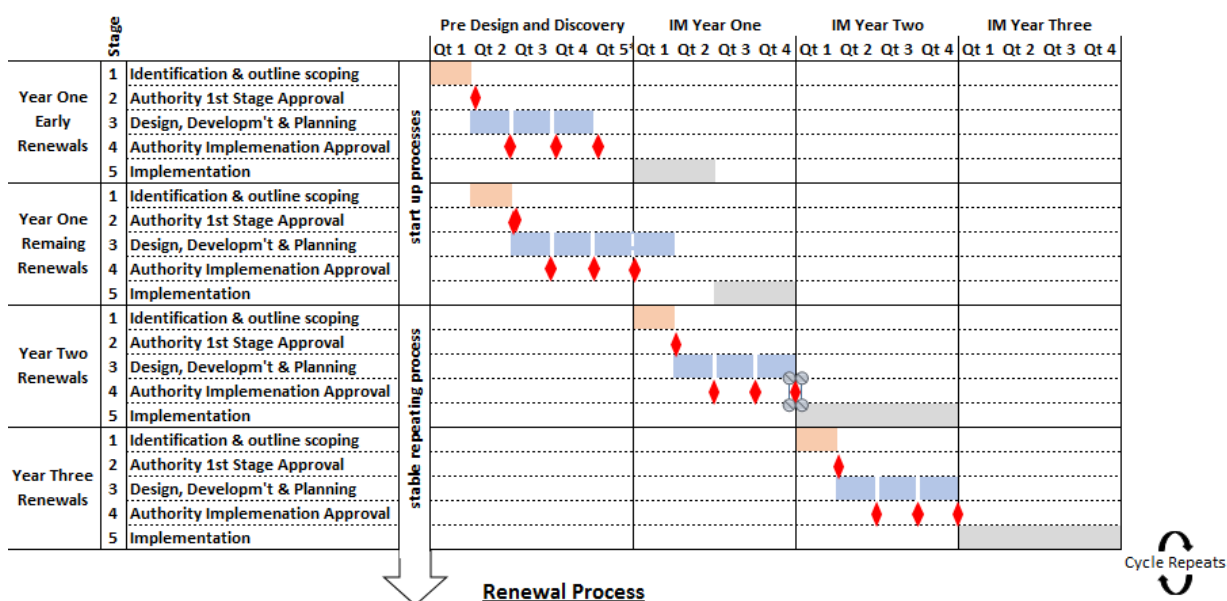
- 1.1 InfraCo's Initial Asset Knowledge Management Plan is as set out in this Part B to Annex 4 of Schedule 3A.3.
- 1.2 InfraCo shall ensure that its Initial Asset Knowledge Management Plan is developed by InfraCo and a revised version of the Initial Asset Knowledge Management Plan shall be provided 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:
- Renewals Process – Stage One;
  - Renewals Process – Stage Two;
  - Renewals Process – Stage Three;
  - Renewals Process – Stage Four; and
  - 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 InfraCo and Authority during this period.

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



### 2 RENEWALS PROCESS - STAGE ONE

- 2.1 During Renewals Process - Stage One, InfraCo shall:
- provide to the Authority and the Independent Reporter a programme of Renewals for the next IM Year based upon a detailed analysis of (where relevant):
    - 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 InfraCo 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 InfraCo; and
  - (iii) the agreed price to be paid to InfraCo for the activities to be carried out by InfraCo during Renewal Process: – Stage Three including InfraCo'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 InfraCo 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, InfraCo shall, for each Renewal which the Authority has instructed InfraCo 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 InfraCo 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 InfraCo and provide instructions to InfraCo 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 InfraCo Infrastructure Works as a Package Order in Schedule 3B (Infrastructure Services and InfraCo Infrastructure Works); or
  - (b) where InfraCo and the Authority are unable to agree the terms of the implementation of the Renewals to be delivered as InfraCo Infrastructure Works, the Authority shall have the right to determine such works are carried out by an IDP with InfraCo 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 InfraCo or IDP (as instructed by the Authority) and the obligations of the Parties shall be as set out in Schedule 3B (Infrastructure Services and InfraCo Infrastructure Works) in respect of such works.

## 7 FUTURE AMENDMENTS TO THE RENEWAL PROCESS

- 7.1 The Parties shall, acting reasonably and in good faith, work together to agree, by no later than four (4) weeks following the termination of the ODP Grant Agreement revisions to the Renewals Process based on the following principles:
- (a) the revisions shall provide more detail on the Parties rights and responsibilities under the Renewals Process, provided that where any agreed revisions result in an aggregated increase the responsibilities and/or costs of InfraCo in the Renewals Process – Stage One and/or Renewals Process - Stage two, the Authority shall provide cost protection to InfraCo through a reasonable adjustment to the Infrastructure Manager Service Payment; the revisions shall accurately reflect the existing procurement protocols and process of InfraCo and the Authority and shall enable efficient compliance with these protocols and processes, including the application of package order processes pursuant to Schedule 3B of this Infrastructure Agreement in respect of all works not included in the Infrastructure Management Services Payment;
  - (b) the revisions shall encourage and allow for an acceleration of the Renewals Process wherever practical;
  - (c) the revisions shall set out in more detail:
    - (i) the integration of the Renewals Process with the Annual Asset Management Planning process;
    - (ii) the treatment of;
      - (A) long lead items such as materials and plant bookings;
      - (B) Renewals which require minimal or no design requirements and would be more efficiently implemented as design and build packages;
      - (C) Unplanned Renewals;
      - (D) Urgent Renewals; and
      - (E) any other Renewals responsibilities and activities that the Parties agree should be revised; and
  - (d) the revisions shall seek to ensure more efficient and effective integration of the Renewals Process at the expiry or termination of the Infrastructure Agreement including with the future Renewals Process of any Successor Operator.

**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

**AMEY KEOLIS INFRASTRUCTURE / SEILWAITH AMEY** (2)  
**KEOLIS LIMITED ("InfraCo")**

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) **AMEY KEOLIS INFRASTRUCTURE / SEILWAITH AMEY KEOLIS LIMITED** incorporated and registered in England and Wales with company number 11389544 whose registered office is at Transport For Wales Cvi Infrastructure Depot Ty Trafnidiaeth, Treforest Industrial Estate, Gwent Road, Pontypridd, United Kingdom, CF37 5UT ("**InfraCo**"); 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 Infrastructure Agreement dated [DATE] with InfraCo for the Infrastructure Manager Services, as are more specifically described in schedule 3A of the Infrastructure Agreement ("**Contract**").
- (B) Pursuant to the paragraph 20 of schedule 3A.3 of the Contract, InfraCo 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 schedule 10.2 to the Contract;

"**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;

## 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) not used; or
  - (iii) not used; and
- (b) for which the Independent Reporter has provided certification that InfraCo 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, and such failure has resulted in the Authority suffering loss, liabilities, costs or expenses which it is not otherwise able to recover from InfraCo under the Infrastructure Agreement,

up to the Maximum Amount [but shall not be required to pay any losses, liabilities, costs or expenses in connection with:

- (A) the Authority's mobilisation of, and transfer of responsibility to, Wales Infrastructure Manager of Last Resort Limited (company number 12213395) or procurement costs in respect of a Successor Operator (as defined in the Infrastructure Agreement); or
- (B) InfraCo's failure to comply with its obligations under Schedule 14 (Preservation of Assets) and/or Schedule 15 (Obligations associated with Termination) of the Infrastructure Agreement.]<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. Subject to Clause 2.1, 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.

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

- 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:
- (a) date that is seven (7) Reporting Periods following the [EXPIRY DATE]<sup>2</sup>;
  - (b) [INSERT DATE REQUIRED BY PARAGRAPH 20.1(C)(I) OF SCHEDULE 3A],  
(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 InfraCo;
  - (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 INFRACO**

- 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 InfraCo in competition with the Authority; or
  - (b) enforce any security over the assets of InfraCo 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:

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<sup>2</sup> DN: Duration of this Bond is not to be less than three (3) years, subject to clause 20.1(c)(ii).

- (a) to pay to the Authority any sums due from InfraCo to the Authority under, or in connection with, the Contract; and
- (b) subject to Clause 5.3(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 InfraCo in favour of the Authority under, or in connection with, the Contract shall be conclusive evidence of any liability of InfraCo to which that judgment, award, agreement or decision relates.
- 6.2 Insolvency of InfraCo 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) **AMEY KEOLIS INFRASTRUCTURE / SEILWAITH AMEY KEOLIS LIMITED:**

[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 AMEY KEOLIS  
INFRASTRUCTURE / SEILWAITH AMEY  
KEOLIS LIMITED 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;

**“After Tax Basis”** means in relation to any payment made pursuant to paragraph 15A where the payment (or any part thereof) is chargeable to any Taxation to be incurred by the recipient of the payment (the "Payee"), a basis such that the amount so payable shall be increased so as to ensure that, after taking into account any Taxation chargeable (excluding corporation tax to the extent that the payment relates to the InfraCo's aggregate overhead and profit mark-up referred to in paragraph 15A.20), there shall remain a sum equal to the amount that would otherwise have been so payable, taking account of any loss, deduction, credit or other relief obtained by the Payee as a result of the costs (stated in paragraph 15A.1(a) – (c)) being incurred by the Payee;

**“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 InfraCo Infrastructure Works);

**“Asset Class Asset Management Plan”** means the asset management plan setting out in detail, for each asset class, the InfraCo's asset management plans prepared in accordance with the requirements of the InfraCo's Portfolio Asset Management Plan and as required to achieve and maintain the InfraCo's certification to ISO55001 and compliance with the requirements of this Schedule 3A;

**“Asset Knowledge Management”** or **“AKM”** means the management of InfraCo'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 InfraCo 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 InfraCo'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 InfraCo's works which have a detrimental impact upon the assets; and
- (m) where CVL Assets require enhanced maintenance as a result of InfraCo 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 InfraCo 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 InfraCo is compliant with its obligations under this Schedule 3A.

**"Asset Protection Agreement"** means any agreement to be entered into between InfraCo 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 InfraCo 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 InfraCo 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 InfraCo Infrastructure Works);

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

**“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 6 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 InfraCo 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 InfraCo Infrastructure Works);

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

**“Discovery Plan”** means InfraCo'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 InfraCo'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 InfraCo'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 be 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 InfraCo) 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 InfraCo or the Independent Reporter; or

- (iii) a restriction on the operation of rail services for a sustained period; and
- (b) was not known to InfraCo 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 in the twelve (12) month period following the Excluded Risk for InfraCo 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 InfraCo 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 InfraCo and the Authority under the Independent Reporter's Appointment;

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

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

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

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

**“Infrastructure Manager Asset Management Services”** means the services to be provided by InfraCo during the Infrastructure Manager Phase as set out in paragraph 4.1 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 Infrastructure 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 31st March 2021;
- (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 InfraCo 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 InfraCo'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 InfraCo to meet its asset management obligations under this Schedule 3A;

**“Key Date”** has the meaning given to it in Schedule 3B (Infrastructure Services and InfraCo 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, InfraCo's access rights to the CVL Assets is not sufficient to allow InfraCo 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 InfraCo 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 InfraCo by the Authority prior to the date of this Agreement; and
- d) InfraCo 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 InfraCo's costs in managing, maintaining, or monitoring the CVL Assets or the InfraCo's ability to manage, maintain or monitor the CVL Assets;
- (b) could not reasonably have been expected by InfraCo to have been present in the title so deduced;
- (c) InfraCo has used all reasonable endeavours to mitigate the impact of such apparent lack of title.

**“Material CVL Asset 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 InfraCo pursuant to paragraph 1.4 of Schedule 3A.2 or obtained by InfraCo where:

- (a) such Adverse Rights materially and adversely impact InfraCo's costs in managing, maintaining, or monitoring of the CVL Assets or InfraCo's ability to manage, maintain or monitor the CVL Assets, including through any inability of InfraCo to comply with or observe (as applicable) such Adverse Rights;
- (b) such Adverse Rights could not reasonably have been expected to exist by InfraCo; and
- (c) InfraCo 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, InfraCo 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 InfraCo;
  - (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 InfraCo 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 InfraCo 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 for InfraCo that is in excess of [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;

**"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 due to a direct or indirect result of a failure of InfraCo to maintain the CVL Assets in accordance with this Schedule 3A or a failure of InfraCo to achieve the specified design life for CVL Transformation as a result of InfraCo not complying with Schedule 3B; or
- (ii) such works are not required due to a failure of InfraCo to maintain any part of the system that it InfraCo is responsible for under this Agreement, 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 Eight, any Overhead Line Equipment Renewals provided by InfraCo as part of InfraCo's CVL Transformation shall be solely funded by InfraCo, except to the extent that the Authority provided the materials in connection with such equipment;

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

**“Portfolio Asset Management Plan”** means the asset management planning document that is prepared in accordance with the requirements of the InfraCo's Strategic Asset Management Plan, to set out how the Asset Class Asset Management Plan's integrate and as required to achieve and maintain the InfraCo's certification to ISO55001 and compliance with the requirements of this Schedule 3A;

**“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 due to a failure of InfraCo to maintain the CVL Assets in accordance with this Schedule 3A or a failure of InfraCo to achieve the specified design life for CVL Transformation as a result of InfraCo not complying with Schedule 3B; or
- (ii) such works are not required due to a failure of InfraCo 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 Eight, any Power Distributions and Electricity and Power Renewals provided by InfraCo as part of InfraCo's Transformation shall be solely funded by InfraCo, except to the extent that the Authority provided the materials in connection with such equipment;

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

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

**"Preliminary Design and Discovery Phase"** has the meaning given to it in Schedule 3B (Infrastructure Services and InfraCo 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 InfraCo 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 InfraCo 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) Not used;
- (b) 1 July 2020;
- (c) 1 October 2021; and
- (d) 1 April of each IM Year thereafter;

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

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

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

**“Schedule of Rates”** means InfraCo'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;

## “Self-Insured Asset”

## “Self-Insured Event”

## **“Self-Insured Event Claims Handling Process”**

## “Self-Insured Event Cost Protection”

### **“Self-Insured Event Reinstatement Plan”**

**“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;



**“Strategic Asset Management Plan”** means the overarching asset management planning document prepared in accordance with the Authority's spending objectives and other policy requirements as defined in 3A.3 paragraph 1.5 (a) (i) and as required to achieve and maintain the InfraCo's certification to ISO55001 and compliance with the requirements of this Schedule 3A;

**“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]; [**Note: Parties to confirm.**]

**“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 InfraCo 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.

**Schedule 3B - Infrastructure Services and AKI Infrastructure Works**

**SCHEDULE 3B**

**Infrastructure Services and AKI Infrastructure Works**

Schedule 3B	Infrastructure Services and AKI Infrastructure Works
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The documents forming this Schedule 3B are as follows:

Schedule 3B.1	Identified and Defined Terms
Schedule 3B.2	General Terms
Schedule 3B.3	Principal Infrastructure Services
Schedule 3B.4	Additional Infrastructure Services
Schedule 3B.5	AKI Infrastructure Works
Schedule 3B.6	Package Orders for Additional Infrastructure Services and AKI Infrastructure Works
Schedule 3B.7	Not used
Schedule 3B.8	Infrastructure Delivery Alliance
Schedule 3B.9	Personnel
Schedule 3B.10	Assignment
Schedule 3B.11	Applicable Law and Jurisdiction

#### **Appendices**

Appendix 1	Definitions
Appendix 2	Not used
Appendix 3	Quotation Procedure
Appendix 4	Infrastructure Works Plan
Appendix 5	Infrastructure Services
Part A	Conditions of Contract for Infrastructure Services
Part B	Principal Infrastructure Services
	Contract Data Part One
	Contract Data Part Two
Annex 1	Scope
Annex 2	Commercial Information
Annex 3	Principal Infrastructure Services Delivery Plan
Annex 4	Outline Target Price
Part C	Package Order - Additional Infrastructure Services
	Contract Data Part One
	Contract Data Part Two
Annex 1	Scope

	Annex 2	Commercial Information
	Annex 3	Additional Infrastructures Services Delivery Plan
	Annex 4	Package Budget
Appendix 6	AKI Infrastructure Works	
	Part A	Conditions of Contract for AKI Infrastructure Works
	Part B	Package Order AKI Infrastructure Works
		Contract Data Part One
		Contract Data Part Two
	Annex 1	Infrastructure Works Information
	Annex 2	Commercial Information and Site Information
	Annex 3	AKI Infrastructure Works Delivery Plan
	Annex 4	Package Budget
	Annex 5	Schedule of Cost Components
Appendix 7	Dispute Resolution	
Appendix 8	Form of Novation Deed	
Appendix 9	Forms of Collateral Warranties	
Appendix 10	Form of Performance Bond	
Appendix 11	Milestone Table for Principal Infrastructure Services	
Appendix 12	Milestone Criteria	
Appendix 13	Authority's Plan of Works	
	Annex 1	Annex 1 to Authority's Plan of Works
Appendix 14	Framework Agreement Information	
Appendix 15	Not used	
Appendix 16	[DRAFT] Process for Best Value	
Appendix 17	[DRAFT] Form of IDP Contract	
Appendix 18	Not used	
Appendix 19	Change Mechanism	
Appendix 21	Concept Design	
Appendix 22	CVL Engineering Requirements	

Appendix 23	Trust Deed
Appendix 24	Joining Deed
Appendix 25	Staff Rates
Appendix 26	ERDF Requirements
Appendix 27	Third Party Agreements
Appendix 28	Programme Control Management Plan
Appendix 29	CVL Transformation Proposal
Appendix 30	Not used
Appendix 31	Not used
Appendix 32	Alliance Agreement



## **SCHEDULE 3B - INFRASTRUCTURE SERVICES AND AKI INFRASTRUCTURE WORKS**

### **Schedule 3B.1 – Identified and Defined Terms**

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

- 1.1 The terms used in this Schedule 3B have the meanings set out in Appendix 1 (Definitions) to this Schedule 3B of the Infrastructure Agreement.
- 1.2 Except to the extent that they are inconsistent with the definitions and interpretations in Appendix 1 (Definitions) to this Schedule 3B (where the Appendix 1 (Definitions) to this Schedule 3B shall apply), the definitions and interpretations in clause 3 of the Infrastructure Agreement shall apply to this Schedule 3B.
- 1.3 Except where a contrary intention appears, references to clauses, Appendices, Annexes, and Parts are to the clauses, Schedules, Appendices, Annexes and Parts of this Schedule 3B and references to paragraphs are to paragraphs of this Schedule 3B.
- 1.4 Clause, Schedule, Appendix, Annex, and paragraph headings are inserted for convenience only and shall not affect the interpretation of this Schedule 3B.
- 1.5 Any reference to this Schedule 3B or to any other document shall include any permitted variation, amendment or supplement to this Schedule 3B or such other document.
- 1.6 The Annexes, Appendices and Parts form part of this Schedule 3B and shall have effect as if set out in full in the body of this Schedule 3B. Any reference to this Schedule 3B includes the Annexes, Appendices and Parts.

### **Schedule 3B.2 – General Terms**

#### **2 GENERAL TERMS**

- 2.1 The Authority wishes to procure the carrying out of certain design and management services by InfraCo in relation to the CVL Assets and CVL Transformation as more particularly described in Part B of Appendix 5 (Principal Infrastructure Services) of this Schedule 3B and may wish to procure certain additional design and management services (the Additional Infrastructure Services) and / or certain technical design and / or works (the AKI Infrastructure Works) (as more particularly defined in Annex 1 (Scope) of Part C of Appendix 5 and in Annex 1 (Infrastructure Works Information) of Part B of Appendix 6 of this Schedule 3B respectively) from InfraCo in connection with the CVL Transformation and / or Associated Projects in accordance with this Schedule 3B.
- 2.2 The purpose of this Schedule 3B is to:
  - (a) instruct InfraCo to Provide the Principal Infrastructure Services with effect from the Grant Agreement Date;
  - (b) set out the terms and conditions upon which the Principal Infrastructure Services shall be provided and the rights and obligations of the Parties in relation to the Principal Infrastructure Services;
  - (c) provide a mechanism whereby the Parties may enter into Package Orders for the provision of Additional Infrastructure Services and / or AKI Infrastructure Works by InfraCo;
  - (d) provide the framework to administer each Package Order; and
  - (e) set out the terms and conditions upon which the Additional Infrastructure Services and / or AKI Infrastructure Works shall be provided and the rights and obligations of the Parties in relation to any Additional Infrastructure Services and / or AKI Infrastructure Works carried out by InfraCo.

- 2.3 The terms and conditions of this Schedule 3B shall apply to any Infrastructure Services and AKI Infrastructure Works provided by InfraCo.

### **Schedule 3B.3 – Principal Infrastructure Services**

## **3 PRINCIPAL INFRASTRUCTURE SERVICES**

- 3.1 With effect from the Starting Date, InfraCo shall Provide the Principal Infrastructure Services set out in Part B of Appendix 5 (Infrastructure Services) of this Schedule 3B.
- 3.2 InfraCo shall Provide the Principal Infrastructure Services in accordance with the provisions of this Schedule 3B and Part A and Part B of Appendix 5 (Infrastructure Services) of this Schedule 3B.
- 3.3 The Principal Infrastructure Services shall be provided exclusively by InfraCo save that InfraCo may sub-contract the Principal Infrastructure Services in accordance with clause 24 of the Conditions of Contract for Infrastructure Services.
- 3.4 The Authority will pay InfraCo the amounts due and carry out its duties in respect of the Principal Infrastructure Services in accordance with this Schedule 3B and Part A and Part B of Appendix 5 (Infrastructure Services) of this Schedule 3B.
- 3.5 The Principal Infrastructure Services include:
- (a) Principal Infrastructure Services to be provided during the Preliminary Design and Discovery Phase; and
  - (b) Principal Infrastructure Services to be provided during the Detailed Design and Management Phase.
- 3.5A The following payment mechanisms apply to the Principal Infrastructure Services:
- (a) Main Option E (Time Based contract) set out in the Conditions of Contract for Infrastructure Services applied during the Preliminary Design and Discovery Phase; and
  - (b) Main Option C (Target cost) set out in the Conditions of Contract for Infrastructure Services shall apply during the Detailed Design and Management Phase and with effect from 1 April 2020.
- 3.6 The parties acknowledge that:
- (a) the Notice to Proceed was issued by the Authority to the ODP on 20 October 2020 pursuant to paragraph 3.6 of Schedule 3B of the ODP Grant Agreement;
  - (b) pursuant to the Notice to Proceed,
    - (i) the Preliminary Design and Discovery Phase ended on 31 March 2020;
    - (ii) the Detailed Design and Management Phase began on 1 April 2020; and
    - (iii) InfraCo is authorised to proceed with the Principal Infrastructure Services to be provided during the Detailed Design and Management Phase with effect from 1 April 2020;
  - (c) notwithstanding clauses 30.1B and 60.1(q) of Part A of Appendix 5 of Schedule 3B of the ODP Grant Agreement or any other provision of the ODP Grant Agreement or any Package Order or this agreement, InfraCo shall have no entitlement to a Compensation Event (including, for the avoidance of doubt, any change to the Prices or adjustment to the Completion Date or Planned Milestone Delivery Dates) arising out of or in connection with the date of issue of the Notice to Proceed;

- (d) the milestones set out in Appendix 11 take into account InfraCo's full entitlement to extensions of time under or in connection with this Schedule 3B in respect of all events arising out of or in connection with the date of issue of the Notice to Proceed; and
- (e) without prejudice to paragraph 16.2(d) above, the milestones set out in Appendix 11 take into account InfraCo's full entitlement to extensions of time under or in connection with this Schedule 3B in respect of all events arising on or before 26 October 2020 (including, without limitation, any default or breach by the ODP and/or the Authority (whether by act or omission) and the Planned Milestone Delivery Dates and the Completion Date shall only be subject to adjustment in respect of events occurring after 26 October 2020 in accordance with this Schedule 3B.

#### **Schedule 3B.4 - Additional Infrastructure Services**

### **4 ADDITIONAL INFRASTRUCTURE SERVICES**

- 4.1 In the event that the Authority requires any Additional Infrastructure Services to be performed by InfraCo, the Authority shall request the same in writing from InfraCo and the Parties shall follow the process referred to in paragraph 7 (Package Orders) of this Schedule 3B.
- 4.2 Any Additional Infrastructure Services carried out by InfraCo will be performed in accordance with the provisions of paragraph 7 of this Schedule 3B, the Conditions of Contract for Infrastructure Services and the relevant Package Order.
- 4.3 The Additional Infrastructure Services that may be requested by the Authority and provided by InfraCo are of the type described in Part C (Scope) of Appendix 5 of this Schedule 3B or as more particularly described in each Package Order for Additional Infrastructure Services.
- 4.4 The Authority will pay InfraCo the amounts due and carry out its duties in respect of any Additional Infrastructure Services in accordance with this Schedule 3B, the Conditions of Contract for Infrastructure Services, Part C (Scope) of Appendix 5 to this Schedule 3B, and the relevant Package Order.
- 4.5 Where Additional Infrastructure Services are required to be performed in relation to the CVL Assets, and where InfraCo is acting as the Infrastructure Manager, the Authority shall request the same in writing from InfraCo and shall seek to procure the same from InfraCo (and not from Others). If InfraCo does not accept the instruction to Provide the Additional Infrastructure Services or the Parties cannot agree the terms and conditions (including but not limited to scope, price, and programme) upon which the Additional Infrastructure Services shall be performed by InfraCo within 60 days (or such other timescale agreed between the Parties) of the written request by the Authority to InfraCo, the Authority may in its absolute discretion instruct Others to perform the Additional Infrastructure Services.
- 4.6 The Authority's requirements may vary, and this Schedule 3B shall not place the Authority under any obligation to procure any Additional Infrastructure Services from InfraCo or Others at a particular time or at all.

### **5 EXTENDIBILITY OPTIONS**

- 5.1 Prior to the Grant Agreement Date, the ODP provided to the Authority proposals for certain additional infrastructure services and infrastructure works as more particularly set out in the "Extendibility Outline Response" in the Concept Design which the Authority may wish InfraCo to perform as part of the Additional Infrastructure Services or AKI Infrastructure Works ("**Extendibility Options**").
- 5.2 Where the Authority so requires InfraCo to perform any of the Extendibility Options, such services shall form part of the Additional Infrastructure Services or AKI Infrastructure Works and paragraph 4 or paragraph 6 (as applicable) of this Schedule 3B shall apply.

## **Schedule 3B.5 – AKI Infrastructure Works**

### **6 AKI INFRASTRUCTURE WORKS**

- 6.1 During the term of this Schedule 3B, the Authority may at its absolute discretion require certain AKI Infrastructure Works to be carried out.
- 6.2 For the purpose of carrying out AKI Infrastructure Works (if any) the Authority may engage InfraCo as may be required. The AKI Infrastructure Works that may be requested by the Authority and provided by InfraCo are of the type described in Annex 1 (Infrastructure Works Information) of Part B of Appendix 6 of this Schedule 3B or as more particularly described in each Package Order for AKI Infrastructure Works and are subject to paragraph 6.3 of this Schedule 3B.
- 6.3 Where Infrastructure Works are required to be performed in relation to the CVL Assets and where InfraCo is acting as the Infrastructure Manager, the Authority may request the same in writing from InfraCo as part of the AKI Infrastructure Works and may seek to procure the same from InfraCo (and not as part of the Authority's Works from Others) provided that in the Authority's opinion (acting reasonably):
- (a) the total value of such works (when aggregated with any other AKI Infrastructure Works which have already been instructed and / or performed by InfraCo or the ODP, but excluding any Renewals, the value of any sums paid by the Authority to InfraCo pursuant to Schedule 3B of the Infrastructure Agreement and the value of any sums paid by the Welsh Ministers to the ODP pursuant to Schedule 3B of the ODP Grant Agreement for the Principal Infrastructure Services carried out during the Preliminary Design and Discovery Phase) is no more than 15% of the whole of the CVL Capital Budget (for the purposes of calculating the 15%, any Stage C design of the Authority's Plan of Works is excluded), save that this paragraph 6.3(a) shall not apply to any Renewals;
  - (b) no additional value for money is anticipated to be achieved for the Authority by procuring such works as part of the Authority's Works; and
  - (c) either:
    - (i) there is the benefit of systems integration and mitigation of integration by instructing InfraCo to perform such works as part of AKI Infrastructure Works; or
    - (ii) there is an urgency of progressing such works whereby the delay in procuring such works as part of the Authority's Works would lead to an unacceptable programme delay.

For the avoidance of doubt, for the purposes of this Schedule 3B (including but not limited to paragraph 6.3(a)), any Technical Design carried out by InfraCo shall be deemed to constitute part of the AKI Infrastructure Works.

- 6.3A If InfraCo does not accept the instruction to Provide the AKI Infrastructure Works or the Parties cannot agree the terms and conditions (including but not limited to scope, price, and programme) upon which the AKI Infrastructure Works shall be performed by InfraCo within 60 days of the written request by the Authority to InfraCo (or such other timescale agreed between the parties), the Authority may in its absolute discretion procure the Infrastructure Works referred to in this Schedule 3B.5 from Others as part of the Authority's Works.
- 6.4 Where the Authority requests InfraCo to Provide the AKI Infrastructure Works pursuant to paragraph 6.3 of this Schedule 3B, the Parties shall follow the process referred to in paragraph 7 (Package Orders) of this Schedule 3B.

- 6.5 Any AKI Infrastructure Works carried out by InfraCo will be performed in accordance with the provisions of this Schedule 3B, the Conditions of Contract for AKI Infrastructure Works, and the relevant Package Order for AKI Infrastructure Works.
- 6.6 The Authority will pay InfraCo the amounts due and carry out its duties in respect of any AKI Infrastructure Works in accordance with this Schedule 3B, the Conditions of Contract for AKI Infrastructure Works, and the relevant Package Order for AKI Infrastructure Works.

**Schedule 3B.6 – Package Orders for Additional Infrastructure Services and AKI Infrastructure Works**

**7 PACKAGE ORDERS**

- 7.1 At any time during the duration of the Infrastructure Agreement, the Authority may identify Additional Infrastructure Services or AKI Infrastructure Works which at its sole discretion it wishes to instruct InfraCo to Provide pursuant to the terms of this Schedule 3B.
- 7.2 The Authority and InfraCo agree that the Authority is under no obligation to InfraCo to issue any or a specific number or value of Package Orders during the term of this Schedule 3B.
- 7.3 Whenever during the term of this Schedule 3B the Authority wishes InfraCo to provide Additional Infrastructure Services or AKI Infrastructure Works pursuant to paragraph 4 or paragraph 6 of this Schedule 3B, the Authority shall provide relevant information to InfraCo sufficient to enable InfraCo to prepare a Package Order Proposal and instruct InfraCo to prepare a Package Order Proposal (a "**Request**"). The Authority shall select the Conditions of Contract for Infrastructure Services or the Conditions of Contract for AKI Infrastructure Works to apply as appropriate. Upon issue of a Request by the Authority to InfraCo, the Parties shall follow the Quotation Procedure.
- 7.4 Not used.
- 7.5 A Package Order shall only be formed between the Authority and InfraCo in respect of any Additional Infrastructure Services or AKI Infrastructure Works when the relevant Package Order has been executed by the Authority and InfraCo in writing and dated.
- 7.6 InfraCo shall not do any work included in a proposed Package Order until the Package Order has been formed in accordance with paragraph 7.5.
- 7.7 InfraCo shall perform all Package Orders in accordance with the requirements of this Schedule 3B (including the applicable Conditions of Contract) and the Package Order. In the event of any inconsistency or conflict between the provisions of this Schedule 3B and the provisions of the relevant Package Order, the provisions of this Schedule 3B shall prevail save where this Schedule 3B or the Package Order expressly state otherwise.
- 7.8 Each Package Order shall be a binding agreement on the Parties and shall incorporate the relevant Conditions of Contract (as may have been amended in such Package Order by agreement between the Parties) and such documentation shall together form a separate agreement between the Parties.
- 7.9 The Authority may from time to time wish to consult with InfraCo in relation to possible future Package Orders. InfraCo agrees to provide any reasonable cooperation and advice which the Authority seeks prior to entering into a Package Order, acknowledging that unless and until the Authority and InfraCo enter into a Package Order, InfraCo shall not be entitled to any reimbursement in connection with the same or have any guarantee that it shall be appointed to carry out the same.
- 7.10 Save where and to the extent that paragraph 7.11 of this Schedule 3B applies, in the event that the Infrastructure Agreement is terminated in whole, any Package Order shall automatically terminate 14 days after termination of the Infrastructure Agreement, unless the Authority states in the Termination Notice that the Package Order shall terminate in

a shorter period than 14 days or with immediate effect. Clause 91 and clause 92 of the Conditions of Contract for Infrastructure Services and clause 92 and 93 of the Conditions of Contract for AKI Infrastructure Works (as applicable) shall apply in the event of termination pursuant to this paragraph 7.10 of this Schedule 3B.

7.11 The Authority may notify InfraCo in writing within 10 days of termination of the Infrastructure Agreement that any Package Order in relation to any AKI Infrastructure Works shall survive termination of the Infrastructure Agreement, in which case the following shall apply:

- (a) paragraph 7.10 shall not apply in relation to such Package Order(s) specified in the Authority's notice;
- (b) InfraCo shall continue to Provide the AKI Infrastructure Works specified in the Package Order(s) referred to in the Authority's notice in accordance with the terms and conditions of the Package Order;
- (c) the Package Order(s) specified in the Authority's notice shall be deemed to include such terms and conditions of the Infrastructure Agreement as are strictly necessary to give effect to and continue the operation of the Package Order(s) referred to in the Authority's notice after termination of the Infrastructure Agreement; and
- (d) the Parties shall take all steps and do all things as necessary to give effect to the Package Order(s) referred to in the Authority's notice.

## **8 FEE**

No fee shall be payable by the Authority to InfraCo in relation to any obligations or duties on the part of and to be performed by InfraCo under this Schedule 3B save for the Principal Infrastructure Services and any Additional Infrastructure Services or AKI Infrastructure Works instructed in writing in accordance with this Schedule 3B.

### **Schedule 3B.7 – Discovery Phase Services and cost of Independent**

## **9 DISCOVERY PHASE SERVICES**

InfraCo shall be paid by the Authority for carrying out the Discovery Phase Services delivered by InfraCo pursuant to Schedule 3A of the Infrastructure Agreement during the Pre CVL Asset Transfer Phase as part of the Fee for the Principal Infrastructure Services and the CVL Capital Budget.

### **9A INDEPENDENT REPORTER**

9A.1 Until the end of the Preliminary Design and Discovery Phase, InfraCo's share of the cost of the Independent Reporter shall be an amount due under clause 50.3(c) of the Conditions of Contract for Infrastructure Services.

### **Schedule 3B.8 – Infrastructure Delivery Alliance**

## **10 INFRASTRUCTURE DELIVERY ALLIANCE**

10.1 InfraCo shall take an active role in assisting the Authority to finalise with the partners the terms of an alliance agreement in substantially the same form as the alliance agreement set out in Appendix 32 (the "**Alliance Agreement**") and once finalised shall enter into such Alliance Agreement.

10.2 Once an Infrastructure Delivery Alliance has been formed, InfraCo shall ensure that it behaves collaboratively and directs its decisions towards the collective vision and objectives of the Infrastructure Delivery Alliance rather than its own self-interests or commercial interests.

**11 NOT USED**

**Schedule 3B.9 - Personnel**

**12 THE PARTIES' PERSONNEL AND / OR REPRESENTATIVES**

- 12.1 InfraCo shall forthwith appoint the Infrastructure Services Director to direct and control the overall performance by InfraCo of its obligations under this Schedule 3B and any Package Order issued pursuant to it.
- 12.2 InfraCo shall, provided the same remains within its employment, not remove the person referred to in paragraph 12.1 or any person agreed by the Authority pursuant to this paragraph 12.2 without the prior written approval of the Authority (such approval shall not be unreasonably withheld or delayed). If such approval is given or if the person referred to in paragraph 12.1 or agreed with the Authority pursuant to this paragraph 12.2 ceases to be employed by InfraCo, InfraCo shall be responsible for replacing such person with a person who shall have been previously approved in writing (such approval not to be unreasonably withheld) by the Authority, and save in emergency, there shall be a handover period between the person being removed and his or her replacement.
- 12.3 InfraCo shall change the person referred to in paragraph 12.1 at the request of the Authority subject to the Authority providing fair and reasonable grounds for such change to InfraCo and allowing InfraCo such time to effect the required change as may be reasonable in the circumstances of the case.
- 12.4 The Authority may specify, and from time to time re-specify, the employee(s) and / or other representative(s) of the Authority to whom InfraCo shall primarily report, and from whom InfraCo shall take instructions, under or in connection with this Schedule 3B.

**Schedule 3B.10 - Assignment**

**13 ASSIGNMENT**

- 13.1 The Authority may assign or transfer at any time without the prior consent of InfraCo:
- (a) all of its rights under or arising out of this Schedule 3B; and/or
  - (b) all of its rights under or arising out of any Package Order issued pursuant to this Schedule 3B,
- to a third party in which the Welsh Government shall have a controlling interest, except that the Authority shall not be permitted to assign such rights to the Joint Venture Party, TfWR or any successor provider of railway passenger services, and the Parties shall do all things necessary to give effect to this paragraph 13.1. The Authority shall use all reasonable endeavours to provide prior written notice to InfraCo of any proposed assignment no less than 14 days prior to such assignment but for the avoidance of doubt, any failure to give such notice shall not affect the validity of such assignment.
- 13.2 InfraCo shall not assign, transfer, charge or otherwise deal with this Schedule 3B (or any of its rights or obligations under it) nor grant, declare a trust of, create or dispose of any right or interest in it without the prior written consent of the Authority.

**Schedule 3B.11 – Applicable Law and Jurisdiction**

**14 DISPUTES APPLICABLE LAW AND JURISDICTION**

- 14.1 This Schedule 3B and any Package Order shall be governed by and construed in accordance with the law of England and Wales.
- 14.2 Appendix 7 (Dispute Resolution) of Schedule 3B shall apply exclusively to any dispute or difference between the Parties on any matter or thing of whatsoever nature concerning the Infrastructure Services and Infrastructure Works and / or arising under this Schedule

3B and / or any Package Order or in connection therewith or its or their subject matter or formation.

## **15 VARIATIONS**

- 15.1 No amendment or variation to this Schedule 3B shall be binding on the Authority and InfraCo unless in writing signed as a deed by a duly authorised officer of the Authority and InfraCo.

### **Schedule 3B.12 – Performance Security**

## **16 PERFORMANCE SECURITY**

- 16.1 Not used

- 16.2 InfraCo shall obtain and maintain or procure the obtaining and maintenance of a performance bond for an amount equal to [REDACTED] for the whole of the Principal Infrastructure Services and the AKI Infrastructure Works (if any) in respect of the CVL Transformation, provided by a Bond Provider which the Authority has accepted, in substantially the form set out in Appendix 10 to this Schedule 3B and shall have a minimum duration of:

- (a) three (3) years; or
- (b) if the Expiry of the Sch 3B Bond Requirement Date will occur during the three (3) year duration referred to in paragraph 16.2(a), the period from the date that the performance bond under this paragraph is required to be obtained and maintained until the Expiry of the Sch 3B Bond Requirement Date.

The only permitted reason for the Authority not accepting the Bond Provider is if such Bond Provider has a rating which is below the Relevant Credit Rating. Such performance bond shall cover InfraCo's obligations in respect of the Principal Infrastructure Services and AKI Infrastructure Works (if any) in respect of the CVL Transformation.

- 16.3 The performance bond referred to in paragraph 16.2 shall be provided by the Novation Time and InfraCo shall procure that a valid and effective performance bond be maintained until the date of issue of the final defects certificate in relation to the whole of the CVL Transformation (the "**Expiry of the Sch 3B Requirement Date**").

- 16.3A When a Package Order for any Additional Infrastructure Services or for AKI Infrastructure Works to be performed by InfraCo in respect of an Associated Project is entered into and as specified by the Authority in a Request issued to InfraCo by the Authority pursuant to paragraph 7.3 of this Schedule 3B, the Authority may require provision by InfraCo of a performance bond for an amount and term to be specified by the Authority (acting reasonably), provided by a Bond Provider which the Authority has accepted, in substantially the form set out in Appendix 10 to this Schedule 3B and have a minimum duration of three (3) years (or such shorter date until InfraCo's obligation to maintain such bond ends). The only reason for the Authority not accepting the Bond Provider is if such Bond Provider has a rating which is below the Relevant Credit Rating. Such performance bond shall cover InfraCo's obligations in respect of the Additional Infrastructure Services or AKI Infrastructure Works to be performed by InfraCo in respect of an Associated Project.

- 16.3B InfraCo shall be permitted subject to the prior consent of the Authority (such consent not to be unreasonably withheld or delayed) to meet its obligations under this Schedule 3B.12 to provide a valid and effective performance bond by providing:



- (a) up to three valid and effective performance bonds, the aggregate value of which at all times is equal to the value determined under paragraph 16.2 of this Schedule 3B.12; and
- (b) up to three valid and effective performance bonds, the aggregate value of which at all times is equal to the value determined under paragraph 16.3A of this Schedule 3B.12,

as applicable.

With the exception of the value of each individual performance bond, the provisions of this Schedule 3B in relation to the performance bond shall be deemed to apply separately in relation to each such performance bond. Where multiple bonds are provided to satisfy a bond requirement (the “**Total Bond Requirement**”), each claim by the Authority shall be made against (i) all such performance bonds; and (ii) each performance bond in the proportion that the performance bond bears to the Total Bond Requirement.

16.3C InfraCo may replace the then current performance bond referred to in paragraph 16.2 or 16.3A of this Schedule 3B.12 at any time. InfraCo shall replace each performance bond at least six (6) months prior to its scheduled expiry with a replacement performance bond which complies with the requirements of paragraph 16.2 or paragraph 16.3A (as applicable) of this Schedule 3B.12.

16.4 Where a Bond Provider Downgrade occurs, InfraCo shall, at no extra cost to the Authority, within 30 Business Days:

- (a) deliver to the Authority another performance bond with a bond amount at the date of replacement equal to the amount under the then current performance bond which complies with all other requirements of this Schedule 3B.12; or
- (b) procure that alternative cash collateral or other security acceptable to the Authority in an amount equal to the bond amount is made available to the Authority on such terms and conditions as the Authority shall, in its absolute discretion, consider appropriate.

16.5 InfraCo shall be regarded as being in material breach of this Schedule 3B which is incapable of remedy where:

- (a) a performance bond referred to in this Schedule 3B.12 is or becomes invalid or otherwise unenforceable and is not replaced within 10 Business Days by a Bond Provider which is acceptable to the Authority in accordance with paragraph 16.2 of this Schedule 3B.12, or
- (b) a Bond Provider Downgrade occurs and InfraCo fails to provide a replacement performance bond, alternative cash collateral or other security in accordance with paragraph 16.4 of this Schedule 3B.12.

16.6 If the Authority does terminate the whole of the Infrastructure Agreement for such breach referred to in clause 16.5:

- (a) in respect of the Principal Infrastructure Services and/or Additional Infrastructure Services it shall proceed pursuant to clause 90 of Appendix 5 of this Schedule 3B as if the reason for termination was 90.1(c)(v); and
- (b) in respect of any InfraCo Infrastructure Works, it shall proceed pursuant to clause 90 of Appendix 6 of this Schedule 3B as if the reason for termination was R12,

except in each case that InfraCo's period for rectification shall be 10 Business Days rather than within four weeks of notification.

- 16.7 The Parties acknowledge and agree that the performance bonds referred to in this paragraph 16 shall not be required to cover those costs which are covered by the Performance Bond required to be provided by InfraCo to the Authority pursuant to paragraph 4 of Schedule 12 to the Infrastructure Agreement.

## **Appendix 1 of Schedule 3B**

### Definitions

Defined Term	Definition
<b>Accepted Programme</b>	means the programme identified in the Infrastructure Works Plan or the latest programme accepted by the Authority or the Authority's Project Manager. The latest programme accepted by the Authority supersedes previous Accepted Programmes.
<b>Access Agreement</b>	has the meaning given to it in clause 3 of the Infrastructure Agreement.
<b>Achieve</b>	means, in respect of a Milestone or a Milestone Deliverable, that such Milestone or Milestone Deliverable meets the relevant Milestone Criteria, and Achieved, Achieving and Achievement shall be construed accordingly.
<b>Act or The Act</b>	<p>the Act is the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009.</p> <p>A period of time stated in days is a period calculated in accordance with Section 116 of the Act.</p>
<b>Activity Schedule</b>	has the meaning given to <i>activity schedule</i> in the Contract Data.
<b>Additional Infrastructure Services</b>	those services referred to in Part C of Appendix 5 (Scope) of this Schedule 3B which may be instructed by the Authority to be undertaken by InfraCo in accordance with and pursuant to Part C of Appendix 5 to this Schedule 3B and any Package Order.
<b>Adjudicator</b>	has the meaning given to <i>Adjudicator</i> in the Contract Data.
<b>Affiliate</b>	means, in respect of any person, any person by which that person is Controlled or which is Controlled by that person, or any person which is Controlled by any other Affiliate of that person and for the purpose of this definition Network Rail or NR shall not be construed as being an affiliate of the Authority.
<b>AKI Infrastructure Works</b>	<p>those elements of the capital works which:</p> <ul style="list-style-type: none"><li>(a) have been instructed under the Existing Package Orders; and</li><li>(b) are instructed by the Authority to be undertaken directly by InfraCo,</li></ul>

in accordance with and pursuant to Part B of Appendix 6 to Schedule 3B of the Infrastructure Agreement and any Package Order.

AKI Infrastructure Works may also include any Renewals provided that in the Authority's opinion (acting reasonably) the criteria set out in paragraph 6.3(b) and 6.3(c) of this Schedule 3B is met, in which case where such works are required to be performed in relation to the CVL Asset and where InfraCo is acting as the Infrastructure Manager, the Authority shall request the same in writing from InfraCo and shall seek to procure the same from InfraCo (and not from Others).

Any Renewals which in the Authority's opinion (acting reasonably) do not meet the criteria set out in paragraph 6.3(b) and 6.3(c) of this Schedule 3B shall form part of the IDP Work Packages.

<b>Alliance Agreement</b>	has the meaning given to it in paragraph 10.3 of this Schedule 3B.8.
<b>Applicant</b>	means InfraCo acting as applicant for the Order.
<b>Application Rules</b>	means the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006
<b>Asset Knowledge Management Plan</b>	has the meaning given to it in Annex 8 to Schedule 3A.3 of the Infrastructure Agreement
<b>Asset Management Plan</b>	has the meaning given to it in Annex 8 to Schedule 3A.3 of the Infrastructure Agreement.
<b>Associated Project</b>	any project for building works, refurbishment, repair, alterations, additional facilities, fitting out, mechanical, electrical or other installations and any associated works related to the CVL Transformation and / or the Wales and Cross Border Lines and / or South Wales Metro as more particularised in the Scope or Infrastructure Works Information and including but not limited to the extendibility options set out in the "Extendibility Outline Response" in the Concept Design. Any works or services instructed pursuant to this Schedule 3B to be performed by InfraCo in relation to such projects shall be deemed to be Additional Infrastructure Services or AKI Infrastructure Works (as applicable).
<b>Assurance Plan</b>	means the plans which:  <ul style="list-style-type: none"><li>(a) define InfraCo's organisational arrangements, roles and responsibilities in respect of provision of assurance regarding the Infrastructure Works;</li><li>(b) define InfraCo's assurance milestones; and</li></ul>

	(c) define InfraCo's proposals for providing evidence of assurance to the Authority at each assurance milestone by way of tests, demonstrations or otherwise.
<b>Assurance Regime</b>	means the assurance regime agreed between the Parties as set out in the Infrastructure Works Information and as amended from time to time.
<b>Authorisation</b>	is a document authorising the <i>project bank</i> to make payments to InfraCo and Named Suppliers.
<b>Authority</b>	has the meaning given to it in the Infrastructure Agreement.
<b>Authority's Background IPR</b>	means all IPR other than Foreground IPR which is or becomes owned by the Authority which is required for the full performance of Schedule 3B of the Infrastructure Agreement including that which InfraCo needs to use in order for InfraCo to enjoy the rights granted to it under or pursuant to Schedule 3B of the Infrastructure Agreement and / or to perform its obligations under or pursuant to Schedule 3B of the Infrastructure Agreement and / or in relation to the CVL Transformation and / or Associated Projects.
<b>Authority Dependencies</b>	has the meaning given to it in Schedule 18 of the Infrastructure Agreement.
<b>Authority's Design Acceptance Process</b>	means the Authority's design acceptance process set out in the CVL Engineering Requirements at Appendix 22 to this Schedule 3B.
<b>Authority's IPR</b>	has the meaning given to it in clause 70.2(a) of the Conditions of Contract for Infrastructure Services and clause 112 of the Conditions of Contract for AKI Infrastructure Works.
<b>Authority's Plan of Works</b>	the Authority's standard plan of work to provide a staged/gated delivery process for infrastructure projects as set out in Appendix 13 to this Schedule 3B including any annexes thereto, each as amended from time to time.
<b>Authority's Policies</b>	has the meaning given to it in clause 25.4C of the Conditions of Contract for Infrastructure Services or clause 122.2 of the Conditions of Contract for AKI Infrastructure Works (as applicable).
<b>Authority's Project Manager</b>	is the <i>Authority's Project Manager</i> identified in the Contract Data.
<b>Authority's Works</b>	means those works and Technical Design which have been or will be carried out by or on behalf of the Authority or Others in respect of the CVL Transformation and / or Associated Projects. All references to 'works by Others' or 'works of Others' shall be read as references to the Authority's Works.

<b>Available</b>	<p>means:</p> <ul style="list-style-type: none"> <li>(a) the AKI Infrastructure Works are safe,</li> <li>(b) there are no reasonably foreseeable hazards to the use of the AKI Infrastructure Works except insofar as a risk assessment has been carried out and any risk has been expressly accepted by the Authority, and</li> <li>(c) the AKI Infrastructure Works are readily accessible and operable by the Authority, InfraCo, and other operators.</li> </ul>
<b>Beneficiary</b>	means the Authority and any third parties with an interest in the CVL Transformation and / or Associated Projects who require rights from InfraCo and / or subconsultants or Subcontractors.
<b>Bond Provider</b>	means the bank or insurer which provides a performance bond to the Authority on behalf of InfraCo.
<b>Bond Provider Downgrade</b>	means the rating of the Bond Provider is downgraded below the Relevant Credit Rating.
<b>British Standards</b>	those standards produced by the British Standard Institution of 389 Chiswick High Road, London, United Kingdom.
<b>Business Day</b>	a day (other than a Saturday or Sunday) on which banks are open for business in Cardiff and London.
<b>CDM Regulations</b>	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.
<b>Change of Control</b>	has the meaning given to it in clause 8.1 of the Infrastructure Agreement.
<b>Code of Construction Practice</b>	means the code of construction practice as appended to the relevant Scope or Infrastructure Works Information, including the Code of Construction Practice – Part 1 as provided by the Authority and amended from time to time and / or the Code of Construction Practice – Part 2 provided by InfraCo as part of the Preliminary Design and Discovery Phase and as amended by agreement of the Parties.
<b>Compensation Event</b>	means the compensation events set out in clause 60.1 of Part A of Appendix 5 of this Schedule 3B, and / or clause 60.1 of Part A of Appendix 6 of this Schedule 3B (as applicable).
<b>Completion</b>	<p>Completion is when InfraCo has:</p> <ul style="list-style-type: none"> <li>(a) done all the work which the Scope or Infrastructure Works Information (as</li> </ul>

	applicable) and Contract Data states it is to do by the Completion Date;
	(b) corrected all notified or patent Defects which would have prevented the Authority (and InfraCo as necessary) from using the Infrastructure Services or AKI Infrastructure Works (as applicable) and Others from doing their work; and
	(c) in relation to the AKI Infrastructure Works, has done all the work necessary for the AKI Infrastructure Works to be Available.
<b>Completion Date</b>	the Completion Date is the <i>completion date</i> unless later changed in accordance with this Schedule 3B and / or the contract.
<b>Control</b>	has the meaning given to it in clause 3 (Definitions) of the Infrastructure Agreement.
<b>Concept Design</b>	the concept design as tendered by the ODP and annexed at Appendix 21 to this Schedule 3B as amended from time to time.
<b>Conditions of Contract</b>	the Conditions of Contract for Infrastructure Services and the Conditions of Contract for AKI Infrastructure Works set out at Part A of Appendix 5 and Part A of Appendix 6 to this Schedule 3B respectively.
<b>Conditions of Contract for Infrastructure Services</b>	for the terms and conditions set out at Part A of Appendix 5 (Conditions of Contract) to this Schedule 3B which shall apply in relation to any Infrastructure Services.
<b>Conditions of Contract for AKI Infrastructure Works</b>	for the terms and conditions set out at Part A of Appendix 6 (Conditions of Contract) to this Schedule 3B which shall apply in relation to any AKI Infrastructure Works.
<b>Connection Agreements</b>	has the meaning given to it in paragraph 3.1 of Schedule 3A.2 of the Infrastructure Agreement.
<b>Connected Person</b>	all and any of InfraCo's employees, directors, contractors, agents, Subcontractors, suppliers, shareholders, professional advisors (including lawyers, auditors, financial advisors, accountants and technical contractors) or underwriters.
<b>Consents</b>	all consents and other approvals and any licences necessary or appropriate to enable InfraCo to Provide the Infrastructure Services and AKI Infrastructure Works and / or as are required in relation to the CVL Transformation and / or Associated Projects.
<b>Construction Industry Scheme</b>	the provisions of Chapter 3 of Part 3 of the Finance Act 2004 (Construction Industry Scheme) together with any regulations made pursuant to these

provisions, including the Income Tax (Construction Industry Scheme) Regulations 2005 as amended.

**Contract Data**

either:

- (a) the contract data set out in Part B of Appendix 5 in respect of the Principal Infrastructure Services; or
- (b) the contract data set out in Part C of Appendix 5 in respect of any Additional Infrastructure Services; or
- (c) the contract data set out in Part B of Appendix 6 in respect of any AKI Infrastructure Works,

as applicable.

**Contract Date**

the date of the InfraCo Subcontract.

**Critical Defect**

means a Defect which appears on or before the Defects Date for the AKI Infrastructure Works and which is:

- (a) critical to the operation and safety of the network; or
- (b) within a category of Defects identified in the Scope or the Infrastructure Works Information (as applicable) as a Critical Defect; or
- (c) deemed by the Authority (acting reasonably) to be critical in all the circumstances.

**CVL or Core Valley Lines**

has the meaning given to it in clause 3 (Definitions) of the Infrastructure Agreement.

**CVL Asset**

has the meaning given to it in clause 3 (Definitions) of the Infrastructure Agreement.

CVL Assets shall be interpreted accordingly.

**CVL Asset Lease**

has the meaning given to it in clause 3 (Definitions) of the Infrastructure Agreement.

**CVL Asset Transfer**

has the meaning given to it in clause 3 (Definitions) of the Infrastructure Agreement.

**CVL Capital Budget**

has the meaning given to *CVL capital budget* in the Contract Data at in Part B of Appendix 5 in respect of the Principal Infrastructure Services.

**CVL Cost Template**

means the CVL Cost Template contained within the Final Tender Financial Model.

**CVL Engineering Requirements**

means the requirements set out in Appendix 22 (CVL Engineering requirements) to this Schedule 3B.



<b>CVL Physical System</b>	<ul style="list-style-type: none"> <li>(a) the civils including the bridges (rail/road/ foot), viaducts and subways, tunnels, earthworks, track drainage, boundary fencing – lineside, at stations, depot &amp; maintenance access;</li> <li>(b) the land;</li> <li>(c) the stations and stops;</li> <li>(d) the track and alignment;</li> <li>(e) the vehicle control and signalling;</li> <li>(f) the vehicles;</li> <li>(g) the highways and parking;</li> <li>(h) the traction supply and overhead line systems;</li> <li>(i) systems integration; and</li> <li>(j) data communications network</li> </ul>
<b>CVL Transformation</b>	<p>means the transformation of the CVL Physical System to support enhanced Passenger Services by operation of the Principal Infrastructure Services and any AKI Infrastructure Works (save for any AKI Infrastructure Works instructed by the Authority in relation to any Associated Projects) including the Core Valley Lines and the following lines:</p> <ul style="list-style-type: none"> <li>a) Cardiff Central to Barry Island;</li> <li>b) Cardiff Central to Radyr via Fairwater; and</li> <li>c) Cardiff Central to Penarth.</li> </ul>
<b>CVL Transformation Proposal</b>	has the meaning given to it in Annex 1 (Scope) of Part B (Principal Infrastructure Services) of Appendix 5 (Infrastructure Services) of Schedule 3B of the Infrastructure Agreement.
<b>CVL Transformation Proposal Milestone</b>	means CVL Milestone 5 as set out in Appendix 11 (Milestone Table for Principal Infrastructure Services).
<b>Deed of Novation and Amendment</b>	means the deed of novation and amendment entered into between the Authority, the Welsh Ministers, ODP and InfraCo in respect of, among other things, the novation from the ODP to the Authority of the InfraCo Subcontract.
<b>Defect</b>	a part of the Infrastructure Services or the AKI Infrastructure Works which is not in accordance with the contract, the Scope, the Infrastructure Works Information, Standards, Legislation or any term of Schedule 3B of the Infrastructure Agreement or relevant Package Order.
<b>Defects Certificate</b>	the Defects Certificate is either a list of Defects that the Authority's Project Manager or the <i>Supervisor</i> or

InfraCo has notified before the Defects Date for the AKI Infrastructure Works which InfraCo has not corrected or, if there are no such Defects, a statement that there are none.

**Defects Date**

has the meaning given to *defects date* in the Contract Data.

**Defined Cost**

means:

(a) the amount of payments due to Subcontractors for work which is subcontracted without taking into account of amounts deducted for:

- (i) retention;
- (ii) payment to the Authority as a result of the Subcontractor failing to meet a Planned Milestone Delivery Date;
- (iii) the correction of Defects after Completion;
- (iv) payments to Others;
- (v) the supply of equipment, supplies and services included in the charge for overhead cost within the Working Areas in this Schedule 3B; and

(b) the cost of components in the Schedule of Cost Components for other work,

less Disallowed Cost.

No part of the Principal Infrastructure Services or Additional Infrastructure Services are eligible for inclusion in the Defined Cost.

**Delay Payment Cap**

means the total amount payable by InfraCo to the Authority in respect of any Milestone Delay Payment such amount as set out in the Contract Data.

**Deleterious Materials**

any products or materials which are generally known within the construction industry to be deleterious at the time of specification or approval in the particular circumstances in which they are to be used, or those identified as potentially hazardous in or not in conformity with:

(a) Section 2 of the British Council for Offices/British Property Federation report entitled "Good Practice in the Selection of Construction Materials" (current at the time of specification, authorisation or use);

	<ul style="list-style-type: none"> <li>(b) relevant International Standards, British Standards or European Standards or Codes of Practice and general good building and engineering practice;</li> <li>(c) any publications of the Building Research Establishment related to the specification of products or materials; or</li> <li>(d) the Standards (if the Standards are applicable to the Infrastructure Services), all applicable law, Statutory Requirements, the Sustainable Development Strategy, and the instructions of the Authority.</li> </ul>
<b>Delivery Partner</b>	has the meaning given to it in paragraph 17 of Annex 1 of Part B of Appendix 5 of this Schedule 3B.
<b>Delivery Partner Services</b>	means the services described in paragraphs 17 to 20 of Annex 1 (Scope) of Part B of Appendix 5 to this Schedule 3B.
<b>Design Development</b>	the design undertaken by InfraCo as part of the Principal Infrastructure Services during the Detailed Design and Management Phase as more particularly set out in Part B (Scope) of Annex 1 of Appendix 5 of Schedule 3B.
<b>Design Standards</b>	has the meaning given to it in Annex 1 (Scope) of Part B (Principal Infrastructure Services) of Appendix 5 (Infrastructure Services) of Schedule 3B.
<b>Detailed Design</b>	the design undertaken by InfraCo and / or IDPs during the Detailed Design and Management Phase comprising the Technical Design and Detailed Integration Design.
<b>Detailed Design and Management Phase</b>	the period following issue of the Notice to Proceed by the Authority to the ODP between the end of the Preliminary Design and Discovery Phase and completion of the CVL Transformation and commencing on the date instructed in the Notice to Proceed.
<b>Detailed Integration Design</b>	means the design activities which InfraCo must perform itself with effect from the Grant Agreement Date and throughout the Authority's Plan of Works to carry out the role of system integrator, including overall design and those elements of system-wide design which are critical to the operation of the CVL Asset such as control system design and those activities specified in paragraph 6 (Design Integration and Coordination) of Annex 1 (Scope) of Part B (Principal Infrastructure Services) of Appendix 5 (Infrastructure Services) of Schedule 3B.
<b>Disallowed Cost</b>	means cost which the Authority's Project Manager decides:

- (a) is not justified by InfraCo's accounts and records,
- (b) should not have been paid to a Subcontractor or supplier in accordance with this contract,
- (c) was incurred because InfraCo did not (i) comply with the Infrastructure Works Information or the Scope, or (ii) give an early warning which this contract required it to give,
- (d) InfraCo is unable to demonstrate has been reasonably and properly incurred by InfraCo for the purposes of this contract,
- (e) results from paying a Subcontractor more for a Compensation Event than is included in the quotation or assessment for the Compensation Event accepted by the Authority's Project Manager,
- (f) in relation to any AKI Infrastructure Works, is incurred as a result of any negligence or breach of contract, due to an act, omission or default by InfraCo or its employees, subcontractors or agents in Providing any Infrastructure Services and / or AKI Infrastructure Works;
- (g) is due under a subcontract entered into in breach of clause 26.2 of the Conditions of Contract for AKI Infrastructure Works, and
- (h) the cost
  - (i) not used
  - (ii) of correcting Defects caused by InfraCo's failure to comply with a procedure set out in the Quality Plan,
  - (iii) of correcting Defects caused by InfraCo's failure to exercise the Required Standard in the design of the AKI Infrastructure Works or any part thereof,
  - (iv) of correcting Defects after Completion,
  - (v) of correcting Defects caused by InfraCo not complying with Standards or a constraint on how it is to Provide the AKI Infrastructure Works stated in the Scope and / or Infrastructure Works Information or an agreed method statement,

- (vi) of Plant and Materials not used to Provide the AKI Infrastructure Works (after allowing for reasonable wastage) unless resulting from a change to the Scope and / or Infrastructure Works Information,
- (vii) of resources not used to Provide the AKI Infrastructure Works (after allowing for reasonable availability and utilisation) or not taken away from the Working Areas when the Authority's Project Manager requested,
- (viii) incurred by InfraCo through providing a replacement person as described in clause 24 of the Conditions of Contract for AKI Infrastructure Works,
- (ix) not used,
- (x) of preparation for and conduct of an adjudication or proceedings of the courts (save where such costs are properly and reasonably incurred by InfraCo in connection with services and works which InfraCo is required to provide pursuant to this Schedule 3B and shall not, for the avoidance of doubt, include the cost of defending or bringing any claim against the Authority pursuant to or in connection with this Schedule 3B or due to any default, act or omission of InfraCo),
- (xi) of fines, charges, penalties and fees imposed on or accepted by InfraCo as a result of any unsafe, unlawful or criminal conduct or any infringement or disregard of any Statutory Requirement,
- (xii) of strikes, riots and civil commotion confined to InfraCo's employees and / or any Subcontractor's employees,
- (xiii) of profit payable to InfraCo's subsidiary, Affiliate or parent company or a company with the same parent company where such parent or other company is a Subcontractor, and profit payable between each party comprising InfraCo,
- (xiv) of complying with any obligations under the contract which are stated to be at InfraCo's own cost (or any other costs which are stated to be at

InfraCo's own cost) or at InfraCo's own risk,

- (xv) incurred in preparation of InfraCo's application for a Compensation Event save for any reasonably incurred, properly mitigated and proportionate costs of preparing an application for a Compensation Event where such Compensation Event is implemented, and
- (xvi) in relation to AKI Infrastructure Works Provided in relation to the CVL Transformation, the cost of *staff expenses* for those staff living outside the South Wales Metro Area, who are travelling to / living in the South Wales Metro Area after the end of the Preliminary Design and Discovery Phase.

**Disallowed Time Charge**

means any item which:

- (a) InfraCo is unable to demonstrate has been reasonably and properly incurred by InfraCo for the purposes of the Principal Infrastructure Services or the Additional Infrastructure Services (as applicable)
- (b) in relation to:
  - (i) the Principal Infrastructure Services, is incurred as a result of any negligence or breach of contract, due to an act, omission or default by InfraCo or its employees, subcontractors or agents in Providing any Additional Infrastructure Services or any AKI Infrastructure Works;
  - (ii) any Additional Infrastructure Services, is incurred as a result of any negligence or breach of contract, due to an act, omission or default by InfraCo or its employees, subcontractors or agents in Providing the Principal Infrastructure Services or any AKI Infrastructure Works
- (c) is a result of strikes, riots or civil commotion confined to InfraCo's staff

- (d) which is stated in the contract to be at InfraCo's own cost (or any other costs which are stated to be at InfraCo's own cost or at InfraCo's own risk

and any item which is based on staff time which

- (e) is not justified by InfraCo's accounts and records
- (f) is incurred under a subcontract entered into in breach of clause 24 of the Conditions of Contract for Infrastructure Services
- (g) was incurred because InfraCo did not
  - (i) follow an acceptance or procurement procedure stated in the Scope; or
  - (ii) give an early warning which the contract required InfraCo to give or
- (h) is incurred in preparation for and / or conduct of an adjudication, arbitration or legal proceedings in connection with a Dispute
- (i) is incurred in preparation of InfraCo's application for a Compensation Event save for any reasonably incurred, properly mitigated and proportionate costs of preparing an application for a Compensation Event where such Compensation Event is implemented, and
- (j) in relation to Infrastructure Services Provided in relation to the CVL Transformation, any cost of *staff expenses* for those staff living outside the South Wales Metro Area, who are travelling to / living in the South Wales Metro Area after the end of the Preliminary Design and Discovery Phase.

**Discovery Phase Services**

has the meaning given to it in Annex 8 to Schedule 3A.3 of the Infrastructure Agreement.

**Dispute**

has the meaning given to it in Appendix 7 (Dispute Resolution) of Schedule 3B.

**Documentation**

means all documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and / or other material produced or supplied by or on behalf of InfraCo in the performance of this Schedule 3B in hard copy and electronic form including all updates, upgrades and modifications of the same.

**Due Date**

has the meaning given to it in clause 51.5 of the Conditions of Contract for Infrastructure Services.

<b>Effective Date</b>	<p>means:</p> <ul style="list-style-type: none"> <li>(a) in respect of the Principal Infrastructure Services, the Grant Agreement Date;</li> <li>(b) in respect of any Additional Infrastructure Services or AKI Infrastructure Works, the date of the relevant Package Order.</li> </ul>
<b>Engineering Implementation Plan</b>	means the Initial Engineering Implementation Plan set out in Appendix 4 of Schedule 3B of the ODP Grant Agreement and the revised Engineering Implementation Plan Document Deliverable provided by InfraCo as part of the Principal Infrastructure Services during the Preliminary Design and Discovery Phase and as amended by agreement of the Parties.
<b>Equipment</b>	items provided by InfraCo and used by it to Provide the Infrastructure Services and / or the AKI Infrastructure Works and which the Scope and Infrastructure Works Information does not require InfraCo to include in the CVL Transformation and / or Associated Projects.
<b>ERDF Requirements</b>	means the requirements set out in Appendix 26 (ERDF Requirements) to this Schedule 3B and in the CVL Requirements Summary document set out in Appendix 22 (CVL Engineering Requirements) to this Schedule 3B.
<b>European Standards</b>	those standards ratified by the European Committee for Standardization (CEN) and the European Committee for Electrotechnical Standardization (CENELEC) both of Avenue Marnix 17, B-1000 Brussels, Belgium or the European Telecommunications Standards Institute (ETSI) of 650, Route des Lucioles, Sophia-Antipolis, 06560, Valbonne France.
<b>Exceptional Items</b>	has the meaning given to it in Schedule 18 of the Infrastructure Agreement.
<b>Existing Package Orders</b>	means the Package Orders as defined in the Deed of Novation and Amendment.
<b>Expenses</b>	has the meaning given to <i>expenses</i> in the Contract Data.
<b>Fee</b>	means the sum of the amounts calculated by applying the <i>subcontracted fee percentage</i> to the Defined Cost of subcontracted work (i.e. costs under limb (a) of the definition of Defined Costs) and the <i>direct fee percentage</i> to the Defined Cost of other work (i.e. costs under limb (b) of the definition of Defined Costs), as such fee percentages are specified in the Contract Data.



<b>Final CVL Transformation Outturn Cost</b>	has the meaning given to it in paragraph 4B.4(e)(i) of Annex 1 (Scope) of Part B of Appendix 5 to this Schedule 3B.
<b>Final CVL Transformation Target Price</b>	has the meaning given to it in paragraph 4B.4(e)(ii) of Annex 1 (Scope) of Part B of Appendix 5 to this Schedule 3B.
<b>Final Target Price</b>	<div style="background-color: black; height: 1.2em; width: 100%;"></div> <div style="background-color: black; height: 1.2em; width: 60%; display: inline-block;"></div> including VAT.
<b>Final Tender Financial Model</b>	has the meaning given to it in clause 3 of the Infrastructure Agreement.
<b>First Notice</b>	has the meaning given to it in clause 51.8 of the Conditions of Contract for Infrastructure Services.
<b>Fixed Overhead</b>	means the maximum fixed corporate overheads to which InfraCo is entitled as identified in the Contract Data and is inclusive of all human resources, financial services, payroll, accommodation and other corporate overheads.
<b>Fixed Profit</b>	means the maximum fixed profit to which InfraCo is entitled as identified in the Contract Data.
<b>FOI Legislation</b>	means the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them and any guidance issued by the Information Commissioner in relation to such legislation.
<b>Force Majeure Event</b>	means any of the events described as such in paragraph 1 of Schedule 10.3 (Force Majeure and Business Continuity) of the Infrastructure Agreement where the conditions specified in paragraph 2 of Schedule 10.3 (Force Majeure and Business Continuity) of the Infrastructure Agreement are satisfied.
<b>Foreground IPR</b>	means all IPR developed by or created for the Authority or any contractor of the Authority, InfraCo, and any Subcontractor whether before or after the Effective Date to the extent that such IPR is developed or created for the purposes of the Authority or InfraCo enjoying the rights granted by this Schedule 3B and / or performing their respective obligations under this Schedule 3B.
<b>Framework Agreement</b>	means the framework agreement(s) entered into or to be entered into between the Authority and IDPs for the provision of works and services in relation to the CVL Transformation and Associated Projects, and references to Framework Agreements shall be interpreted accordingly.
<b>Framework Information</b>	information which specifies how the Parties and Others work together and is in Appendix 14 or the document which the Contract Data states it is in.

<b>Grant Agreement Date</b>	means the date of the ODP Grant Agreement.
<b>IDP</b>	means the partners selected to deliver construction civil engineering works and infrastructure maintenance in respect of the Core Valley Lines.
<b>IDP/InfraCo Risk Share Proposal</b>	the risk share proposal prepared by InfraCo under clause 4 of Annex 1 (Scope) of Part B of Appendix 5 of Schedule 3B identifying which risks identified in the QRA are transferred to InfraCo and IDPs.
<b>IDP Framework Panels</b>	has the meaning given to it in Annex 1 (Scope) of Part B of Appendix 5 to this Schedule 3B.
<b>IDP Work Packages</b>	has the meaning given to it in Appendix 14 of this Schedule 3B.
<b>Independent Competent Person</b>	has the meaning given to it in Railways and Other Guided Transport Systems (Safety) Regulations 2006, as amended or varied from time to time.
<b>InfraCo Subcontract</b>	means the long form subcontracting agreement entered into between ODP and InfraCo dated 12 October 2018.
<b>InfraCo's Background IPR</b>	means all IPR other than Foreground IPR which is or becomes owned by InfraCo which is required for the full performance of Schedule 3B of the Infrastructure Agreement including that which the Authority needs to use in order for the Authority to enjoy the rights granted to it under or pursuant to Schedule 3B of the Infrastructure Agreement and / or to perform its obligations under or pursuant to Schedule 3B of the Infrastructure Agreement and / or in relation to the CVL Transformation and / or Associated Projects.
<b>InfraCo's Representative</b>	has the meaning given to <i>InfraCo's Representative</i> in the Contract Data.
<b>Infrastructure Agreement</b>	means this Agreement (of which this Schedule 3B forms part) and which is the "Infrastructure Agreement" for the purposes of the Act which has been entered into between the Authority and InfraCo.
<b>Infrastructure Delivery Alliance</b>	means the alliance formed between the parties to the Alliance Agreement for the delivery of the CVL Transformation and Associated Projects, as documented therein.
<b>Information Request</b>	a request for information under the FOI Legislation.
<b>Infrastructure Manager</b>	has the definition as set out in the Railway (Access, Management and Licensing of Railway Undertakings) Regulations 2016.
<b>Infrastructure Manager Services</b>	has the meaning given to it in Annex 8 to Schedule 3A.3 of the Infrastructure Agreement.

<b>Infrastructure Service Delivery Plan</b>	the further definition of Infrastructure Services and / or AKI Infrastructure Works and deliverables annexed to the Scope and Infrastructure Works Information (including the Resource Schedule) and any Package Order together with all future Infrastructure Service Delivery Plans that the Authority and InfraCo may agree.
<b>Infrastructure Services</b>	the Principal Infrastructure Services and the Additional Infrastructure Services.
<b>Infrastructure Services Director</b>	has the meaning given to <i>infrastructure services director</i> in the Contract Data at Part B or Part C of Appendix 5 (as applicable).  The Infrastructure Services Director is a Key Person.
<b>Infrastructure Works</b>	the AKI Infrastructure Works and any Technical Design or works undertaken by the IDPs, the Authority or Others with respect to changes, Renewals, and enhancements to the CVL Assets or the CVL Transformation and / or Associated Projects.
<b>Infrastructure Works Information</b>	is set out in Annex 1 of the relevant Package Order.
<b>Infrastructure Works Plan</b>	the Initial Infrastructure Works Plan or such subsequent detailed works plan as shall have been prepared by InfraCo and agreed by the Authority in accordance with the Scope and / or Infrastructure Works Information. The Infrastructure Works Plan includes but is not limited to the Engineering Implementation Plan.
<b>Initial Infrastructure Works Plan</b>	the document set out in Appendix 4 (Initial Infrastructure Works Plan) including but not limited to the Initial Engineering Implementation Plan.
<b>Inquiry Rules</b>	means the Transport and Works (Inquiries Procedure) Rules 2004
<b>Insolvency</b>	has the definition set out in paragraph 1.1 of Schedule 10.2 (Events of Default and Termination Events) of the Infrastructure Agreement.
<b>Insurance Table</b>	means the table at clause 85.2 of Part A of Appendix 5 of this Schedule 3B in relation to Infrastructure Services or clause 85.2 of Part A of Appendix 6 of this Schedule 3B in relation to AKI Infrastructure Works.
<b>International Standards</b>	those Standards produced by the International Standards Organisation (ISO) 1, ch. De la Voie-Creuse, CP 56, CH-1211 Geneva 20 Switzerland or the International Electrotechnical Commission (IEC) of 3 Rue de Varembe, PO Box 131, CH1211, Geneva 20, Switzerland.

<b>IPR</b>	means “Intellectual Property Rights” which has the meaning given to it in clause 3 of the Infrastructure Agreement.
<b>Joining Deed</b>	is an agreement in the form set out in Appendix 24 to this Schedule 3B under which the Supplier joins the Trust Deed.
<b>Joint Venture Party</b>	has the meaning given to it in clause 3 of the Infrastructure Agreement.
<b>Key Person</b>	has the meaning given to <i>key person</i> in the Contract Data.
<b>Legislation</b>	has the meaning given to it in clause 3 of the Infrastructure Agreement.
<b>Local Authority</b>	has the meaning given to it in clause 3 of the Infrastructure Agreement.
<b>Losses</b>	means all costs (including legal costs and costs of enforcement), expenses, liabilities, injuries, direct, indirect or consequential loss, damages, claims, demands, and compensation, which must be legally enforceable and properly mitigated against.
<b>Material Discovery</b>	has the meaning given to it in Annex 8 to Schedule 3A.3 of the Infrastructure Agreement.
<b>Milestone</b>	means an event identified as a “Construction Service Milestone” in the Milestone Table set out in the Contract Data.
<b>Milestone Achievement Certificate</b>	means the certificate to be issued by the Authority to InfraCo upon Achievement of a Milestone or a Milestone Deliverable (as applicable).
<b>Milestone Criteria</b>	means the criteria required to be met for the relevant Milestone and / or Milestone Deliverable to be Achieved, such criteria identified as “Milestone Criteria” in the Milestone Table set out in the Contract Data. The Milestone Criteria shall be established and developed in accordance with Appendix 12 of this Schedule 3B.
<b>Milestone Delay Payment</b>	means the amount payable by InfraCo to the Authority following the failure of InfraCo to Achieve a Milestone by the relevant Planned Milestone Delivery Date such amount as set out in the Contract Data.
<b>Milestone Deliverable</b>	means a deliverable identified as a “Milestone Deliverable” in the Milestone Table set out in the Contract Data.
<b>Milestone Payment</b>	means the amount payable by the Authority to InfraCo following the Achievement of a Milestone such amount identified as a “Milestone Payment” in the Milestone Table set out in the Contract Data.

<b>Milestone Table</b>	means the table set out in the Contract Data.
<b>Minimum Records</b>	means the minimum records as set out in clause 52.2 of Appendix 5 or clause 106.1 of Appendix 6 of this Schedule 3B (as applicable)
<b>Multi-Disciplinary Reviews</b>	has the meaning given to it in Annex 1(Scope) of Part B of Appendix 5 to this Schedule 3B.
<b>Named Suppliers</b>	are <i>named suppliers</i> defined in the Contract Data and other Suppliers who have signed the Joining Deed.
<b>Network Rail</b>	has the meaning given to it in clause 3 of the Infrastructure Agreement.
<b>Network Rail's Network</b>	the network which Network Rail operates pursuant to the network licence granted by the Secretary of State pursuant to section 8 of the Railways Act 1993.
<b>Nominating Authority</b>	Technology and Construction Solicitors Association (TeCSA)
<b>Notice of Adjudication</b>	has the meaning given to 'Notice' in the TeCSA Adjudication Rules.
<b>Notice to Proceed</b>	the notice dated 20 October 2020 issued by the Authority to the ODP at Appendix 20 of this Schedule 3B to the Infrastructure Agreement confirming that the Preliminary Design and Discovery Phase Finish has been achieved and instructing the ODP to undertake the Principal Infrastructure Services during the Detailed Design and Management Phase.
<b>Novation Time</b>	has the meaning given to it in the Deed of Novation and Amendment.
<b>ODP</b>	means Keolis Amey Wales Cymru Limited.
<b>Open Document Format</b>	means the IT format specified by the Authority from time to time for collaboration and the sharing of documents.
<b>Order</b>	means the order to be applied for under sections 1, 5 and 6 of the Transport and Works Act 1992, which would authorise the transfer of the Core Valley Lines from Network Rail to Transport for Wales
<b>Others</b>	people or organisations who are not the Authority, InfraCo, the Adjudicator, or any employee, Subcontractor or supplier of InfraCo. For the avoidance of doubt, "Others" includes but is in no way limited to the IDPs, the ORR, Stakeholders, the Rail Services provider, the Infrastructure Manager (where this role is not performed by InfraCo), and licencees.
<b>Outline Target Price</b>	<div style="background-color: black; height: 1.2em; width: 100%;"></div> <div style="background-color: black; height: 1.2em; width: 100%;"></div> including VAT, being the price tendered by

	the ODP for the delivery of the CVL Transformation (including optimism bias), as superseded by the Final Target Price.
<b>Package Budget</b>	means the budget for (i) the Additional Infrastructure Services as set out in Annex 4 to Part C of Appendix 5 of this Schedule 3B or (ii) the budget for the Infrastructure Works as set out in Annex 4 to Part B of Appendix 6, as applicable.
<b>Package Order</b>	means an order entered into between the Authority and InfraCo in the form set out in Part B or Part C of Appendix 5 in relation to Infrastructure Services (based on the Conditions of Contract for Infrastructure Services) or Part B of Appendix 6 (based on the Conditions of Contract for AKI Infrastructure Works) of this Schedule 3B for the performance of the AKI Infrastructure Works in accordance with the relevant Conditions of Contract.
<b>Package Order Proposal</b>	a Package Order sent by InfraCo to the Authority in the form annexed to this Schedule 3B in accordance with paragraph 7 of this Schedule 3B and pursuant to a Request by the Authority.
<b>Passenger Demand</b>	means the predicted levels of passengers as recorded in the Final Tender Financial Model.
<b>Passenger Services</b>	has the meaning given to it in clause 3 of the Infrastructure Agreement.
<b>Payment Notice</b>	has the meaning given to it in clause 51.6 of the Conditions of Contract for Infrastructure Services and clause 51.6 of the Conditions of Contract for AKI Infrastructure Works (as applicable).
<b>Pay Less Notice</b>	has the meaning given to it in clause 51.7 of the Conditions of Contract for Infrastructure Services and clause 51.7 of the Conditions of Contract for AKI Infrastructure Works (as applicable).
<b>Personal Data</b>	has the meaning given to it in clause 3 of the Infrastructure Agreement.
<b>Planned Milestone Delivery Date</b>	means the date by which each Milestone is to be Achieved by InfraCo such dates identified as "Planned Milestone Delivery Dates" in the Milestone Table set out in the Contract Data and as such dates may be adjusted in accordance with the Conditions of Contract.
<b>Plant and Materials</b>	are items intended to be included in the AKI Infrastructure Works.
<b>Pre CVL Asset Transfer Phase</b>	has the meaning given to it in Annex 8 to Schedule 3A.3 of the Infrastructure Agreement .
<b>Preliminary Design</b>	the design carried out by InfraCo from the Grant Agreement Date to the end of the Preliminary Design and Discovery Phase pursuant to this Schedule 3B of the Infrastructure Agreement as

	further described in Annex 1 to Appendix 13 of the ODP Grant Agreement.
<b>Preliminary Design and Discovery Phase</b>	the period from the Grant Agreement Date and ending on issue of the CVL Transformation Proposal by the ODP to the Authority in accordance with Annex 1 (Scope) of Part B of Appendix 5 of the ODP Grant Agreement.
<b>Preliminary Design and Discovery Phase Finish</b>	Preliminary Design and Discovery Phase Finish is when the Authority issued the Notice to Proceed.
<b>Preliminary Design Proposal</b>	has the meaning given to it in paragraph 3.3 of Annex 1 (Scope) of Part B of Appendix 5 of the ODP Grant Agreement.
<b>Premises</b>	means any premises owned, leased or under the control of the Authority.
<b>Price for Infrastructure Services Provided to Date</b>	has the meaning given to it in clause 11.4 of the Conditions of Contract for Infrastructure Services.
<b>Price for Work Done to Date</b>	the total Defined Cost which the Authority's Project Manager forecasts will have been paid by InfraCo before the next assessment date plus the Fee plus any Milestone Payments where InfraCo has Achieved the Milestone Criteria for the works by the Planned Milestone Delivery Dates set out in the Milestone Table on or before the assessment date.
<b>Prices</b>	<p>In relation to Infrastructure Services:</p> <ul style="list-style-type: none"> <li>(a) where Main Option C applies, Prices has the meaning given to it in clause 11.4(c) of the Main Option Clauses for Option C: Target contract, and</li> <li>(b) where Main Option E applies, Prices has the meaning given to it in clause 11.4(b) of the Main Option Clauses for Option E: Time based contract.</li> </ul> <p>In relation to AKI Infrastructure Works, the Prices are the lump sum prices for each of the activities on the Activity Schedule unless later changed in accordance with this contract.</p>
<b>Principal Contractor</b>	has the meaning given to it in the CDM Regulations.
<b>Principal Designer</b>	has the meaning given to it in the CDM Regulations.
<b>Principal Infrastructure Services</b>	has the meaning given to principal infrastructure services in the Contract Data in Part B of Appendix 5.
<b>Programme Control Management Plan</b>	means the plan that has superseded the Project Control Framework and which is set out in Appendix 28 to this Schedule 3B.
<b>Prohibited Act</b>	means:

- (a) offering, giving or agreeing to give to any officer or agent of the Authority, any gift or consideration of any kind:
  - (i) as an inducement or reward; or
  - (ii) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Schedule 3B or any other contract with the Authority; or
  - (iii) for showing or not showing favour or disfavour for any person in relation to this contract or any other Schedule 3B with the Authority; or
  - (iv) for entering into this Schedule 3B in connection with which commission has been paid or has been agreed to be paid by it or on its behalf, or to its knowledge unless before this Schedule 3B is made, particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Authority; or
- (b) the commission of an offence under the Prevention of Corruption Acts 1889-1916; or
- (c) entering into any form of collusion with other suppliers of services similar to the services or with other actual or potential bidders for this Schedule 3B; or
- (d) defrauding or attempting to defraud the Authority.

**Project Bank Account**

is the account used to receive payments from the Authority and InfraCo and make payments to InfraCo and Named Suppliers.

**Project Completion**

has the meaning given to *Project Completion* in the Contract Data.

**Project Management Team**

has the meaning given to it in paragraph 27.1 to Appendix 1 to Part B of Appendix 5 of Schedule 3B to the Infrastructure Agreement.

**Project Control Framework**

the framework jointly developed by InfraCo and the Authority after the Grant Agreement Date as part of the Preliminary Design and Discovery Phase setting out the standard for development and management of IDP Work Packages and project controls.

**Proposed Consequential Change**

a design decision which InfraCo determines in its opinion (acting reasonably):

- (a) is likely to have a material impact on InfraCo's contractual commitments under the Infrastructure Agreement to deliver



	Infrastructure Manager Services and/or on the ability of the Authority or Others to delivery Rail Services post-Transformation; or
	(b) is likely to increase Infrastructure Manager Payments by £50,000 or more.
<b>Provide the Additional Infrastructure Services</b>	to do the work necessary to complete the Additional Infrastructure Services in accordance with the Infrastructure Agreement and all incidental work, services and actions which the Infrastructure Agreement requires in relation to the Additional Infrastructure Services.
<b>Provide the Infrastructure Services</b>	to do the work necessary to complete the Infrastructure Services in accordance with the Infrastructure Agreement and all incidental work, services and actions which the Infrastructure Agreement requires in relation to the Infrastructure Services.
<b>Provide the Principal Infrastructure Services</b>	to do the work necessary to complete the Principal Infrastructure Services in accordance with the Infrastructure Agreement and all incidental work, services and actions which the Infrastructure Agreement requires in relation to the Principal Infrastructure Services.
<b>Provide the AKI Infrastructure Works</b>	to do the work necessary to complete the AKI Infrastructure Works in accordance with the Infrastructure Agreement and all incidental work, services and actions which the Infrastructure Agreement requires in relation to the AKI Infrastructure Works.
<b>QRA</b>	means the quantified assessment of risks and assumptions associated with the CVL Transformation (as referred to in paragraph 4A of Annex 1 of Part B of Appendix 5 to this Schedule 3B) and which is incorporated into this Schedule 3B.
<b>Quality Statement</b>	the quality statement set out in the Scope or Infrastructure Works Information as applicable.
<b>Quotation Procedure</b>	the procedure set out in Appendix 3 (Quotation Procedure) of this Schedule 3B.
<b>Rail Services</b>	has the meaning given to it in clause 3 of the Infrastructure Agreement.
<b>Relevant Credit Rating</b>	has the meaning given to it in clause 3 of the Infrastructure Agreement.
<b>Remedy Period</b>	means the period identified in the Milestone Table in the Contract Data.
<b>Renewals</b>	has the meaning given to it in Annex 8 to Schedule 3A.3 of the Infrastructure Agreement.

<b>Request</b>	has the meaning given to it in paragraph 7.3 of this Schedule 3B.
<b>Required Standard</b>	<p>means:</p> <ul style="list-style-type: none"> <li>(a) in respect of the Infrastructure Services, the degree of skill, care, diligence, experience, prudence and foresight to be expected of a skilled, professionally qualified, experienced and competent professional consultant (whether architect, structural engineer, project manager or otherwise), contractor and rail infrastructure provider engaged in activities of a similar nature, scope, value and complexity to the Infrastructure Services and the CVL Transformation and Associated Projects (as applicable) and under the same or similar circumstances, where such consultant is seeking to comply with its contractual obligations and all applicable laws and Statutory Requirements.</li> <li>(b) in respect of the AKI Infrastructure Works, the degree of skill, care, diligence, experience, prudence and foresight to be expected of a skilled, professionally qualified, experienced and competent professional contractor and rail infrastructure provider engaged in activities of a similar nature, scope, value and complexity to the AKI Infrastructure Works and the CVL Transformation and Associated Projects (as applicable) and under the same or similar circumstances, where such contractor is seeking to comply with its contractual obligations and all applicable laws and Statutory Requirements.</li> </ul>
<b>Resource Schedule</b>	has the meaning given to it in paragraph 6 of Part A of Appendix 3 to this Schedule 3B.
<b>Responsible Officers</b>	means InfraCo's [REDACTED] and Transport for Wales' Cyfarwyddwr Gweithrediadau Rheilffordd / Director of Rail Operations.
<b>Revised Detailed Design Proposal</b>	has the meaning given to it in paragraph 5 of Annex 1 (Scope) of Part B of Appendix 5 to this Schedule 3B.
<b>Risk Register</b>	<p>a register of:</p> <ul style="list-style-type: none"> <li>(a) the risks specific to the Infrastructure Services and / or the Infrastructure Works and / or the CVL Transformation and / or Associated Projects which are listed in the Contract Data; and</li> <li>(b) the risks specific to the Infrastructure Services and / or the Infrastructure Works</li> </ul>

and / or the CVL Transformation and / or Associated Projects which the Authority or InfraCo or Others have notified as an early warning matter; and

and includes a description of the risk and a description of the actions which are to be taken or avoided to reduce the risk.

The Risk Register is deemed to include any other risks (not specific to the Principal Infrastructure Services or the Infrastructure Works) which are referred to in the Risk Management Plan.

**Risk Management Plan**

means the agreed plan setting out the arrangements to be made and / or taken by InfraCo to identify, record, monitor, mitigate, control and assess risks for the period of the contract as set out in the Infrastructure Works Information.

**RV Mech Cost Summary**

means the summary included as “Supplementary Material” within the Final Tender Financial Model.

**Safety Breach**

a material breach of the contract caused by the gross incompetence or wilful default of InfraCo or any Subcontractor (or anyone employed or acting on behalf of InfraCo or any Subcontractor) or any of its agents which has materially affected the safe operation of Network Rail's Network or the CVL Assets or the CVL Physical System or the CVL Transformation or Associated Projects or the safety of any person.

**Scope**

the Scope is information which:

- (a) specifies and describes the Infrastructure Services and / or
- (b) states any constraints on how InfraCo Provides the Infrastructure Services

and is either

- (a) in the documents which the Contract Data for the Infrastructure Services states it is in or
- (b) in Appendix 5 to this Schedule 3B or
- (c) in Appendix 6 to this Schedule 3B or
- (d) in an instruction given in accordance with this Schedule 3B.

**Senior Representatives**

means a representative of a Party at a senior executive level.

**Site**

has the meaning given to *site* set out in the Contract Data.

<b>Site Information</b>	<p>is information which</p> <ul style="list-style-type: none"> <li>(a) describes the Site and its surroundings and</li> <li>(b) is in the documents which the Contract Data states it is in.</li> </ul>
<b>SMEs</b>	has the meaning given to in clause 3 of the Infrastructure Agreement.
<b>SME Works Packages</b>	has the meaning given to it in paragraph 9A.1 of Annex 1 (Scope) of Part B of Appendix 5 of this Schedule 3B.
<b>South Wales Metro</b>	has the meaning given to it in clause 3 of the Infrastructure Agreement.
<b>Staff Rates</b>	has the meaning given to <i>staff rates</i> in the Contract Data.
<b>Stakeholders</b>	has the meaning given to it in clause 3 of the Infrastructure Agreement.
<b>Standards</b>	the individual requirements contained within standards documents and codes of practice issued to InfraCo by the Authority and / or specified in the Scope or the Infrastructure Works Information as applicable and / or referred to in the contract and / or the Scope or Infrastructure Works Information as applicable.
<b>Starting Date</b>	<p>is:</p> <ul style="list-style-type: none"> <li>(a) in respect of the Principal Infrastructure Services, the date stated as such in Appendix 5 to Schedule 3B of the Infrastructure Agreement; and</li> <li>(b) in respect of any Additional Infrastructure Services or AKI Infrastructure Works, the date stated as such in the relevant Package Order.</li> </ul>
<b>Statutory Requirement</b>	means any laws, statutes, by-laws, codes, common law or other laws or legislation made by a Competent Authority and all subordinate legislation, rules, regulations, ordinances, orders, notices, directives, franchises, guidance notes and circulars promulgated pursuant to the same (to the same legally effective).
<b>Statutory Undertakers</b>	<p>any governmental or local authority or statutory undertaker:</p> <ul style="list-style-type: none"> <li>(a) which has any jurisdiction with regard to the Infrastructure Works and / or the CVL Transformation and / or Associated Projects and / or the Infrastructure Services including without limitation any jurisdiction to control development of the Site or any part of it</li> </ul>

- (b) with whose requirements which relate to the Infrastructure Works or Infrastructure Services (as applicable) the Authority is obliged to comply or
- (c) with whose systems and / or utilities the Infrastructure Works and / or the CVL Transformation and / or Associated Projects and / or the Infrastructure Services will be associated.

**Subcontractor**

means a person or organisation who has a contract with InfraCo to either:

- (a) construct or install part of the AKI Infrastructure Works, or
- (b) provide a service necessary to Provide the Infrastructure Services or the AKI Infrastructure Works, or
- (c) supply plant or materials which the person or organisation has wholly or partly designed specifically for the Infrastructure Services or the AKI Infrastructure Works.

**Supplier**

is a person or organisation who has a contract to

- (a) provide part of the Infrastructure Services or
- (b) provide a service necessary to Provide the Infrastructure Services.

**Systems Integration Plan**

means the plan provided by the ODP pursuant to Schedule 3B of the ODP Grant Agreement marked R8.27 Systems Integration Plan (as updated from time to time) in Appendix 4 of Schedule 3B of the Infrastructure Agreement.

**Sustainable Development Plans**

has the meaning given to Sustainable Development Plan and Initial Sustainable Development Plan in clause 3 of the Infrastructure Agreement.

**Sustainable Development Strategy**

has the meaning given to it in clause 3 of the Infrastructure Agreement.

**Technical Design**

means the design activities and required design deliverables which form part of Stage C (Preliminary design), Stage D (Statutory process), Stage E (Detailed design) and Stage F (Construct, commission & handover) of the Authority's Plan of Works included within one or more IDP Work Packages or AKI Infrastructure Works Work Packages and which are not Detailed Integration Design activities.

**TeCSA Adjudication Rules**

the Technology and Construction Solicitors Association Adjudication Rules 2002 Version 3.2 or such later version as is current at the time of the referral to the Adjudicator;

<b>Term</b>	means the period from the Grant Agreement Date to the Expiry Date (as defined in clause 3 of the Infrastructure Agreement) or the date of any earlier termination pursuant to this Schedule 3B.
<b>Termination Notice</b>	has the meaning given to it in clause 3 of the Infrastructure Agreement.
<b>Termination Table</b>	refers to clause 90 of part A of Appendix 6 of Schedule 3B of the Infrastructure Agreement.
<b>Third Party</b>	means any person that the Authority and InfraCo are required to liaise and/or negotiate with to promote the Order.
<b>Third Party Agreement</b>	has the meaning given to it in clause 105.1 of the Conditions of Contract for Infrastructure Services and clause 23A.1 of the Conditions of Contract for AKI Infrastructure Works (as applicable).
<b>Third Party Background IPR</b>	means all IPR other than Foreground IPR which is or becomes owned by third parties or Subcontractors which is required for the full performance of Schedule 3B of the Infrastructure Agreement including that which the Authority needs to use in order for the Authority to enjoy the rights granted to it under or pursuant to Schedule 3B of the Infrastructure Agreement and / or to perform its obligations under or pursuant to Schedule 3B of the Infrastructure Agreement and / or in relation to the CVL Transformation and / or Associated Projects.
<b>TFA</b>	Means the transfer framework agreement to be entered into between Network Rail and the Authority
<b>Time Charge</b>	is the sum of the products of each of the Staff Rates multiplied by the total staff time appropriate to that rate properly spent on work on the Infrastructure Services in this Schedule 3B less Disallowed Time Charge for all work carried out up to the total of the Prices. In respect of Option E, the only profit or overhead which InfraCo is entitled to is the Fixed Profit and Fixed Overhead attributable to each Milestone.
<b>Trust Deed</b>	is an agreement in the form set out in Appendix 23 to Schedule 3B of the Infrastructure Agreement which contains provisions for administering the Project Bank Account.
<b>TWAO Deed of Amendment</b>	means the deed of amendment to the Infrastructure Agreement dated on or around 9 October 2018
<b>TWAO Services</b>	means the services and duties of InfraCo under paragraphs 25 to 27 of Part B to Appendix 5 of the Infrastructure Agreement, such services and duties forming part of the Principal Infrastructure Services
<b>Variation</b>	means any change to the Scope or to the Infrastructure Works Information or to a Package Order or to the Infrastructure Services or the

Infrastructure Works or any part thereof which (in each case) constitutes or is instructed or approved or accepted as a variation pursuant to Appendix 19 (Change Mechanism) of Schedule 3B of the Infrastructure Agreement.

**Wales and Cross Border Lines**

has the meaning given to it in clause 3 of the Infrastructure Agreement.

**Working Areas**

are those parts of the *working areas* which are

- (a) necessary for Providing the AKI Infrastructure Works and
- (b) used only for work in this Schedule 3B

unless later changed in accordance with this Schedule 3B.

For the avoidance of doubt – InfraCo's Head offices are not part of the Working Areas.

## 1 INTERPRETATION

1.1 In this Schedule 3B of the Infrastructure Agreement, except to the extent the context otherwise requires:

- (a) words and expressions defined in Part I of the Railways Act 1993 (as modified, amended or replaced by the Transport Act 2000 and / or the Railways Act 2005) and any regulations or orders made thereunder have the same meanings when used therein provided that, except to the extent expressly stated, **“railway”** shall not have the wider meaning attributed to it by section 81(2) of the Act;
- (b) words and expressions defined in the Interpretation Act 1978 have the same meanings when used in Schedule 3B of the Infrastructure Agreement;
- (c) references to **“Parties”** shall mean the Authority and InfraCo (and references to a **“Party”** shall mean the Authority or InfraCo as the context requires);
- (d) the words **“include”**, **“including”** and **“in particular”** are to be construed without limitation;
- (e) references to any **“person”** include its successors, transferees or assignees;
- (f) the words **“subsidiary”**, **“subsidiary undertaking”** and **“parent undertaking”** each have the same meaning in Schedule 3B of the Infrastructure Agreement as in section 1162 of the Companies Act 2006;
- (g) references in any of the agreements comprising the Infrastructure Agreement to Recitals, clauses, Schedules, Parts of Schedules, paragraphs of Schedules and Appendices to Schedules are to Recitals, clauses, Schedules, Parts of Schedules, paragraphs of Schedules and Appendices to Schedules of that agreement, unless expressly specified to the contrary, and the Schedules and Appendices form part of the agreement in which they appear;
- (h) references in any Schedule in any of the agreements comprising the Infrastructure Agreement to a Part, paragraph or Appendix are references to a Part, paragraph or Appendix of that Schedule (or the relevant Part of a Schedule), unless expressly specified to the contrary;
- (i) headings and references to headings shall be disregarded in construing the Infrastructure Agreement;
- (j) references to any enactment include any subordinate legislation made from time to time under such enactment and are to be construed as references to that enactment as for the time being amended or modified or to any enactment for the time being replacing or amending it and references to any subordinate legislation are to be construed as references to that legislation as for the time being amended or modified or to any legislation for the time being replacing or amending it;
- (k) references to an agreement or any other document shall be construed as referring to that agreement or document as from time to time supplemented, varied, replaced, amended, assigned or novated;
- (l) references to any particular provisions of any agreement or any other document shall be construed to include any other provisions of, or incorporated in, that agreement or other document which the Authority reasonably considers have an equivalent effect or are intended to fulfil the same function;
- (m) amendments to or variations of contracts or arrangements include assignments, novations or other transfers of rights and / or obligations (in whole or in part) under such contracts or arrangements;



- (n) words importing the masculine gender include the feminine and vice-versa, and words in the singular include the plural and vice-versa;
- (o) wherever provision is made for the giving or issuing of any notice, endorsement, consent, approval, waiver, certificate or determination by any person, unless otherwise specified, such notice, endorsement, consent, approval, waiver, certificate or determination shall be in writing and the words “**notify**”, “**endorse**”, “**consent**”, “**approve**”, “**waive**”, “**certify**” or “**determine**” and other cognate expressions shall be construed accordingly;
- (p) references to materials, information, data and other records shall be to materials, information, data and other records whether stored in electronic, written or other form;
- (q) not used;
- (r) not used;
- (s) references to “**railway passenger services**” are to be construed subject to section 40 of the Railways Act 2005;
- (t) references to the “**provision of railway passenger services**” include the organisation of the relevant train movements and making the necessary arrangements with Network Rail or any other relevant Facility Owner (as defined in Section 17(6) of the Railways Act 2006);
- (u) references in lower case letters to terms defined in Appendix 1 to this Schedule 3B (Definitions) shall be construed, where relevant, as being references to the terms defined as such in a franchise agreement or relevant agreement made under section 30 of the Act or section 6 of the Railways Act 2005 with any other train operator;
- (v) references to sums of money being expended by InfraCo shall be to such sums exclusive of Value Added Tax;
- (w) the words “**shall not be liable**” are to be construed as meaning that no contravention of the Infrastructure Agreement and no Event of Default shall arise as a result of the occurrence of the matter to which such words relate;
- (x) references to a “**contravention of the Infrastructure Agreement**” or a “**contravention**” (and cognate expressions) are to be construed as meaning a breach of the Infrastructure Agreement;
- (y) wherever provision is made for InfraCo to “**procure**” or “**ensure**” the delivery of an obligation under the Infrastructure Agreement, unless otherwise specified, that provision shall be construed as a primary obligation on InfraCo to deliver that obligation;
- (z) references to “**profit**” shall be construed as meaning profit before corporation tax, determined in accordance with GAAP; and
- (aa) references to “**sums payable**” include, in respect of the relevant Aggregate Liability Cap, invoices to the Authority paid by the Authority, invoices to the Authority due and sums not yet invoiced but included within the value of Package Orders already entered into.

- 1.2 Where there is a requirement on InfraCo to “**fully and effectively co-operate**” with one (1) or more other parties with regard to an objective, that requirement relates to the quality of co-operation to be provided by InfraCo taking into account and subject to the response of the other parties concerned. It does not indicate an obligation on InfraCo beyond co-operation, relating to the funding of detailed design and development of an infrastructure project, actual delivery or subsequent operation (including in each case performance cost

and revenue effects). It does indicate that InfraCo shall participate actively in relation to the relevant objective including through the application of management time and internal resources, correspondence and attendance at meetings, in each case as InfraCo reasonably considers in all of the circumstances to be an appropriate use of its resources and effective to achieve the relevant objective.

**Appendix 2 of Schedule 3B**

Not Used

### **Appendix 3 of Schedule 3B**

#### **Quotation Procedure for Additional Infrastructure Services and AKI Infrastructure Works**

##### **Introduction**

This quotation procedure sets out the process regarding how InfraCo and the Authority are to prepare and assess a quotation for a proposed Package Order instruction under paragraph 7 of Schedule 3B of the Infrastructure Agreement following a Request issued to InfraCo by the Authority pursuant to paragraph 7.3 of Schedule 3B of the Infrastructure Agreement.

##### **Part A**

##### **Additional Infrastructure Services Package Order**

##### **Package Order Proposal provided by InfraCo**

- 1 At the request of the Authority, InfraCo will prepare at its own cost a Package Order Proposal based upon the information provided to it by the Authority in the Request and setting out as a minimum the following data for the Additional Infrastructure Services Package Order for approval by the Authority (unless otherwise stated in the Request):
  - (a) confirmation from InfraCo that it has the resources to perform the Additional Infrastructure Services in accordance with the information set out in the Request;
  - (b) the applicable Main Option clause for the Infrastructure Services Package Order (it is agreed that method 1 (rates) (see below) shall apply);
  - (c) the draft outline Scope based upon the information provided to InfraCo in the Authority's Request;
  - (d) details of the proposed Additional Infrastructure Services to be provided;
  - (e) details of access to persons, places and things;
  - (f) matters included in the Risk Register;
  - (g) the Starting Date;
  - (h) a schedule of Milestones, Milestone Criteria, Milestone Deliverables, Planned Milestone Delivery Dates, Milestone Payments, and Milestone Delay Payments;
  - (i) the authority of InfraCo Project Manager;
  - (j) not used;
  - (k) any changes to the Contract Data Part One at Part C of Appendix 5 (Package Order – Additional Infrastructure Services) to Schedule 3B of the Infrastructure Agreement;
  - (l) confirmation whether or not InfraCo has no conflict of interest in relation to the CVL Transformation and / or Associated Projects and where there is a conflict of interest the nature of that conflict;
  - (m) the identity of the personnel that InfraCo proposes to use to Provide the Infrastructure Services and a description of their respective roles, including CVs for each of them; and
  - (n) any other information reasonably required in the Request.

- 2 InfraCo shall reply to the Request in accordance with this Quotation Procedure within the time specified by the Authority in the instruction and submit the Package Order Proposal to the Authority for approval within the timescale specified by the Authority or notify the Authority within five (5) days of receipt of the Request (or such other period as is notified to InfraCo by the Authority) if it does not have the capacity to undertake the Infrastructure Services set out in the Request.
- 3 The Authority shall reply to the submission within twenty-eight (28) days (or such other period as the Authority notifies to InfraCo) of receiving the Package Order Proposal. The Authority's reply shall be:
  - (a) a request for a quotation, in which case paragraph 6 of this Appendix 3 (Quotation Procedure) shall apply;
  - (b) an instruction to submit a revised Package Order Proposal; or
  - (c) a notification that the proposed Package Order will not be issued to InfraCo.
- 4 If a Package Order Proposal is to be revised, the Authority shall advise InfraCo of the reasons for not accepting the Package Order Proposal and InfraCo shall submit a revised Package Order Proposal within the time required by the Authority.
- 5 If and to the extent that the Package Order Proposal is rejected by the Authority, or InfraCo confirms that it does not have capacity to undertake the Infrastructure Services, then neither party shall have any further obligation to the other in respect of that Package Order Proposal and the Authority shall be entitled to appoint, at any time, another contractor to undertake such works.

#### **Quotation information prepared by InfraCo**

- 6 InfraCo shall prepare a quotation that comprises the following documents:
  - (a) Where Option C applies, the required commercial information as follows: an *activity schedule*, *staff rates*, *InfraCo's share percentages* and *share ranges*.
  - (b) Where Option E applies, the required commercial information as follows: *direct fee percentage*, *subcontracted fee percentage*, *listed items of Equipment*, *rates for special Equipment*, *percentage for Working Area overheads*, *daily rates for Defined Cost of manufacture and fabrication outside the Working Areas*, *percentage for manufacture and fabrication overheads*, *daily rates for Defined Cost of design outside the Working Areas*, *percentage for design overheads*, *categories of design employees whose travelling expenses are included as a cost of design*, *percentage of people overheads*, *percentage for adjustment for Equipment in the published list* and *rates for other Equipment* and any other pricing information required by the Contract Data.
  - (c) An Infrastructure Service Delivery Plan setting out InfraCo's proposals for delivery of the services and deliverables which are the subject of the Package Order and including:
    - (i) a programme in accordance with clause 31 of Conditions of Contract for Infrastructure Services;
    - (ii) a Resource Schedule that shows, on a periodic basis for the duration of the Package Order, details as requested by the Authority relating to:
      - (A) Key Persons;
      - (B) all other staff;

- (C) whether Key Persons and / or other staff are to be located at the Authority's office or located at InfraCo's office;
    - (iii) a schedule of working drawings to be issued each month by discipline; and
    - (iv) any further matters to be included in the Risk Register.
  - (d) the draft completed Contract Data Part One (to the extent InfraCo is able to do so) and Contract Data Part Two, draft completed Annex 2 (Commercial Information), draft completed Annex 3 (Additional Infrastructure Services Delivery Plan), and draft complete Annex 4 (Package Budget); and
  - (e) any further information requested by the Authority.
- 7** All proposals submitted by InfraCo within its quotation must be consistent with all proposals which the ODP submitted in its tender submission (insofar as they relate to InfraCo) relating to the award of the ODP Grant Agreement.
- 7A** For the avoidance of doubt, the Authority may request a quotation for both Option C and Option E.

#### **Option C and Option E payment methods**

- 8** When requesting a quotation under Option C and / or Option E InfraCo shall use the following method for Staff Rates:
- (a) Method 1: rates (such rates shall reflect the rates set out in the Contract Data for the Principal Infrastructure Services at Part B of Appendix 5).
- 9** InfraCo's quotation shall comply with the requirements applicable to Option C and / or Option E quotations set out in this Appendix 3 (Quotation Procedure).

#### **Assessment of InfraCo's quotation by the Authority**

- 10** The Authority shall reply to the quotation submission within such period as the Authority notifies to InfraCo) of receiving the quotation informing InfraCo of its decision relating to the award of the Package Order. The Authority's reply shall be:
- (a) request issue of a Package Order;
  - (b) an instruction to submit a revised quotation; or
  - (c) a notification that the proposed Package Order will not be issued to InfraCo.
- 11** If a quotation is to be revised, the Authority shall advise InfraCo of the reasons for not accepting the quotation and InfraCo shall submit a revised quotation within the time required by the Authority.
- 12** If and to the extent that the quotation is rejected by the Authority then neither party shall have any further obligation to the other in respect of that Package Order Proposal and the Authority shall be entitled to appoint another contractor to undertake such works.

#### **Package Order award**

- 13** Upon request, InfraCo will produce the Package Order for the Authority's approval comprising the following documents in the forms set out in Part B of Appendix 5 (Package Orders) to this Schedule 3B:
- (a) the Package Order form of agreement (incorporating the Package Order conditions of contract);

- (b) the completed Contract Data Parts One and Two;
- (c) the Scope (Annex 1);
- (d) the Commercial Information (Annex 2);
- (e) the Principal Infrastructure Service Delivery Plan (Annex 3); and
- (f) the Package Budget (Annex 4)

which shall be based on the Package Order Proposal and quotation submitted and agreed between the Parties pursuant to this Quotation Procedure.

- 14** Once approved, the Authority and InfraCo will each execute the Package Order as a deed.

## **Part B**

### **AKI Infrastructure Works Package Order**

#### **Package Order Proposal provided by InfraCo**

- 1** At the request of the Authority, InfraCo will prepare a Package Order Proposal setting out as a minimum the following data for the AKI Infrastructure Works Package Order for approval by the Authority (unless otherwise stated in the Request):
- (a) confirmation from InfraCo that it has the resources to perform the AKI Infrastructure Works in accordance with the information set out in the Request;
  - (b) the applicable Main Option clause (Option C) for the AKI Infrastructure Works Package Order (it is agreed that method 1 (rates) (see below) shall apply);
  - (c) the draft outline Infrastructure Works Information based upon the information provided to InfraCo in the Authority's Request;
  - (d) details of the proposed AKI Infrastructure Works to be provided;
  - (e) details of access to persons, places and things;
  - (f) matters included in the Risk Register;
  - (g) the Starting Date;
  - (h) a schedule of Milestones, Milestone Criteria, Milestone Deliverables, Planned Milestone Delivery Dates, Milestone Payments, and Milestone Delay Payments;
  - (i) the authority of the InfraCo Project Manager;
  - (j) not used;
  - (k) any changes to the Contract Data Part One at Part B of Appendix 6 (Package Orders) to Schedule 3B of the Infrastructure Agreement;
  - (l) confirmation whether or not InfraCo has no conflict of interest in relation to the CVL Transformation and / or Associated Projects and where there is a conflict of interest the nature of that conflict;

- (m) the identity of the personnel that InfraCo proposes to use to Provide the AKI Infrastructure Works and a description of their respective roles, including CVs for each of them; and
- (n) any other information reasonably required in the Request.

Where the Package Order Proposal relates to AKI Infrastructure Works forming part of the CVL Transformation, InfraCo's costs of preparing the Package Order Proposal are included within the Fee for the Principal Infrastructure Services and the CVL Capital Budget.

Where the Package Order Proposal relates to AKI Infrastructure Works forming part of an Associated Project, InfraCo shall prepare the Package Order Proposal at its own cost.

- 2 InfraCo shall reply to the Request in accordance with this Quotation Procedure within the time specified by the Authority in the instruction and submit the Package Order Proposal to the Authority for approval within the timescale specified by the Authority or notify the Authority within five (5) days of receipt of the Request (or such other period as is notified to InfraCo by the Authority) if it does not have the capacity to undertake the AKI Infrastructure Works set out in the Request.
- 3 The Authority shall reply to the submission within twenty-eight (28) days (or such other period as the Authority notifies to InfraCo) of receiving the Package Order Proposal. The Authority's reply shall be:
  - (a) a request for a quotation, in which case paragraph 6 of this Appendix 3 (Quotation Procedure) shall apply;
  - (b) an instruction to submit a revised Package Order Proposal; or
  - (c) a notification that the proposed Package Order will not be issued to InfraCo.
- 4 If a Package Order Proposal is to be revised, the Authority shall advise InfraCo of the reasons for not accepting the Package Order Proposal and InfraCo shall submit a revised Package Order Proposal within the time required by the Authority.
- 5 If and to the extent that the Package Order Proposal is rejected by the Authority, or InfraCo confirms that it does not have capacity to undertake the AKI Infrastructure Works, then neither party shall have any further obligation to the other in respect of that Package Order Proposal and the Authority shall be entitled to appoint another contractor to undertake such works.

#### **Quotation information prepared by InfraCo**

- 6 InfraCo prepares a quotation that comprises the following documents:
  - (a) The required commercial information according to Option C as follows: an *activity schedule*, *staff rates*, *InfraCo's share percentages* and *share ranges*.
  - (b) An Infrastructure Works Delivery Plan setting out InfraCo's proposals for delivery of the services and deliverables which are the subject of the Package Order and including:
    - (i) a programme in accordance with clause 31 of the Package Order;
    - (ii) a Resource Schedule that shows, on a periodic basis for the duration of the Package Order, details as requested by the Authority relating to:
      - (A) Key Persons;
      - (B) all other staff;



- (C) whether Key Persons and / or other staff are to be located at the Authority's office or located at InfraCo's office.
  - (iii) a schedule of working drawings to be issued each month by discipline; and
    - (iv) any further matters to be included in the Risk Register.
  - (c) any further information requested by the Authority.
- 7 All proposals submitted by InfraCo within its quotation must be consistent with all proposals which the ODP submitted in its tender submission (insofar as they relate to InfraCo) relating to the award of the ODP Grant Agreement.

#### **Option C payment methods**

- 8 When requesting a quotation InfraCo shall use the following method for Staff Rates:
- (a) Method 1: rates
- 9 InfraCo's quotation shall comply with the requirements applicable to Option C quotations set out in this Appendix 3 (Quotation Procedure).

#### **Assessment of InfraCo's quotation by the Authority**

- 10 The Authority shall reply to the quotation submission within 28 days (or such other period as the Authority notifies to InfraCo) of receiving the quotation informing InfraCo of its decision relating to the award of the Package Order. The Authority's reply shall be:
- (a) request issue of a Package Order;
  - (b) an instruction to submit a revised quotation; or
  - (c) a notification that the proposed Package Order will not be issued to InfraCo.
- 11 If a quotation is to be revised, the Authority shall advise InfraCo of the reasons for not accepting the quotation and InfraCo shall submit a revised quotation within the time required by the Authority.
- 12 If and to the extent that the quotation is rejected by the Authority then neither party shall have any further obligation to the other in respect of that Package Order Proposal and the Authority shall be entitled to appoint another contractor to undertake such works.

#### **Package Order award**

- 13 Upon request, InfraCo will produce the Package Order for the Authority's approval comprising the following documents in the forms set out in Part B of Appendix 6 (Package Orders) to this Schedule 3B:
- (a) the Package Order form of agreement (incorporating the Conditions of Contract for AKI Infrastructure Works);
  - (b) the completed Contract Data Parts One and Two;
  - (c) the Infrastructure Works Information (Annex 1);
  - (d) the Commercial Information and Site Information (Annex 2);
  - (e) the Infrastructure Works Delivery Plan (Annex 3); and
  - (f) the Package Budget (Annex 4)
  - (g) the Schedule of Cost Components (Annex 5).

- 14 Once approved, the Authority and InfraCo will each execute the Package Order as a deed.

## **Appendix 4 of Schedule 3B**

### **Initial Infrastructure Works Plan**

The Initial Infrastructure Works Plan is contained on the disc provided with this Schedule 3B and is comprised of the following documents:

No	Documents incorporated by reference into Appendix 4
1	<u>KEA R8.1 Initial Engineering Implementation Plan incorporating:</u> KEA R8.1 Appendix A. The CVL Transformation Delivery Programme v05.5 R8.1 Initial Engineering Implementation Plan
2	KEA R8.8 Public Impact of Implementation Plan
3	KEA R8.9 Sys Def Railway Control System
4	KEA R8.9 Signalling Fact sheet
5	KEA R8.10 Imp Plan Railway Control System
6	KEA R8.12 Operational Model Parameters and Export incorporating: i. CVL DCTT full day WO v12.1.2.xlsx ii. CVL Design Concept Model v4 20171102.7z All contained within KEA R12.1.c 10-1.02-KEA-Railsys and Traction Power Simulation Input-V5.0-211217.zip contained within CVL Concept Design Products 1 - 20.zip submitted as part of the response to R12.1c on 21/12/2017.
7	KEA R8.17 Initial Train Power System Definition
8	KEA R8.18 Traction Power Simulation.zip incorporating: i. 10-1.02-KEA-Railsys and Traction Power Simulation Input-V5.0-211217.xlsx ii. CVL DCTT full day WO v12.1.2.xlsx iii. CVL Design Concept Model v4 20171102.7z All contained within KEA R12.1.c 10-1.02-KEA-Railsys and Traction Power Simulation Input-V5.0-211217.zip contained within CVL Concept Design Products 1 - 20.zip submitted as part of the response to R12.1c on 21/12/2017.
9	KEA R8.20 Initial Traction Power System Implementation Plan
10	KEA R8.25 Electric Power and Plan
11	KEA R8.27 Systems Integration Plan
12	KEA R8.34 Interchange evaluation template
13	<u>KEA R8.40.b Letters of support.zip incorporating:</u>

KEA R8.40b Caerphilly Email Letter of support

KEA R8.40b Cardiff Council Letter of support

KEA R8.40b Merthyr Tydfil County Borough Council Letter of support

KEA R8.40b Rhondda Cynon Taf Letter of support

**Appendix 5 of Schedule 3B**

Infrastructure Services

## Part A of Appendix 5 of Schedule 3B

### Conditions of Contract for Infrastructure Services

These Conditions of Contract shall apply to any Infrastructure Services (including but not limited to the Principal Infrastructure Services) provided by InfraCo.

This Part A of Appendix 5 of this Schedule 3B is based on the NEC3 PSC Option C and Option E Consolidated Conditions of Contract, the copyright of which belongs to the Institution of Civil Engineers and has been amended as set out herein. The terms of this Part A of Appendix 5 of this Schedule 3B may not be reproduced, stored in a retrieval system or transmitted by any means without the prior written consent of the Authority, save in relation to the administration of the contract.

### **CONTENTS**

#### **Core Clauses**

- 1 General
- 2 The Parties' Main Responsibilities
- 3 Time
- 4 Quality, Testing and Defects
- 5 Payment
- 6 Compensation Events
- 7 Rights to Material
- 8 Indemnity, Insurance and Liability
- 9 Disputes and Termination
- 10 Additional Conditions of Contract

#### **Main Option Clauses**

- C Target Contract
- E Time Based Contract

## CORE CLAUSES

### 1 GENERAL

#### ACTIONS

10

- 10.1 The Authority and InfraCo shall act as stated in this contract and in a spirit of mutual trust and cooperation. The Authority and InfraCo work together in a collaborative manner acting in good faith to achieve successful delivery of the Infrastructure Services consistent with an economic and efficient whole-life cost approach and in a way which offers best value for money for the Authority.
- 10.2 InfraCo shall at all times perform its obligations in such a way so as to minimise and mitigate the impact upon the Rail Services and the Infrastructure Manager Services.

#### IDENTIFIED AND DEFINED TERMS

11

- 11.1 In these conditions of contract, terms identified in the Contract Data are in italics and defined terms have capital initials.
- 11.2 No alteration or amendments for which this contract does not otherwise make provision may be made to this contract except where expressly recorded in writing by a document expressed to be supplemental to this contract and signed by the Parties.
- 11.3 The definitions and interpretation provisions are set out in Appendix 1 (Definitions) of Schedule 3B to the Infrastructure Agreement unless expressly stated otherwise.
- 11.4A For the purposes of the Principal Infrastructure Services, references in these Conditions of Contract for Infrastructure Services to "the contract" are references to the contract for the performance of the Principal Infrastructure Services, comprising these Conditions of Contract for Infrastructure Services together with:
- (a) the completed Contract Data Part One and Part Two;
  - (b) the Scope (Annex 1);
  - (c) the Commercial Information (Annex 2);
  - (d) the Principal Infrastructure Services Delivery Plan (Annex 3);
  - (e) the Outline Target Price (Annex 4); and
  - (f) the Final Target Price (Annex 5)
- the documents referred to therein and references to the Infrastructure Agreement are references to the Infrastructure Agreement entered into between InfraCo and the Authority.
- 11.4B For the purposes of any Package Order in respect of any Additional Infrastructure Services, references in these Conditions of Contract for Infrastructure Services to "the

contract" are references to the contract formed by the relevant Package Order.

- 11.4C For the avoidance of doubt, where in these conditions of contract there are references to "Infrastructure Services", any right of InfraCo to suspend or terminate or otherwise obtain relief set out herein shall apply to the Principal Infrastructure Services or to the particular Package Order for Additional Infrastructure Services (as the case may be), and not to the Infrastructure Services or the Additional Infrastructure Services as a whole.

## **INTERPRETATION AND THE LAW**

### **12**

- 12.1 These conditions of contract, and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims), shall be governed by and construed in accordance with the laws of England and Wales.
- 12.2 Appendix 7 (Dispute Resolution) of Schedule 3B shall exclusively apply to any dispute or difference between the Parties concerning the Infrastructure Services on any matter or thing of whatsoever nature arising under Schedule 3B and / or any Package Order and / or any contract or in connection therewith or its subject matter or formation.

## **COMMUNICATIONS**

### **13**

- 13.1 Each instruction, certificate, quotation for Compensation Event, submission, proposal, record, acceptance, notification, reply and other communication which this contract requires is communicated in a form which can be read, copied and recorded. Writing is in the *language of this contract* as stated in clause 19 of the Infrastructure Agreement. Where directed by the Authority InfraCo shall provide or receive communications in a format prescribed by the Authority. The form of communications platform for the sharing of documents and other communications between the Parties and process for its operation shall be agreed between the Parties within four (4) weeks of the Novation Time and amended as agreed by the Parties through the Term.
- 13.2 Other than signed documents which have been electronically scanned, notifications, instructions and quotations for Compensation Events under this contract are not effective if made by electronic mail transmission ('for information' copies of notifications may however be issued electronically).
- 13.3 A communication has effect when it is received at the last address notified by the recipient for receiving communications or, if none is notified, at the address of the recipient stated in the Contract Data.
- 13.4 Any communication sent by hand is deemed to be received upon delivery at such address.



- 13.5 If this contract requires the Authority or InfraCo to reply to a communication, unless otherwise stated in this contract, it shall reply within the *period for reply*.
- 13.6 The Authority shall reply to a communication submitted or resubmitted to it by InfraCo for acceptance. If the Authority's reply is not acceptance, the Authority shall state its reasons and InfraCo shall resubmit the communication within the *period for reply* taking account of these reasons. A reason for withholding acceptance is that more information is needed in order to assess InfraCo's submission fully.
- 13.7 The Authority may extend the *period for reply* to a communication if the Authority and InfraCo agree to the extension before the reply is due. The Authority shall notify InfraCo of the extension which has been agreed.
- 13.8 InfraCo shall retain copies of drawings, specifications, computer data files, reports and other documents which record the Infrastructure Services for the *records retention*. The copies shall be retained in the form stated in the Scope. InfraCo shall provide the Authority with explanations of the documents as reasonably required.
- 13.9 A notification which this contract requires is communicated separately from other communications.
- 13.10 The Authority may withhold acceptance of a submission by InfraCo. Withholding acceptance for a reason stated in this contract is not a Compensation Event.
- 13.11 Any communication required under this contract from InfraCo to Others shall be copied simultaneously to the Authority.
- 13.12 The content of minutes of meetings shall not constitute the issue of instructions, the notification of Compensation Events or changes in the Scope.

## **ACCEPTANCE**

### **14**

- 14.1 No acceptance, approvals, comments, instructions, consents or advice or indication of satisfaction given by or from the Authority and / or the Authority's Project Manager, nor any enquiry or inspection which the Authority and / or the Authority's Project Manager makes or has carried out for its benefit or on its behalf at any time, will operate to reduce, extinguish, exclude, limit or modify InfraCo's liabilities duties and obligations under the Infrastructure Agreement or the contract unless it is in writing from the Authority, refers to the Infrastructure Agreement or the contract and clearly identifies the liability, duty or obligation and the extent to which such liability, duty or obligation is to be reduced, extinguished, excluded, limited or modified.

## **EARLY WARNING**

### **15**

- 15.1 The Authority and InfraCo shall give an early warning by notifying the other as soon as either becomes aware of a Material Discovery and / or any matter which could:

- (a) increase the total of the Prices,
- (b) delay Completion or Project Completion,
- (c) change the Accepted Programme,
- (d) delay Achieving a Planned Milestone Delivery Date,
- (e) impair the usefulness of the Infrastructure Services or the Infrastructure Works to the Authority or the performance of the AKI Infrastructure Works and / or the Infrastructure Works and / or the Infrastructure Services and / or the CVL Transformation and / or Associated Projects (as applicable) in use,
- (f) result in a failure to meet the Consents,
- (g) adversely affect the work of the Authority, InfraCo, an IDP, or Others, or
- (h) increase the Price for Infrastructure Services Provided to Date beyond that allowed for in the Final Target Price or in any forecast (as applicable),
- (i) result in the CVL Capital Budget, and/or the Preliminary Design & Discovery Phase Budget being exceeded,
- (j) constitute a Defect,
- (k) increasing the monies payable by the Authority to Others engaged on the CVL Transformation and / or Associated Projects (as applicable) and / or cause any disruption to the operation of the Rail Services,
- (l) result in a breach of this contract or any subcontract,
- (m) lead to InfraCo terminating or suspending any subcontract,
- (n) cause a change to InfraCo procurement plan, or
- (o) cause a breach of any applicable law.

In the notification InfraCo and the Authority's Project Manager shall state whether the early warning must be dealt with immediately or can wait until the next scheduled risk reduction meeting.

InfraCo shall give an early warning by notifying the Authority of any other matter which could increase its total cost. InfraCo shall enter early warning matters in the Risk Register. Early warning of a matter for which a Compensation Event has previously been notified is not required.

In the notification InfraCo shall state whether, and to what extent, the Material Discovery and / or any matter which could delay Achieving a Planned Milestone Delivery Date or delay Completion is the result of an Exceptional Item or a failure of the Authority to provide, or procure, an Authority Dependency.

- 15.2 Risk reduction meetings shall be held at the intervals set out in the Contract Data. In addition to the intervals set out in the Contract Data, the Authority or InfraCo may instruct the other to attend additional risk reduction meetings. Each may ask other people (including but not limited to IDPs) to attend if the other Party agrees.
- 15.3 At a risk reduction meeting, those who attend shall, having regard to and subject to any provisions in this contract, Schedule 3B of the Infrastructure Agreement, the Framework Agreements, or IDP Works Packages relating to which party (if any) is to be responsible for each registered risk, cooperate in:
- (a) making and considering proposals for how the effect of the registered risks can be avoided or reduced,
  - (b) seeking solutions that will bring advantage to all those who will be affected,
  - (c) deciding on the actions which will be taken and who, in accordance with this contract, Schedule 3B of the Infrastructure Agreement, the Framework Agreements, or IDP Works Packages, will take them, and
  - (d) deciding which risks have now been avoided or have passed and can be removed from the Risk Register.
- 15.4 InfraCo shall revise the Risk Register to record the decisions made at each risk reduction meeting and issue the revised Risk Register to the Authority. If a decision needs a change to the Scope, the Authority shall instruct the change following issue of the revised Risk Register. For the avoidance of doubt InfraCo's only entitlement to a change in the Prices, the Completion Date or a Planned Milestone Delivery Date as a result of any revision to the Risk Register is in accordance with clause 60 and clause 65.

## **AMBIGUITIES AND INCONSISTENCIES 16**

- 16.1 The Authority or InfraCo shall notify the other as soon as either becomes aware of an ambiguity or inconsistency in or between any of the following documents:
- (a) the Infrastructure Agreement and the documents which are part of the Infrastructure Agreement,
  - (b) the documents entered into with the IDPs, or
  - (c) this contract.

The Authority shall give an instruction to resolve the ambiguity or inconsistency. Such instruction is not a Compensation Event where the ambiguity or inconsistency arises within or between any documents provided by InfraCo or on behalf of InfraCo and InfraCo shall be responsible for any ambiguity or inconsistency within or between any documents provided by InfraCo or on behalf of InfraCo.

For the avoidance of doubt, a condition precedent to InfraCo's entitlement to a Compensation Event shall be notification by InfraCo to the Authority of an ambiguity or inconsistency within the later of:

- i) three (3) months of the Effective Date; and
- ii) three (3) months of InfraCo's receipt of the document which contains the ambiguity or inconsistency.

## **ILLEGAL AND IMPOSSIBLE REQUIREMENTS 17**

- 17.1 InfraCo shall notify the Authority as soon as it considers that the Scope requires it to do anything which is illegal or impossible. If the Authority agrees, it shall give an instruction to change the Scope appropriately.

## **THE PARTIES' MAIN OBLIGATIONS 2**

### **THE AUTHORITY'S OBLIGATIONS 20**

- 20.1 The Authority shall provide the information and things which the contract requires it to provide in accordance with the Accepted Programme.
- 20.2 The Authority may give an instruction to InfraCo which changes the Scope, a Planned Milestone Delivery Date or the Infrastructure Works Plan. After Completion, an instruction shall only be given if it is necessary to Provide the Infrastructure Services.
- 20.3 The Authority shall not give an instruction to InfraCo which would require InfraCo to act in a way that is outside InfraCo's professional code of conduct.
- 20.4 The Authority may give an instruction to InfraCo omitting Additional Infrastructure Services from any contract or Package Order for any reason and may procure that such omitted Additional Infrastructure Services or obligations be provided by Others.

### **INFRACO'S OBLIGATIONS 21**

**Services to be provided in accordance with the Scope, etc**

- 21.1 InfraCo acknowledges that the performance of its duties under this contract is necessary for the purposes of the CVL Transformation and Associated Projects.

InfraCo shall Provide the Infrastructure Services in accordance with the terms of this contract and in compliance

with any applicable law, Statutory Requirements, the Consents and the relevant Standards.

Subject to the above paragraph, InfraCo shall Provide the Infrastructure Services in accordance with the Required Standard. In exercising this Required Standard, InfraCo shall comply with the Sustainable Development Strategy, the CVL Engineering Requirements, the Code of Construction Practice and the instructions of the Authority.

InfraCo shall proceed regularly and diligently with the Infrastructure Services and use all reasonable endeavours to prevent and / or reduce any delay in the progress of the Infrastructure Services.

Any work relating to or reasonably to be inferred from the Scope which is not specified in the Scope as the responsibility of the Authority, the IDPs, or Others is deemed to be the responsibility of InfraCo. The Authority and the IDPs are only responsible for any work specifically allocated to them in the Scope.

#### **Standard of care**

- 21.2 InfraCo shall be liable for any Defect in the Infrastructure Services unless InfraCo can prove that InfraCo did comply with its obligations under the contract. If InfraCo corrects a Defect for which it is not liable under this contract it is a Compensation Event.

#### **No Deleterious Materials**

- 21.3 Subject to the Scope and any changes to it, InfraCo warrants to the Authority that to the extent InfraCo is either obliged to specify or approve products or materials for use in the performance of the Infrastructure Services and / or the AKI Infrastructure Works or shall so specify or approve, InfraCo will not specify or approve any Deleterious Materials.
- 21.4 If in the performance of its duties under the Infrastructure Agreement, any Package Order and the contract, InfraCo becomes aware that it or any person has specified, approved or used any such products or materials, InfraCo shall immediately notify the Authority in writing. This clause does not create any additional duty for InfraCo to inspect or check the work of Others which is not otherwise required by the Infrastructure Agreement and / or any Package Order and / or the contract.

#### **Comply with laws and regulations**

- 21.5 In performing the Infrastructure Services and its obligations under this Schedule 3B and any Package Order, InfraCo shall comply with the applicable law, the Standards and the Statutory Requirements to the extent that they impose duties, obligations or restrictions on InfraCo.
- 21.6 In the event that InfraCo does not fulfil its obligations under this contract due to the infringement of any applicable law,

Standard or Statutory Requirement and the Authority thereby incurs Losses to which it would not otherwise be liable, the amount of such legally awarded and properly mitigated Losses or such other amount set out in a settlement agreement reasonably entered into by the Authority with a third party shall be reimbursed by InfraCo to the Authority as a debt.

**Comply with applicable standards**

- 21.7 In so far as the Standards relate to any technical standards (as opposed to procedural standards) required by the Authority or Network Rail, InfraCo warrants that it will perform the Infrastructure Services so that they comply with any such Authority or Network Rail standards in force as at the date of this Agreement.

**Timely provision of information**

- 21.8 InfraCo shall provide information and things which the Infrastructure Agreement, any Package Order and the contract requires it to provide in accordance with the Accepted Programme and without the need for programmes or timetables to be extended.

**Prevent nuisance**

- 21.9 InfraCo shall use all reasonable endeavours to prevent any public or private nuisance including nuisance caused by noxious fumes, noisy working operations or the deposit of materials or debris or other interference with the rights of adjoining or neighbouring landowners, tenants or occupiers or Statutory Undertakers arising out of the Infrastructure Services and shall provide method statements to the Authority upon request setting out InfraCo's proposals for preventing any public or private nuisance. If the Authority (acting reasonably) considers that a claim for public or private nuisance arising out of the actions or inaction of InfraCo should be defended, if the Authority so elects, InfraCo shall assist the Authority in defending any action or proceedings which may be instituted in relation thereto.

**Trespass**

- 21.10 Without prejudice to InfraCo's obligations under clause 21.9 if the carrying out of the Infrastructure Services is likely to necessitate any interference (including the over-sailing of tower crane jibs) with the rights of adjoining or neighbouring landowners, tenants or occupiers, InfraCo shall obtain the prior written agreement of such landowners, tenants or occupiers subject to the approval of the Authority (such approval not to be unreasonably withheld or delayed). InfraCo shall comply in every respect with the conditions contained in such agreements.

**PEOPLE**

**22**

- 22.1 InfraCo shall either employ each Key Person named to do the job for InfraCo stated in the Contract Data or employ a replacement person who has been accepted by the Authority. InfraCo shall submit the name, relevant qualifications, training

and experience of a proposed replacement person to the Authority for acceptance. A reason for not accepting the person is that that person's relevant qualifications and experience are not as good as those of the person who is to be replaced.

22.2 The Authority may, having stated its reasons, instruct InfraCo to remove any person under the control of InfraCo. InfraCo shall then arrange that, after one day, such person has no further connection with the Infrastructure Services.

22.3 InfraCo shall not remove any Key Person from the Infrastructure Agreement, any Package Order or the contract for more than twenty one (21) consecutive days without the prior written consent of the Authority, save where such Key Person is absent on sick leave, or other statutory leave (such as jury service/maternity/paternity or adoption leave) or has left InfraCo's employment in which case InfraCo shall provide a suitable replacement, who is to be approved by the Authority.

## **WORKING WITH THE AUTHORITY AND OTHERS**

### **23**

23.1 InfraCo shall coordinate its activities with Others as required by the Scope and in accordance with the instructions of the Authority.

23.2 InfraCo shall cooperate with the Authority and Others in obtaining and providing information which the Authority and Others require in connection with their works and the Infrastructure Services.

23.3 Where necessary to Provide the Infrastructure Services, InfraCo shall hold or attend meetings with Others. InfraCo shall inform the Authority of these meetings beforehand and the Authority may attend them.

23.4 Not used

23.5 InfraCo shall use best endeavours to Provide the Infrastructure Services and correct Defects in such a way as not to cause delay or disruption to the Authority, the IDPs and / or Others. In the event that Providing the Infrastructure Services or correcting Defects causes delay or disruption to the Authority, the IDPs and / or Others, InfraCo shall take all reasonable steps to mitigate and minimise such delay or disruption.

23.6 For the purposes of clause 23.5, the obligation to use 'best endeavours' shall be satisfied where InfraCo demonstrates to the Authority's satisfaction (acting reasonably) that InfraCo has complied with the Code of Construction Practice and the CVL Engineering Requirements.

## **SUBCONTRACTING**

### **24**

**InfraCo responsible  
for work of  
Subcontractors**

24.1 If InfraCo subcontracts work, it shall be responsible for Providing the Infrastructure Services as if it had not subcontracted. The Infrastructure Agreement and any Package Order and the contract shall apply as if a Subcontractor's employees were InfraCo's.

**Authority  
acceptance  
Subcontractors of**

24.2 Not used.

24.3 InfraCo shall submit to the Authority for acceptance, the name of each proposed Subcontractor together with a copy of the proposed subcontract documentation and such other information as the Authority may require. InfraCo shall not appoint the Subcontractor until the Authority accepts it.

24.4 Reasons for not accepting a proposed Subcontractor and / or a proposed subcontract include:

- (a) InfraCo has not complied with the requirements of clause 24.3 and obtained the Authority's approval,
- (b) the terms of the proposed subcontract are not on NEC terms or do not otherwise, in the Authority's reasonable opinion, adequately reflect the terms of the Infrastructure Agreement and / or any Package Order and / or the contract and / or are inconsistent with the terms of the Infrastructure Agreement and / or any Package Order and / or the contract,
- (c) the appointment of the proposed Subcontractor and / or the proposed subcontract will not allow InfraCo to Provide the Infrastructure Services,
- (d) the proposed subcontract conditions and / or the proposed subcontract works or services do not represent best value,
- (e) the proposed Subcontractor is unable to meet, in the Authority's reasonable opinion, the criteria set out in the Scope,
- (f) the proposed subcontract work or services represents, in the Authority's reasonable opinion, too large a proportion of the total Scope,
- (g) the proposed subcontract conditions do not include provision(s) that:
  - (i) require the proposed Subcontractor to meet the Milestone Criteria stated for a Planned Milestone Delivery Date on or before such Planned Milestone Delivery Date and to achieve Completion on or before the Completion Date and to minimise the level of the Prices,



- (ii) require the proposed Subcontractor to maintain accounts and records and to grant audit rights to the Authority and its authorised representatives of an equivalent extent and nature to those required by the Infrastructure Agreement and / or any Package Order and / or the contract,
- (iii) require the proposed Subcontractor to assign to the Authority the IPR in all Documentation prepared or developed by or on behalf of the proposed Subcontractor in the performance of the subcontract,
- (iv) impose equivalent obligations of confidentiality on the proposed Subcontractor to those required by the Infrastructure Agreement and / or any Package Order and / or the contract,
- (v) impose equivalent obligations regarding health and safety (including Safety Breaches) as required by the Infrastructure Agreement,
- (h) the proposed subcontract not obliging the Subcontractor to provide a collateral warranty in favour of the Authority or the beneficiaries identified in clause 101 within the timescale specified in clause 101 on the terms set out in Appendix 9 (Forms of Collateral Warranties) (as the case may be) of Schedule 3B of the Infrastructure Agreement,
- (i) the proposed subcontract not including a statement that the parties to the subcontract must act in a spirit of mutual trust and co-operation,
- (j) the proposed sub-contract states that the proposed Subcontractor shall not be entitled to a Compensation Event in circumstances where InfraCo is entitled to a Compensation Event,
- (k) the proposed subcontract does not state that InfraCo shall be entitled to suspend performance of the proposed sub-contract where requested to do so by the Authority,
- (l) the proposed subcontract does not state that the proposed Subcontractor shall not be entitled to any loss of profits, loss of fees, loss of chance or other similar losses or any indirect losses or consequential losses arising out of termination of the Subcontractor's engagement,
- (m) the identity of the proposed Subcontractor is not acceptable to the Authority (acting reasonably),
- (n) the proposed Subcontractor is unable to demonstrate to the satisfaction of the Authority that it has professional indemnity insurance at a level that is, in the Authority's reasonable opinion

		sufficient (subject to a maximum of [REDACTED] in relation to InfraCo and a maximum of [REDACTED] in relation to other Subcontractors) having regard to the nature and extent of the services and / or works to be carried out by the proposed Subcontractor,
	(o)	the proposed subcontract terms are not consistent with the terms of this contract, or
	(p)	subject to clause 24.4(q), InfraCo has selected an Affiliate of InfraCo as a Subcontractor and such Subcontractor has not been reasonably selected on the basis of a fair and open competition and / or the proposed subcontract terms are on terms which are unreasonably favourable to such Affiliate.
	(q)	to the extent the rates or prices included in the subcontract documentation are higher than the equivalent rates or prices included in Appendix 25 of this Schedule 3B (as indexed in accordance therewith).
	24.5	InfraCo shall submit the proposed contract data for each proposed subcontract for acceptance to the Authority if an NEC contract is proposed and the Authority instructs InfraCo to make the submission.  A reason for not accepting the proposed contract data would be that its use will not allow InfraCo to Provide the Infrastructure Services.
	24.6	InfraCo shall obtain the prior written approval of the Authority to the appointment of a replacement Subcontractor and the proposed replacement subcontract documentation in the event of any first Subcontractor's appointment being determined and the Parties shall follow the approval and acceptance procedure set out in this Clause 24.
	24.7	Neither the objection to nor any failure to raise an objection to a proposed Subcontractor by the Authority shall relive InfraCo of any liability or obligation under the Infrastructure Agreement and / or any Package Order and / or the contract.
	24.8	Not used
<b>OTHER RESPONSIBILITIES</b>	<b>25</b>	
	25.1	InfraCo shall obtain approvals from Others where necessary to Provide the Infrastructure Services.
	25.2	The Authority shall provide access to a person, place or thing to InfraCo as stated in the Contract Data and the Infrastructure Works Plan on or before the later of its <i>access date</i> and the <i>access date</i> for it shown on the Accepted Programme.
	25.3	InfraCo shall obey an instruction which is in accordance with the Infrastructure Agreement or the contract and is given to it by the Authority.

- 25.4 InfraCo shall act in accordance with the health and safety requirements stated in the Scope and in accordance with the access requirements stated in any Network Rail Access Agreements and / or Connection Agreements and / or any other terms governing access to the CVL Assets or Network Rail's Network.
- 25.4A InfraCo will grant all necessary rights in its possession and will enter into such additional agreements reasonably required by the IDPs and / or the Authority to enable the IDPs to access and / or take temporary possession of the CVL Assets to Provide the Infrastructure Works in accordance with their obligations pursuant to the IDP Works Packages.
- 25.4B Prior to CVL Asset Transfer, ODP shall arrange with and procure from Network Rail such access to persons, places or things as it requires to perform the Principal Infrastructure Services using Network Rail's standard processes and entering into such asset protection agreements as are required to procure such access.
- 25.4C InfraCo undertakes that all its personnel and those of its Subcontractors and subconsultants shall comply with all of the Authority's policies and standards that are relevant to Providing the Infrastructure Services, including those relating to occupational health and safety, security, business ethics, work place harassment, drugs and alcohol and illegal substances and any other on site regulations specified by the Authority for personnel working at Premises or accessing the Authority's computer systems. The Authority shall provide InfraCo with copies of such policies on request (the **"Authority's Policies"**).

**Special requirements of Statutory Bodies**

- 25.5 InfraCo:
- (a) shall comply with all requirements of Statutory Undertakers and shall take these special requirements into account in order to Provide the Infrastructure Services,
  - (b) acknowledges that the Authority does not warrant the accuracy or completeness of any data or information provided to InfraCo by the Authority or the Authority's Project Manager relating to the location, size, nature or condition of services in, on, over or under the Site or in the vicinity of the Site, and
  - (c) acknowledges that it neither has nor will have any claim of any kind against the Authority based upon the accuracy or completeness of any such data or information.

**Obtains all necessary consents**

	25.6	InfraCo must obtain from and / or give to the IDPs and Others all Consents and notices necessary or appropriate to enable it to Provide the Infrastructure Services other than those which the Scope states will be obtained or given by the Authority or Others. InfraCo must ensure that wherever necessary during the course of Providing the Infrastructure Services, the conditions and requirements of the Consents and notices, whether obtained by InfraCo, the IDPs or the Authority are complied with and that the same are renewed whenever necessary or appropriate.
	25.7	InfraCo shall inform the Authority promptly in the event that it considers in its professional opinion (acting reasonably) that a delay in gaining third party approvals and/ or agreements may prevent the achievement of the Milestone Criteria by the Planned Milestone Delivery Date and shall provide the Authority with weekly updates on progress of obtaining the third party approvals and / or agreements until the relevant approval and/ or agreement is obtained.
	25.8	Where the Authority considers in its opinion (acting reasonably) that it is unlikely that the relevant approval and / or agreement referred to in clause 25.7 will be obtained within acceptable timescales and / or at reasonable cost, the Authority may instruct InfraCo that InfraCo has failed to obtain the relevant approval of and / or agreement with the third party. In such an event, InfraCo shall consider alternative approaches for delivery of the CVL Transformation and / or Associated Projects (as applicable) as may be required and present alternative proposals to the Authority for approval.
<b>TIME</b>	<b>3</b>	
<b>STARTING, COMPLETION AND MILESTONES</b>	<b>30</b>	
	30.1	Subject to clause 30.1A, InfraCo shall start work on the Starting Date and shall Provide the Infrastructure Services so that Completion is on or before the Completion Date.
	30.1A	InfraCo shall not commence the Principal Infrastructure Services to be performed during the Detailed Design and Management Phase until the date stated in the Notice to Proceed issued by the Authority to the ODP.
	30.2	InfraCo shall notify the Authority when in InfraCo's opinion the Principal Infrastructure Services or Additional Infrastructure Services (as applicable) have achieved Completion. InfraCo shall provide all information and evidence listed or identified in the Scope as being required and all other information and evidence which the Authority may reasonably request to satisfy the Authority that the Principal Infrastructure Services or Additional Infrastructure Services (as applicable) have been so completed. If the Authority is so satisfied, the Authority shall decide the date of Completion and certify it within twenty eight (28) days of that date.
	30.3	InfraCo shall Provide the Principal Infrastructure Services or Additional Infrastructure Services (as applicable) so as to

Achieve each Milestone by the applicable Planned Milestone Delivery Date.

- 30.4 Subject to clause 30.8, a Milestone Achievement Certificate shall be issued by the Authority within the *period for reply* once all Milestone Deliverables within the Milestone have met the relevant Milestone Criteria.
- 30.5 Upon receipt of a Milestone Achievement Certificate InfraCo shall be entitled to the relevant Milestone Payment and such payment shall be processed in accordance with clause 5.
- 30.6 No Milestone Payments shall be made by the Authority to InfraCo in respect of any Milestone until the date such Milestone is Achieved.
- 30.7 The Authority's certification of any Milestones shall not indicate or imply that the Authority agrees or is satisfied that the requirements of InfraCo to deliver the Infrastructure Services are fully complied with.
- 30.8 Where any Milestone is Achieved earlier than the Planned Milestone Delivery Date any decision to issue a Milestone Achievement Certificate in advance of the Planned Milestone Delivery Date shall be at the Authority's sole discretion. If the Authority chooses not to issue a Milestone Achievement Certificate in advance of the Planned Milestone Delivery Date it shall issue the Milestone Achievement Certificate on the Planned Milestone Delivery Date. The Authority shall upon request additionally provide confirmation of the achievement of all of the Milestone Deliverables within a Milestone in advance of issue of such Milestone Achievement Certificate.
- 30.9 Subject to clause 60, all conditions affecting the Achievement of Milestones are at InfraCo's risk subject to any Exceptional Items or Authority Dependencies.

## **THE PROGRAMME 31**

- 31.1 If a programme is not identified in the Contract Data, InfraCo shall submit a first programme to the Authority for acceptance within the period stated in the Contract Data.
- 31.2 InfraCo shall show on each programme which it submits for acceptance:
  - (a) the Starting Date, *access dates*, Planned Milestone Delivery Dates, and Completion Date,
  - (b) planned Completion,
  - (c) the order and timing of the operations which InfraCo plans to do in order to Provide the Infrastructure Services,
  - (d) the order and timing of the work of the Authority and Others as last agreed with them by InfraCo or, if not so agreed, as stated in the Scope,
  - (e) the dates when InfraCo plans to meet the Milestone Criteria stated for the Milestones and to complete other

work or services needed to allow the Authority and Others to do their work or services,

- (f) provisions for,
  - (i) float,
  - (ii) time risk allowances,
  - (iii) environmental and health and safety requirements, and
  - (iv) the procedures set out in the Infrastructure Agreement,
- (g) the dates when, in order to Provide the Infrastructure Services in accordance with InfraCo's programme, InfraCo will need:
  - (i) access to a person, place or thing if later than its *access date*,
  - (ii) information and things to be provided by the Authority, and
  - (iii) information and approval from Others,
- (h) access requirements in accordance with any Network Rail Access Agreements and / or Connection Agreements and / or any other terms governing access to the CVL Assets or Network Rail's Network,
- (i) for each operation, a statement of how InfraCo plans to do the work identifying the resources which InfraCo plans to use, and
- (j) other information which the Scope requires InfraCo to show on a programme submitted for acceptance.

31.3 Within two (2) weeks of InfraCo submitting a programme to it for acceptance, the Authority shall either accept the programme or notify InfraCo of its reasons for not accepting it. A reason for not accepting a programme is that:

- (a) InfraCo's plans which it shows are not practicable,
- (b) it does not show the information which the Infrastructure Agreement requires,
- (c) it does not represent InfraCo's plans realistically,
- (d) it does not comply with the Scope,
- (e) it does not allow the Authority and / or Others to start or provide and complete their work as planned and subsequently to maintain any assets or facilities delivered as a result of such work,

- (f) it is not in a format which is accepted for use by the Authority,
- (g) the co-ordination of the work of InfraCo and Others who are performing or will perform the Infrastructure Works is unsuitable.

## REVISING THE PROGRAMME 32

- 32.1 InfraCo shows on each revised programme:
- (a) the actual progress achieved on each operation and its effect upon the timing of the remaining work,
  - (b) the effects of implemented Compensation Events,
  - (c) the effects of decisions reached and approved by the Authority at risk reduction meetings,
  - (d) how InfraCo plans to deal with any delays and to correct notified Defects, and
  - (e) any other changes which InfraCo proposes to make to the Accepted Programme.
- 32.2 InfraCo shall submit a revised programme to the Authority for acceptance at no longer interval than the interval stated in the Contract Data from the Starting Date until Completion of the whole of the Infrastructure Services, and:
- (a) within the *period for reply* after the Authority has instructed InfraCo to submit a revised programme,
  - (b) when InfraCo chooses to submit a revised programme and, in any case,
  - (c) following the implementation of a Compensation Event which has an impact on Completion or a Planned Milestone Delivery Date.

## INSTRUCTIONS TO STOP OR NOT TO START WORK 33

The Authority may instruct InfraCo to stop or not to start any work or services and may later instruct InfraCo that InfraCo may re-start or start it.

## ACCELERATION 34

- 34.1 The Authority may instruct InfraCo to submit a quotation for acceleration to achieve Completion before the Completion Date. The Authority shall state changes to the Planned Milestone Delivery Dates to be included in the quotation. A quotation for an acceleration shall comprise proposed changes to the Prices and a revised programme showing the earlier Completion Date and the changed Planned Milestone Delivery Dates. InfraCo shall submit details of its assessment

with each quotation. InfraCo shall submit a quotation or gives its reasons for not doing so within the *period for reply*.

- 34.2 When the Authority accepts a quotation for acceleration, InfraCo submits changes to the Completion Date, the Planned Milestone Delivery Dates and any adjustment to the Prices to the Authority for acceptance.

## **QUALITY**

**4**

## **QUALITY MANAGEMENT SYSTEM**

**40**

- 40.1 InfraCo shall implement and operate a quality management system for Providing the Infrastructure Services as stated in the Scope. The quality management system shall comply with the requirements stated in the Scope.

- 40.2 InfraCo shall provide the Authority, within the period stated in the Contract Data, with a quality policy statement and a quality management plan for acceptance. The quality policy statement and quality management plan shall comply with the requirements stated in the Scope.

- 40.3 InfraCo shall comply with an instruction from the Authority to InfraCo to correct a failure to comply with the quality management plan or quality policy statement.

## **CORRECTING DEFECTS**

**41**

- 41.1 Until the Defects Date, the Authority shall notify InfraCo of each Defect as soon as it finds it and InfraCo shall notify the Authority of each Defect as soon as it finds it. After Completion and until the Defects Date, InfraCo shall notify the Authority of each Defect as soon as it finds it. The Authority's rights in respect of a Defect which the Authority has not found or notified by the Defects Date are not affected.

- 41.2 InfraCo shall correct a Defect, whether or not the Authority notifies InfraCo of it, within a time which minimises the adverse effect on the Authority or Others. If InfraCo does not correct a Defect within a reasonable time having regard to the nature of the Defect, the Authority shall assess the cost to the Authority of having the Defect corrected by other people and InfraCo shall pay that amount.

- 41.3 For the avoidance of doubt, InfraCo will continue to be liable for latent Defects after:

- (a) the Defects Date,
- (b) the operation of this clause 41,
- (c) the termination of this contract and / or the Infrastructure Agreement for any reason (including breach by the Authority),

in accordance with the *law of the contract*.



- 41.4 The Parties may each propose to the other that the Scope is changed so that a Defect does not have to be corrected. If the Parties are prepared to consider the change InfraCo submits a quotation for reduced Prices and, where applicable, an earlier Completion Date to the Authority for acceptance. If the Authority (at its sole discretion) accepts the quotation it shall give an instruction to change the Scope, the Prices, and where applicable the Completion Date.
- 41.5 InfraCo shall carry out such re-design and re-testing or Infrastructure Services at its own cost as may be necessary as a result of a Defect being identified to correct the Defect and prevent a recurrence.
- 41.6 InfraCo acknowledges and agrees that if InfraCo does not commence, carry out, or complete the correction of an identified Critical Defect within the applicable timescale specified by the Authority (acting reasonably) the Authority may arrange for a Critical Defect to be corrected by Others at the cost of InfraCo. Without prejudice to any other right or remedy of the Authority, InfraCo shall pay to the Authority all costs reimbursed by the Authority to Others for correcting a Critical Defect.

**PAYMENT 5**

**ASSESSING THE 50  
AMOUNT DUE**

- 50.1 InfraCo shall assess the amount due at each assessment date and submit an application for payment not later than 10 days after each assessment date setting out the amount it considers to be due and the basis upon which it has been calculated. The first assessment date is decided by InfraCo to suit the procedures of the Parties and is not later than the *assessment interval* after the Starting Date and subsequent assessment dates occur on the last Thursday in each month:
- (a) until eight weeks after the *defects date*, and
  - (b) at Completion of each contract for Additional Infrastructure Services, and
  - (c) at Completion of the whole of the Principal Infrastructure Services.
- 50.2 Applications for payment and invoices submitted by InfraCo shall include the details stated in Annex 2 (Commercial Information) of Part B of Appendix 5 of Schedule 3B to show how the amount due has been assessed. The first invoice is for the amount due. Other invoices shall be for the change in the amount due since the previous invoice.
- 50.3 The amount due shall be:
- (a) the Price for Infrastructure Services Provided to Date calculated in accordance with the Contract Data,

- (b) the amount of the Expenses properly spent by InfraCo in Providing the Infrastructure Services, and
- (c) other amounts to be paid to InfraCo,

less amounts to be paid by, deducted, or retained from InfraCo as permitted by the Infrastructure Agreement or the contract.

Any tax which the law requires the Authority to pay to InfraCo shall be included in the amount due.

50.4 It is a condition precedent to the validity of an application for payment (and to InfraCo's entitlement to payment in respect thereof) that:

- (a) the application for payment is in the form required by this contract or otherwise as required by the Authority from time to time,
- (b) the application for payment is in respect of services properly carried out in accordance with this contract, and
- (c) insofar as the application for payment includes any payment that is the subject of any Planned Milestone Delivery Date, InfraCo has fully complied with any Milestone Criteria for that Milestone and a Milestone Achievement Certificate has been issued by the Authority in accordance with clause 30.

50.5 The Authority may in any Payment Notice (as defined in clause 51.6) make any correction or modification that should properly be made to any previous Payment Notice, including as a result of any set off or deduction from any sum due to InfraCo under this contract.

50.6 The only payment which InfraCo is entitled to under this contract in respect of any profit and corporate overheads is to the Fixed Profit and Fixed Overheads, both as may be payable in accordance with the express provisions of this contract.

50.7 The ODP shall be paid by the Authority for carrying out the Discovery Phase Services delivered by the ODP pursuant to Schedule 3A of the ODP Grant Agreement during the Pre CVL Asset Transfer Phase as part of the Fee for the Principal Infrastructure Services and the CVL Capital Budget.

50.8 Until the end of the Preliminary Design and Discovery Phase, the ODP's share of the cost of the Independent Reporter shall be an amount due under clause 50.3(c) of the Conditions of Contract for Infrastructure Services.

## **PAYMENT 51**

**Dates for payment** 51.1 The date on which a payment becomes due is 14 days after the date of receipt by the Authority of InfraCo's application for payment (the "**Due Date**").

Each payment is the amount due less previous payments. If the amount due as notified in the Payment Notice pursuant to clause 51.6 is a negative sum, a payment is made by InfraCo

		to the Authority. Otherwise, payments are made by the Authority to InfraCo.
	51.2	Payments are in the currency of the Infrastructure Agreement unless otherwise stated in the Contract Data.
	51.3	If the Authority does not accept InfraCo's assessment of the amount due, it shall notify InfraCo of its reasons and the amount which it assesses is due before the Due Date.
	51.4	The Authority or, if applicable, InfraCo makes each payment due under this contract by the final date for payment. Interest is paid on any late payment. Interest is assessed from the date by which the late payment should have been made until the date when the late payment is made, and is included in the first assessment after the late payment is made.
	51.4A	The final date for payment is 7 days or a different period if stated in the Contract Data after the Due Date.
	51.5	Interest is simple interest and is calculated on a daily basis at the <i>interest rate</i> and this constitutes a substantial remedy for the purposes of Section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998.
	51.6	Not later than the Due Date, the Authority shall issue a notice (a " <b>Payment Notice</b> ") to InfraCo stating the amount due as at the assessment date, and the basis on which the amount was calculated and, subject to any Pay Less Notice given pursuant to clause 51.7, the amount of the payment to be made on or before the final date for payment shall be the sum stated in the Payment Notice.  Subject to clause 51.10 and unless a notice has been served under clause 51.7, the paying party shall pay the sum referred to in the Payment Notice (or, if the Authority has not served the Payment Notice, the sum referred to in InfraCo's application referred to in clause 50.1) (in this clause 51, the " <b>notified sum</b> ") on or before the final date for payment.
	51.6A	Within two days of the due date the payee shall deliver to the paying party a VAT invoice for the notified sum.  The payee shall issue a corrected VAT invoice, where required, immediately upon receipt of a Pay Less Notice.
<b>Notice of intention to pay less</b>	51.7	If either Party intends to pay less than the notified sum, it shall notify the other Party not later than 1 day (the prescribed period) before the final date for payment by stating the amount considered to be due and the basis on which that sum is calculated (a " <b>Pay Less Notice</b> "). In the case of the Authority, the Pay Less Notice (or Payment Notice) may be given on the Authority's behalf by the Authority's Project Manager or by any other person who the Authority notifies InfraCo as being authorised to do so. A Party shall not withhold payment of an amount due under this contract unless it has notified its intention to pay less than the notified sum as required by this contract. If the Authority issues such a Pay Less Notice, InfraCo shall raise a credit note for the difference between the amount certified and the amount notified by the Authority as due together with the difference in the amount of VAT due and

issue that credit note to the Authority the day after receipt of the Pay Less Notice.

## **Suspension of performance**

51.8

Without affecting InfraCo's other rights and remedies, if:

- (a) payment to InfraCo by the Authority in respect of the Infrastructure Services has not been paid in full by the final date for payment in accordance with this contract, and
- (b) notification of intention to pay less than the notified sum has not been given in accordance with clause 51.7,

InfraCo may issue a written notice to the Authority of its intention to exercise its right to suspend performance under the Act setting out the grounds for suspension (the "**First Notice**"). If the failure continues for 28 days after receipt by the Authority of the First Notice, InfraCo may exercise its right to suspend performance under the Act with immediate effect by giving the Authority a further notice in writing. If InfraCo exercises its right under the Act to suspend its performance, it is a Compensation Event.

51.9

The right of InfraCo to suspend its performance shall end when the amount that should be paid to InfraCo is paid to it in full.

51.10

If InfraCo's employment is terminated under clause 90.1(a) because InfraCo has become insolvent, the Authority need not pay any sum due to InfraCo other than any amount due to it under clause 92.1 either:

- (a) where InfraCo becomes insolvent prior to the prescribed period before the final date for payment, provided that the Authority or Authority's Project Manager issues a Pay Less Notice notifying the Authority's intention not to pay such sum, or
- (b) in any event, if InfraCo becomes insolvent after the prescribed period before the final date for payment.

51.11

Not used.

## **Accounts and records**

51.12

Without prejudice to clause 52, InfraCo shall keep accounts and records of its Time Charge and Expenses and allow the Authority to inspect them at any time within working hours.

## **Rebasing**

51.13

Rates / Prices will be calculated in accordance with Schedule 8 (Payments) of the Infrastructure Agreement.

## **COMPENSATION EVENTS**

6

**COMPENSATION  
EVENTS**

**60**

60.1

The following are Compensation Events:

- (a) An instruction provided by the Authority which changes the Scope or an Infrastructure Service Delivery Plan.
- (b) Failure by the Authority to provide access to any Premises provided by the Authority for InfraCo as stated in the contract.
- (c) Failure by the Authority to provide something which it is to provide by the date for providing it shown on the Accepted Programme.
- (d) An instruction provided by the Authority to stop or not to start any work or to change a Planned Milestone Delivery Date.
- (e) Failure by the Authority or Others (save for any member of InfraCo's consortium appointed as an IDP to Provide the Infrastructure Works) to work within the times shown on the Accepted Programme or within the conditions stated in the Scope.
- (f) Failure by the Authority to reply to a communication from InfraCo within the period required by this contract.
- (g) A change in a decision by the Authority which it has previously communicated to InfraCo.
- (h) An acceptance being withheld by the Authority (other than acceptance of a quotation for acceleration) for a reason not stated in the contract.
- (i) Notification by the Authority of a correction to an assumption which it has stated about a Compensation Event.
- (j) A breach of contract or act of prevention by the Authority which is not one of the other Compensation Events in the contract.
- (k) Notification by the Authority to InfraCo of a policy with which it is to comply that is not listed in the Contract Data or an Infrastructure Service Delivery Plan.
- (l) Exercise by InfraCo of its right under the Act to suspend performance in accordance with clause 51.8.
- (m) An event which is one of the Authority Dependencies or Exceptional Items (subject to clause 60.3).
- (n) Any delay or act of prevention by an IDP (save for any member of InfraCo's consortium appointed as an IDP to provide Infrastructure Works), provided that this

Compensation Event shall only apply to the Principal Infrastructure Services

- (i) being carried out during the Preliminary Design and Discovery Phase and the Detailed Design and Management Phase; and
- (ii) which are subject to Option E, and provided that
  - (A) InfraCo has complied with its obligations under this contract; and
  - (B) such delay or prevention does not arise to an act, default or omission of InfraCo or its Subcontractors.
- (o) Notification by the Authority to InfraCo of a Third Party Agreement after the Effective Date save for any Third Party Agreement of which InfraCo is already aware of (as referred to in clause 105.1(c)).
- (p) Notification by the Authority to InfraCo of a change in law in accordance with clause 123.1.
- (q) Not used.
- (r) In relation to the Principal Infrastructure Services only, the cost of relocating existing utilities as a direct consequence of, and which are directly affected by, provision of the on-street running of the South Wales Metro to the Flourish Station sited at Cardiff Bay.

60.2 InfraCo shall take all reasonable steps to avoid and / or mitigate delay, disruption and costs arising from a Compensation Event whilst nevertheless complying with its obligations under the Infrastructure Agreement and the contract.

60.3 In respect of any Compensation Event which arises from the Exceptional Item listed in paragraph 1.1(b) of Appendix 2 of Schedule 18.2 of the Infrastructure Agreement, InfraCo shall only be entitled to claim for an extension of time to the Completion Date and a Planned Milestone Delivery Date and shall not be entitled to claim for any cost arising from such Compensation Event, including any change to the Prices.

60.4 InfraCo shall not be entitled to relief under this clause 60 where the relevant delay, disruption or costs arise from an act, default or omission of InfraCo or its Subcontractors in carrying out any AKI Infrastructure Works.

## NOTIFYING COMPENSATION EVENTS

61

61.1 For Compensation Events which arise from the Authority giving an instruction, changing an earlier decision or

correcting an assumption, the Authority shall notify InfraCo of the Compensation Event at the time of that communication. The Authority will then instruct InfraCo to submit quotations, unless the event arises from a fault of InfraCo or quotations have already been submitted. InfraCo shall put the instruction or changed decision into effect.

61.2 The Authority may instruct InfraCo to submit quotations for a proposed instruction or a proposed changed decision. InfraCo shall not put a proposed instruction or a proposed changed decision into effect.

61.3 Subject to clause 61.8, InfraCo shall notify the Authority of an event which has happened or which InfraCo expects to happen as a Compensation Event if InfraCo believes that the event is a Compensation Event. If InfraCo does not notify a Compensation Event within eight weeks of becoming aware of the event, InfraCo is not entitled to a change in Prices, the Completion Date or a Planned Milestone Delivery Date unless the event arises from the Authority giving an instruction, changing an earlier decision or correcting an assumption.

61.4 If and to the extent the Authority decides that an event notified by InfraCo:

- (a) arises solely from a fault of InfraCo,
- (b) has not happened and is not expected to happen,
- (c) has no effect upon InfraCo's costs, Completion or meeting a Planned Milestone Delivery Date, or
- (d) is not one of the Compensation Events stated in this contract,

the Authority shall notify InfraCo of its decision that the Prices, the Completion Date and the Planned Milestone Delivery Date are not to be changed. If the Authority decides otherwise, it shall notify InfraCo accordingly and instruct InfraCo to submit quotations.

If the Authority notifies its decision to InfraCo and, if the Authority's decision is that the Prices, the Completion Date or the Planned Milestone Delivery Dates are to be changed, the Authority shall instruct InfraCo to submit quotations before the end of either:

- (a) one week after InfraCo's notification, or
- (b) a longer period to which InfraCo has agreed.

If the Authority does not notify its decision, InfraCo may notify the Authority of its failure. A failure by the Authority to reply within two weeks of this notification is treated as acceptance by the Authority that the Prices, the Completion Date or the Planned Milestone Delivery Dates are to be changed.

61.4A If and to the extent that an event notified by InfraCo is contributed to directly by a fault of InfraCo:

- (a) the Authority shall so notify InfraCo accordingly,
- (b) to such extent the Prices, the Completion Date and the Planned Milestone Delivery Date shall not be changed, and
- (c) the Authority shall instruct InfraCo to submit quotations accordingly before the end of either:
  - (i) one week after InfraCo's notification, or
  - (ii) a longer period to which InfraCo has agreed.

If the Authority does not notify its decision, InfraCo may notify the Authority of its failure. A failure by the Authority to reply within two weeks of this notification is treated as acceptance by the Authority that the Prices, the Completion Date or the Planned Milestone Delivery Dates are to be changed.

- 61.5 If the Authority decides that InfraCo did not give an early warning of the event which an experienced contractor could have given the Authority shall notify this decision to InfraCo when it instructs InfraCo to submit quotations.
- 61.6 If the Authority decides that the effects of a Compensation Event are too uncertain to be forecast reasonably, it shall state assumptions about the event in its instruction to InfraCo to submit quotations. Assessment of the event shall be based on these assumptions. If any of them is later found to have been wrong, the Authority shall notify a correction.
- 61.7 A Compensation Event shall not be notified after the Defects Date. No change in Prices shall be made in respect of any matter notified after the Defects Date.
- 61.8 InfraCo and the Authority agree to implement a procedure for bundling together and submitting every 4 weeks notifications of and for assessing and implementing Compensation Events. Such procedure will not apply in respect of any Compensation Events of such value or nature which require that they should be brought to the attention of the other Party before the next notification date.

## **QUOTATIONS FOR 62 COMPENSATION EVENTS**

- 62.1 After discussing with InfraCo different ways of dealing with a Compensation Event which are practicable, the Authority may instruct InfraCo to submit alternative quotations. InfraCo shall submit the required quotations to the Authority and may submit quotations for other methods of dealing with the Compensation Event which it considers practicable.
- 62.2 Quotations for Compensation Events shall comprise proposed changes to the Prices and any delay to the Completion Date and Planned Milestone Delivery Dates assessed by InfraCo. InfraCo shall submit details of its assessment with each quotation. If the programme for remaining work is altered by



the Compensation Event, InfraCo shall include the alterations to the Accepted Programme in its quotation.

62.3 InfraCo shall submit quotations within two weeks of being instructed to do so by the Authority. The Authority shall then reply within two weeks of the submission. The Authority's reply shall be either:

- (a) an instruction to submit a revised quotation,
- (b) an acceptance of a quotation,
- (c) a notification that a proposed instruction will not be given or a proposed changed decision will not be made, or
- (d) a notification that the Authority will be making its own assessment.

62.4 The Authority shall instruct InfraCo to submit a revised quotation only after explaining its reasons for doing so to InfraCo. InfraCo shall then submit the revised quotation within three weeks of being instructed to do so.

62.5 The Authority shall extend the time allowed for:

- (a) InfraCo to submit quotations for a Compensation Event, and
- (b) the Authority to reply to a quotation ,

if the Authority and InfraCo agree to the extension before the submission or reply is due. The Authority shall then notify InfraCo that the extension has been agreed.

62.6 If the Authority does not reply to a quotation within the time allowed, InfraCo may notify the Authority of its failure. If InfraCo submitted more than one quotation for the Compensation Event, InfraCo shall state in its notification which quotation it proposes to accept. If the Authority does not reply to the notification within four weeks and unless the quotation is for a proposed instruction or a proposed changed decision, InfraCo's notification is treated as acceptance of the quotation by the Authority.

## **ASSESSING COMPENSATION EVENTS**

### **63**

63.1 Subject to clause 61.3 and InfraCo notifying the Authority at an appropriate time, any changes to the Prices will be assessed as the effect of the Compensation Event upon:

- (a) the actual Time Charge for the Infrastructure Services already done, and
- (b) the forecast Time Charge for the Infrastructure Services not yet done.

The date when the Authority instructed or should have instructed InfraCo to submit quotations will divide the

Infrastructure Services already done from the Infrastructure Services not yet done.

- 63.2 If the effect of a Compensation Event is to reduce the total Time Charge, the Prices will be reduced and InfraCo shall not be entitled to any payment in respect of loss of profit or loss of opportunity in respect of the same.
- 63.3 A delay to the Completion Date will be assessed as the length of time that, due to the Compensation Event, Completion is later than the Completion Date and a delay to a Planned Milestone Delivery Date is assessed as the length of time that, due to the Compensation Event, the date when the Milestone Criteria stated for a Milestone is met later than the relevant Planned Milestone Delivery Date.
- 63.4 Any delay will only be treated as being due to a Compensation Event if the Compensation Event is the sole or principal cause of the delay and if InfraCo has taken all reasonable steps to avoid and / or mitigate delay and disruption.
- 63.5 The rights of the Authority and InfraCo to change the Prices, the Completion Date and the Planned Milestone Delivery Dates will be their only rights in respect of a Compensation Event.
- 63.6 If the Authority has notified InfraCo of its decision that InfraCo:
- (a) did not give an early warning of a Compensation Event which an experienced contractor could have given, or
  - (b) did not give an early warning at the time it became aware or ought reasonably to have become aware of the matter requiring an early warning,
- the event shall be assessed as if InfraCo had given early warning, thereby enabling the Authority to have taken action to minimise or avoid the effects of such Compensation Event.
- 63.7 If the Authority has notified InfraCo of its decision that InfraCo did not take all reasonable steps to avoid and / or mitigate delay, disruption and costs arising from a Compensation Event, the event shall be assessed as if InfraCo had taken all such reasonable steps to avoid and / or mitigate delay of such Compensation Event.
- 63.8 Assessment of the effect of a Compensation Event shall include risk allowances for cost and time for matters which have a significant chance of occurring and are at InfraCo's risk under the Infrastructure Agreement.
- 63.9 Assessments for Infrastructure Services not yet done shall be based upon the assumptions that InfraCo will react competently and promptly to the Compensation Event and that the Accepted Programme can be changed. Assessments for Infrastructure Services already done shall only include cost and time which were reasonably incurred.
- 63.10 A Compensation Event which is an instruction to change the Scope in order to resolve an ambiguity or inconsistency (which is not stated to be InfraCo's own risk or responsibility) shall be

assessed as if the Prices, the Completion Date and the Planned Milestone Delivery Dates were for the interpretation most favourable to the Party which did not provide the Scope.

- 63.11 If a change to the Scope makes the description of the Milestone Criteria for a Planned Milestone Delivery Date incorrect, the Authority shall correct the description. This correction shall then be taken into account in assessing the Compensation Event for the change to the Scope.
- 63.12 If the work included in a quotation for a Compensation Event includes work by staff for which there is no staff rate, a proposed rate shall be included in the quotation.
- 63.13 The following shall be deducted from the assessment of Compensation Events:
- (a) the cost of events for which the Infrastructure Agreement and / or the contract requires InfraCo to insure, and
  - (b) other costs paid to InfraCo by insurers.

#### **THE AUTHORITY'S ASSESSMENTS 64**

- 64.1 The Authority shall assess a Compensation Event if:
- (a) InfraCo has not submitted a required quotation and details of its assessment within the time allowed,
  - (b) the Authority decides that InfraCo has not assessed the Compensation Event correctly in a quotation and it does not instruct InfraCo to submit a revised quotation,
  - (c) when InfraCo submits quotations for a Compensation Event, it has not submitted a programme or alterations to a programme which the Infrastructure Agreement requires InfraCo to submit, or
  - (d) when InfraCo submits quotations for a Compensation Event, the Authority has not accepted InfraCo's latest programme for one of the reasons stated in the Infrastructure Agreement and / or the contract.
- 64.2 The Authority shall assess a Compensation Event using its own assessment of the programme for the remaining work if:
- (a) there is no Accepted Programme, or
  - (b) InfraCo has not submitted a programme or alterations to a programme for acceptance as required by the contract and / or the Infrastructure Agreement.
- 64.3 The Authority shall notify InfraCo of its assessment of a Compensation Event and give InfraCo details of it within the period allowed for InfraCo's submission of its quotation for the same event. This period will start when the need for the Authority's assessment becomes apparent.

	64.4	If the Authority does not assess a Compensation Event within the time allowed, InfraCo may notify the Authority of this failure. If InfraCo submitted more than one quotation for the Compensation Event, InfraCo states in the notification which quotation it proposed is to be accepted. If the Authority does not reply within two weeks of this notification the notification is treated as acceptance of InfraCo's quotation by the Authority.
<b>IMPLEMENTING COMPENSATION EVENTS</b>	<b>65</b>	
	65.1	A Compensation Event shall be implemented when: <ul style="list-style-type: none"> <li>(a) the Authority has notified its acceptance of InfraCo's quotation,</li> <li>(b) the Authority has notified InfraCo of its own assessment, or</li> <li>(c) InfraCo's quotation is treated as having been accepted by the Authority.</li> </ul>
	65.2	The assessment of a Compensation Event shall not be revised if a forecast upon which it is based is shown by later recorded information to have been wrong.
	65.3	The changes to the forecast amount of the Prices, the Completion Date and the Planned Milestone Delivery Dates shall be included in the notification implementing a Compensation Event and the Infrastructure Service Delivery Plan shall be modified accordingly.
<b>REVIEWING STAFF RESOURCING LEVELS INCLUDED IN INFRASTRUCTURE SERVICE DELIVERY PLANS</b>	<b>66</b>	
	66.1	Where the Authority considers that staff resource levels set out in the Infrastructure Service Delivery Plan are not sufficient to Provide the Infrastructure Services or do not comply with the requirements of the Sustainable Development Plans and Sustainable Development Strategy and such lack of sufficiency is not due to a Compensation Event, the Authority and InfraCo shall discuss whether or not to agree a change to the Infrastructure Service Delivery Plan. If no agreement can be reached the Authority will, in its absolute discretion, decide whether the Infrastructure Service Delivery Plan should be changed and if so in what regard.
<b>RIGHTS MATERIAL</b>	<b>TO 7</b>	
<b>THE PARTIES' USE OF MATERIAL</b>	<b>70</b>	

## Foreground IPR

70.1

The Parties agree that the Foreground IPR in all Documentation and works that have been created wholly or mainly in connection with the performance of this contract (including IPR created by a Subcontractor or sub-subcontractor of any tier) vests in the Authority. InfraCo shall procure that each Subcontractor (or sub-subcontractor of any tier) shall assign such Foreground IPR prepared or developed by or on behalf of the Subcontractor (or sub-subcontractor) in the performance of the subcontract to the Authority. InfraCo shall not be liable for any use of the Foreground IPR by the Authority or third parties other than that for which the same was originally prepared and provided.

70.2

- (a) The Authority hereby grants a non-exclusive, non-transferable, royalty free licence to InfraCo to use, and allow its Subcontractors to use, the Foreground IPR and (so far as it is permitted to) the Authority's Background IPR (collectively referred to in this clause as "**the Authority's IPR**") for the duration of this contract for the sole purpose of enabling InfraCo to provide the Infrastructure Services and to comply with its obligations under Schedule 3B of the Infrastructure Agreement. The Authority shall not be liable for any use of the Authority's IPR by InfraCo or third parties other than that for which the same was originally prepared and provided.
- (b) InfraCo shall use, and procure that its Subcontractors use, the Authority's IPR in compliance with the relevant Standards and applicable law.
- (c) InfraCo shall not use, and shall procure that its Subcontractors do not use, the Authority's IPR in combination with any other trademarks without the Authority's prior written consent.
- (d) On written request by the Authority's Project Manager, InfraCo shall supply to the Authority's Project Manager copies or details of items on or in relation to which it has used the Authority's IPR or details of the manner in which they have been used. If the Authority's Project Manager reasonably determines that any use of the Authority's IPR is non-compliant with the Standards, the contract and applicable law the Authority's Project Manager shall give InfraCo written notice of that fact and InfraCo shall correct the use so as to comply with the Standards, the contract and applicable law taking into account the Authority's Project Manager's instructions.
- (e) InfraCo shall not be entitled to bring any action against any third party for infringement relating to the Authority's IPR and the Authority shall not be obliged to bring or extend any proceedings relating to the Authority's IPR if it decides in its sole discretion not to do so.

- (f) As soon as reasonably practicable after expiry or termination of this contract for any reason, InfraCo and its Subcontractors shall cease all use of the Authority's IPR and remove the Authority's IPR or (where removal is not reasonably practical) destroy or, if the Authority's Project Manager so elects, deliver it to the Authority's Project Manager or any other UK company or person designated by the Authority's Project Manager.
- (g) InfraCo shall have no right (save where expressly permitted under this contract or with the Authority's prior written consent) to use any trademarks, trade names, logos or other intellectual property rights of the Authority.

**InfraCo's  
Background IPR and  
Third Party  
Background IPR**

70.3

In respect of InfraCo's Background IPR, InfraCo hereby grants and in respect of Third Party Background IPR, InfraCo shall procure the grant of a non-exclusive, world-wide, perpetual, irrevocable, royalty free licence (including the right to assign, novate and otherwise transfer and / or grant sub-licences) to the Authority and Others carrying out services or works in relation to the CVL Transformation and Associated Projects to use InfraCo's Background IPR and Third Party Background IPR for the following purposes:

- (a) understanding the Infrastructure Works, the CVL Transformation and Associated Projects,
- (b) operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting, upgrading and replacing the Infrastructure Works, any Equipment or Plant and Materials,
- (c) extending, interfacing with, integrating with, connection into and adjusting the Infrastructure Works and / or the CVL Transformation and / or Associated Projects,
- (d) enabling the Authority, Network Rail or Others to carry out the operation, maintenance, repair, modification, alteration enhancement, re-figuration, correction, upgrading and replacement of the CVL Asset and Network Rail's Network,
- (e) enabling the Authority and InfraCo (or any successor operator) to perform their function and duties as Infrastructure Manager and operator of the CVL Asset and Network Rail's Network as relevant, and enabling Network Rail to perform its function and duties as Infrastructure Manager of the CVL Assets and Network Rail's Network as relevant,
- (f) executing and completing the Infrastructure Works, the CVL Transformation and Associated Projects, and
- (g) designing, testing and commissioning the Infrastructure Works, the CVL Transformation and Associated Projects.

70.3A

InfraCo shall provide to the Authority or any person nominated by the Authority's Project Manager prompt access

to all Documentation in whatever form reasonably requested by the Authority's Project Manager at any time but at the latest on termination or expiry of this contract.

	70.4	InfraCo acknowledges that it is the author of all Documentation and waives any moral rights which InfraCo might be deemed to possess under Chapter IV of the Copyright, Design & Patents Act 1988 in respect thereof and of the Infrastructure Services and AKI Infrastructure Works.
	70.5	InfraCo warrants and undertakes that it has the right to grant to the Authority a licence to use InfraCo's Background IPR and to Others carrying out works in relation to the CVL Transformation and Associated Projects a licence to use InfraCo's Background IPR for all purposes, including (without limitation) for the purposes listed in clause 70.3.
	70.6	InfraCo shall indemnify the Authority and Others carrying out works in relation to the CVL Transformation and Associated Projects against all Losses arising out of any use by the Authority or Others of InfraCo's Background IPR, including, without limitation, any claim that the exploitation of the licence granted by InfraCo under clause 70.3 infringes the intellectual property rights or other rights of any third party.
<b>Computer Generated Data</b>	70.7	InfraCo shall supply to the Authority all Documentation needed to enable the Authority to exercise its IPRs.
<b>IPR Claims</b>	70.8	<p>(a) InfraCo shall promptly notify the Authority upon becoming aware of an infringement, alleged infringement or potential infringement of any IPR (including any claims, demands or actions (collectively "<b>Claims</b>") relating to the same by InfraCo or its Subcontractors) which affects or may affect the provision of the Infrastructure Works, the CVL Transformation and / or Associated Projects.</p> <p>(b) Subject to the Authority's proper observance of its obligations under this contract, InfraCo indemnifies the Authority against all Claims and Losses that arise from or are incurred by reason of any infringement or alleged infringement of any IPR by InfraCo or its Subcontractors.</p> <p>(c) The Authority, at the request of InfraCo, shall give InfraCo all reasonable assistance for the purpose of contesting any such Claim. InfraCo shall reimburse the Authority for all Losses incurred in doing so and / or InfraCo shall conduct any litigation and all negotiations at its own expense arising from such Claim. InfraCo shall consult with the Authority in respect of the conduct of any Claim and keep the Authority regularly and fully informed as to the progress of such Claim.</p>

<b>INDEMNITY, INSURANCE LIABILITY</b>	<b>8</b>
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**AND**

<b>INDEMNITY</b>	<b>80</b>
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80.1 InfraCo shall be responsible for and indemnify the Authority against, any and all Losses arising out of:

- (a) any failure by InfraCo to use the Required Standard,
- (b) death or bodily injury to any person whomsoever arising out of or caused by the carrying out of the Infrastructure Services by InfraCo,
- (c) loss of or damage to property real or personal (including without limitation the property of the Authority) arising out of or caused by the carrying out of the Infrastructure Services by InfraCo, and
- (d) any infringement by InfraCo of the rights of Others, except an infringement which arose out of the use by InfraCo of things provided by the Authority,

to the extent that such Losses are due to any negligence, breach of contract, breach of statutory duty, error, act, omission or default by InfraCo, its employees, Subcontractors or agents.

The liability of InfraCo to indemnify the Authority is reduced to the extent that such Losses are caused by the negligence of the Authority.

The indemnity referred to in this clause 80 remains in force for the duration of the Infrastructure Agreement and continues to survive the expiry or termination of the Infrastructure Agreement along with any other clauses or schedules of the Infrastructure Agreement necessary to give effect to the indemnity, to expire 12 years after Completion.

80.2 Nothing in this clause 80 or elsewhere in the Infrastructure Agreement shall exclude or limit either Party's liability for death or personal injury caused by that Party's negligence.

## **INSURANCE COVER 81**

81.1 InfraCo and the Authority shall provide the insurances stated in the Insurance Table set out in this clause 81. InfraCo shall provide additional insurances as stated in the Contract Data. The insurances provide cover from the Starting Date until the Defects Date save in relation to the Professional Indemnity Policy which shall be maintained until 12 years after the Defects Date for the relevant Infrastructure Services.



## INSURANCE TABLE

	Insurance against	Minimum amount of cover	Party responsible for ensuring insurance is in place
<b>A</b>	<p>Liability for loss of or damage to property (except the Infrastructure Works, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of InfraCo) caused by activity in connection with the Infrastructure Agreement.</p> <p>Note: This insurance is envisaged to cover suppliers and consultants in respect of their manual site activities only.</p> <p><b>(Public and Products Liability Policy)</b></p>	<p>GBP [REDACTED] for each and every occurrence and in the annual aggregate with respect to pollution and products</p>	<p>InfraCo shall ensure the Public and Products Liability Policy is in place.</p>
<b>B</b>	<p>Liability for negligent act, error or omission in the performance of InfraCo's professional obligations under the Infrastructure Agreement (including but not limited to advice, design, specification and professional services)</p> <p><b>(Professional Indemnity Policy)</b></p>	<p>GBP [REDACTED] (or such other limit as may be agreed) for each and every claim and in the annual aggregate with one reinstatement of limit</p>	<p>InfraCo shall provide the Professional Indemnity Policy, (notwithstanding that the Authority may provide project specific Professional Indemnity insurance at its sole discretion).</p>
81.2	When requested by a Party the other Party shall provide certificates from its insurer or broker stating that the insurances required by the Infrastructure Agreement are in force.		
81.3	InfraCo's professional indemnity insurance:		
	(a) must be under the usual and customary terms and conditions prevailing in the insurance market,		

- (b) must not include any term to the effect that InfraCo must discharge any liability before being entitled to recover from the insurers,
- (c) must not include any other term which might adversely affect the right of any person (other than the Parties) to recover from the insurers under any applicable law relating to the rights of third parties,
- (d) must be with a reputable insurer authorised to underwrite such risks in the United Kingdom and approved by the Authority,

provided that such insurance is available upon commercially reasonable terms and premiums. If at any time such insurance becomes unavailable on commercially reasonable terms and premiums (excluding an increase in premiums attributable to the actions, omissions errors or default of InfraCo) InfraCo shall immediately inform the Authority in writing and the Parties shall meet and agree an alternative method of managing such risk.

InfraCo shall notify the Authority as soon as InfraCo becomes aware of any claims from whatever source under the Professional Indemnity Insurance or other insurances required to be procured by InfraCo, or incidents which may reduce the annual aggregate of cover available, and shall ensure that in the event of the annual aggregate limit being eroded by claims other than in connection with the Infrastructure Agreement, such annual aggregate limit shall be reinstated to the limit required by the Infrastructure Agreement, and shall pay any premium charged by the insurers.

#### **Provisions relating to insurance**

- 81.4 The insurances provided pursuant to Schedule 3B of the Infrastructure Agreement will not relieve InfraCo from any of its obligations and liabilities under the Infrastructure Agreement.
- 81.5 InfraCo shall cooperate with the Authority regarding the handling and settlement of claims under the Authority's insurances and shall comply with the requirements of the Authority's insurers in connection with the handling and settlement of claims, including where appropriate the provision of such information, documents and records as the Authority, its claims handler and its insurers require. InfraCo shall not compromise, settle or waive any claim, or by an act or omission lose or prejudice InfraCo's right to make or proceed with such a claim against insurers, which InfraCo may have under the Authority's insurances or any claim which InfraCo may have against insurers and which relates to a claim by the Authority against InfraCo, without the prior written consent of the Authority.
- 81.6 Unless the Authority otherwise instructs, the Authority shall submit all claims under its insurances and InfraCo shall

provide such information in connection with such claims as the Authority and its insurers require.

- 81.7        InfraCo shall not by any act, omission or default prejudice, lose or forego the Parties' right or the right of either of them to make or proceed with a claim against the insurers.
- 81.8        In respect of the insurances provided by InfraCo, InfraCo shall bear the cost of all premiums.
- 81.9        To the extent that the Authority shall arrange any insurance policies on behalf of InfraCo, InfraCo shall pay all excesses and bear all deductibles on claims arising under the insurance policies maintained by the Authority to the extent that InfraCo is responsible for the loss or damage in question. If the premiums payable for such insurances increase as a result of claims made by InfraCo arising from events which a prudent and experienced contractor familiar with services of a similar size, nature and complexity to the Infrastructure Services might reasonably have avoided (including claims attributable to its subcontractors or sub-consultants), then InfraCo shall pay to the Authority the increase in premium which is deemed to be a debt due on demand.
- 81.10       InfraCo shall ensure that its Subcontractors and subconsultants of any tier maintain professional indemnity insurance covering their liabilities under subcontracts in respect of their services and employer's liability insurances as required by law.
- 81.11       InfraCo shall submit documentary evidence for the insurances which it is to provide to the Authority for acceptance on or before the Effective Date. InfraCo shall then continue to submit documentary evidence to the Authority as required or necessary to prove that such insurances are being maintained in accordance with the Infrastructure Agreement. Such documentary evidence must state that the insurance required by the Infrastructure Agreement is in force and be signed by InfraCo's insurer or insurance broker. Reasons for not accepting the documentary evidence for the insurances include:
- (a)        the insurances or the documentary evidence do not comply with the Infrastructure Agreement or this contract (including but not limited to clause 81.3),
  - (b)        the proposed insurer is not a reputable insurer authorised to underwrite the insurances in the United Kingdom and approved by the Authority, or
  - (c)        the proposed insurer is not, having regard without limitation to the size, nature and complexity of the Infrastructure Services, of sufficient financial strength.
- 81.12       The Parties shall comply with the terms and conditions of the insurance policies.
- 81.13       Any amount not recovered from an insurer (including, excesses or deductibles) shall be borne by the Authority for

events which are at its risk and by InfraCo for events which are at its risk.

81.14 In the event of the insolvency of an insurer of either Party, the insuring Party shall inform the other Party forthwith on becoming aware thereof and shall submit documentary evidence of alternative insurance to the other Party for acceptance.

81.14A In the event that the insurances set out in this clause 81 or in the Contract Data are provided under other provisions of the Infrastructure Agreement, the Authority is under no obligation to request or provide further insurance under this contract and may notify InfraCo of the same in the Authority's sole discretion.

**If InfraCo does not insure**

81.15 The Authority may insure a risk which the Infrastructure Agreement requires InfraCo to insure if InfraCo does not submit a required certificate. The cost of this insurance (including all reasonable Expenses incurred by the Authority in respect of taking out such insurance) to the Authority shall be paid by InfraCo. If the Authority insures a risk which the Infrastructure Agreement requires InfraCo to insure, this is without prejudice to any of the Authority's other rights, powers or remedies under the Infrastructure Agreement.

**Insurance by the Authority**

81.16 The Authority shall submit policies and certificates for insurances to InfraCo for acceptance before the date set out in the Contract Data and afterwards as InfraCo instructs. InfraCo shall accept the policies and certificates if they comply with the Infrastructure Agreement.

81.17 InfraCo's acceptance of an insurance policy or certificate provided by the Authority does not change the responsibility of the Authority to provide the insurances stated in the Contract Data.

81.18 InfraCo may insure a risk which the Infrastructure Agreement requires the Authority to insure if the Authority does not submit a required policy or certificate. The reasonable cost of this insurance to InfraCo shall be paid by the Authority.

81.19 Not used.

81.20 InfraCo shall comply, and shall ensure that its subcontractors and sub-consultants comply, with the requirements of the Authority's claims handling procedures, such procedure to be provided to InfraCo by the Authority.

81.21 InfraCo shall not compromise, settle or waive any claim which InfraCo may have under the Authority's insurances without the prior written consent of the Authority.

81.22 Neither failure to comply nor full compliance with the insurance provisions of the Infrastructure Agreement shall

limit or relieve InfraCo of its liabilities and obligations under the Infrastructure Agreement.

- 81.23 Without prejudice to clause 81.7, InfraCo shall not take any action or fail to take any reasonable action, or (insofar as it is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any insurance policy in which that party is an insured, a co-insured or additional insured person.

**LIMITATION OF LIABILITY**

- 82.1 Save in respect of any excluded matters, the maximum aggregate liability of InfraCo to the Authority:

- (a) in respect of the Principal Infrastructure Services only, shall not exceed:

- (i) in respect of any formal demand issued by the Authority during the Preliminary Design and Discovery Phase, the higher of

(A) [REDACTED]

- (B) the aggregate of any sums payable by the Authority to InfraCo in connection with the Principal Infrastructure Services during the Preliminary Design and Discovery Phase under Schedule 3B and this contract; and

- (ii) in respect of any formal demand issued by the Authority during the Detailed Design and Management Phase, the higher of: (a)

[REDACTED] save that such cap during the Detailed Design and Management Phase shall be reduced by any formal demands issued by the Authority during the Preliminary Design and Discovery Phase which have been paid by InfraCo; or (b) the aggregate of any sums payable by the Authority to InfraCo in connection with the Principal Infrastructure Services under Schedule 3B and this contract; and

- (b) in respect of the Additional Infrastructure Services only, shall not exceed the higher of: (a) [REDACTED]; or (b) the aggregate of any sums payable by the Authority to InfraCo in

connection with the Additional Infrastructure Services as at the date of the formal demand by the Authority,

(each being an “**Aggregate Liability Cap**”).

For the avoidance of doubt, each Aggregate Liability Cap shall not act to restrict or limit any liability of InfraCo pursuant to the remainder of the Infrastructure Agreement with respect to the Infrastructure Manager Services.

The excluded matters for the purposes of the Aggregate Liability Cap are liabilities of InfraCo in respect of:

- (c) any failure by InfraCo to comply with any applicable law and / or Statutory Requirements,
- (d) the use by the Authority and Others of any IPR provided by or on behalf of InfraCo (including any IPR provided by any Subcontractor), including any infringement of any third party’s intellectual property rights,
- (e) any failure by InfraCo to comply with the Third Party Agreements,
- (f) any damage to or loss of any third party property, real or personal, and
- (g) any bodily injury, sickness, disease or death, of any person whatsoever.

82.2 Nothing in this contract shall exclude or limit any liability of InfraCo in respect of gross negligence, death or personal injury, fraud, illegal acts, deliberate default, reckless misconduct or abandonment of the Infrastructure Services.

82.3 If and to the extent that a liability of InfraCo is covered by an insurance policy which the Authority is required to take out or maintain under the Infrastructure Agreement (including Schedule 3B), this contract or any Package Order instructed pursuant to Schedule 3B, and InfraCo receives proceeds (or would have done so, but for any act or omission on the part of InfraCo) the payment of such sums equivalent to the proceeds shall not count towards or act to reduce the unexpended amount of any limitation on such liability of InfraCo.

82.4 InfraCo acknowledges and agrees that it may be engaged by the Authority to perform the Principal Infrastructure Services and (under Package Orders) to perform Additional Infrastructure Services and AKI Infrastructure Works. Accordingly, InfraCo shall not be entitled to, and hereby waives, any claim against the Authority, for any relief from its obligations, additional fees, costs, compensation or Expenses, extensions of time or a Compensation Event or variation under or in connection with the Infrastructure Agreement, Schedule 3B, this contract, each Package Order and any IDP Works Package (where InfraCo is engaged as the IDP under such IDP Works Package) arising out of or in connection with any neglect, default or other act or omission of InfraCo under Schedule 3B, this contract, any other Package Order, the Infrastructure Agreement, or any IDP

Works Package (where InfraCo is engaged as the IDP under such IDP Works Package) (as applicable).

82.5 Neither Party shall be entitled to recover compensation or make a claim under Schedule 3B, this contract, or any Package Order in respect of any loss that it has incurred to the extent that it has been compensated in respect of that loss pursuant to Schedule 3B, any Package Order, the Infrastructure Agreement, or this contract.

**TERMINATION 9**

**TERMINATION 90**

90.1 Without prejudice to clause 5.1 and Schedule 10 of the Infrastructure Agreement:

- (a) the Authority may terminate InfraCo's obligation to Provide the whole of the Additional Infrastructure Services or any particular Package Order entered into in respect of the Additional Infrastructure Services by notifying InfraCo if InfraCo is subject to an Event of Default within the meaning set out in limbs (a) to (g) of paragraph 1.1 of Schedule 10.2 of the Infrastructure Agreement.
- (b) save where the Authority has complied with clause 51.7, InfraCo may terminate its obligation to Provide the whole of the Additional Infrastructure Services or any particular Package Order entered into in respect of the Additional Infrastructure Services by notifying the Authority if the Authority has not paid an amount due by the final date for payment in excess of [REDACTED] due to InfraCo under this contract within eight weeks of the issue of a notice by InfraCo to the Authority that payment is overdue provided that the Authority has not paid the amount due within that period.
- (c) the Authority may terminate InfraCo's obligation to Provide the whole of the Additional Infrastructure Services or any particular Package Order entered into in respect of the Additional Infrastructure Services at any time by giving no less than fourteen (14) days' notice in writing to InfraCo to that effect if:
  - (i) InfraCo has substantially failed to comply with its obligations and has not put the default right within twenty-eight (28) days of a notification by the Authority, or
  - (ii) InfraCo commits a Safety Breach or a Prohibited Act, or
  - (iii) InfraCo has substantially failed to comply with its obligations on at least two occasions within a period of 8 weeks whether or not InfraCo has remedied the default within 8 weeks

of the second notification by the Authority,

(iv) InfraCo has not provided or maintained a performance bond required pursuant to Schedule 3B, or

(v) an event occurs which:

(A) stops InfraCo completing the whole of the Additional Infrastructure Services or the Package Order referred to in clause 90.1(c) above entered into in respect of the Additional Infrastructure Services, or

(B) stops InfraCo completing the whole of the Additional Infrastructure Services or the Package Order referred to in clause 90.1(c) above entered into in respect of the Additional Infrastructure Services, by the date shown on the Accepted Programme and is forecast to delay Completion by more than 20 weeks,

and which

(C) neither Party could prevent, and

(D) an experienced and prudent contractor familiar with services similar to the Infrastructure Services and exercising the foresight appropriate to such a contractor would have judged at the Effective Date to have such a small chance of occurring that it would have been unreasonable for him or her to have allowed for it.

(d) the Authority may also terminate InfraCo's obligation to Provide the Additional Infrastructure Services or any particular Package Order entered into in relation to the Additional Infrastructure Services at any time by giving twenty eight (28) days' notice in writing to InfraCo to that effect if the Authority no longer requires InfraCo to Provide the Additional Infrastructure Services or the particular Package Order entered into in relation to the Additional Infrastructure Services or otherwise wishes to terminate InfraCo's obligation to Provide the



Additional Infrastructure Services or the particular Package Order entered into in relation to the Additional Infrastructure Services for any reason.

- (e) this contract may be terminated in accordance with paragraphs 7.10 and 7.11 of Schedule 3B of the Infrastructure Agreement.

**PROCEDURES ON 91  
TERMINATION**

91.1 On termination of the whole of the Infrastructure Agreement or the whole of InfraCo's obligation to Provide the whole of the Additional Infrastructure Services:

- (a) the Authority may not issue any further Package Orders in relation to the Additional Infrastructure Services, and
- (b) as the Authority may require in writing InfraCo either does no further work necessary to Provide the Principal Infrastructure Services or the Additional Infrastructure Services (as applicable) or completes the Package Orders ordered before the notification.

91.2 On termination of InfraCo's obligation to Provide a particular Package Order entered into in respect of the Additional Infrastructure Services:

- (a) the Authority may continue to issue Package Orders, and
- (b) no such termination shall affect the Principal Infrastructure Services or the remaining Additional Infrastructure Services (if any) unless expressly stated to the contrary in such termination notice.

91.3 On termination pursuant to clause 91.1 or 91.2:

- (a) the Authority may complete the terminated Infrastructure Services or relevant Package Order and may use any Plant and Material to which it has title,
- (b) the Authority may require InfraCo to assign the benefit of and / or enter into a novation deed in the form set out in Appendix 8 to Schedule 3B of the Infrastructure Agreement novating any subcontract, sub-consultancy or other contract related to performance of the terminated Infrastructure Services or particular Package Order to the Authority or such entity as determined by paragraph 13 of Schedule 3B of the Infrastructure Agreement (Assignment);
- (c) InfraCo shall make available to the Authority within 14 days all information prepared in either electronic or documentary form including all Documentation, reports and any other information held in an agreed format;

- (d) the Parties shall continue to comply with the constraints and obligations in the Infrastructure Agreement on:
  - (i) the use of material prepared or obtained by InfraCo, and
  - (ii) confidentiality and publicising the Infrastructure Services and AKI Infrastructure Works and the CVL Transformation and Associated Projects,
- (e) termination for whatsoever reason shall take effect without prejudice to any right or entitlement of the Parties in respect of any antecedent breach of this contract and shall not affect the operation of paragraph 13 of Schedule 3B of the Infrastructure Agreement (Assignment) which shall continue to apply, and
- (f) InfraCo shall give to the Authority work carried out to date, information resulting from work carried out to date, and information InfraCo has obtained which it has a responsibility to provide pursuant to this contract and shall cooperate with the Authority and provide to it all reasonable assistance to facilitate the handover or transfer of such obligations to the Authority or the Authority's nominee including briefing and providing information to the Authority or the Authority's nominee.

## **PAYMENT TERMINATION**

### **ON 92**

- 92.1 A final payment shall be made as soon as possible after termination. The amount due on termination shall be limited to the following:
  - (a) an amount due assessed as for normal payments, and
  - (b) other costs reasonably incurred by InfraCo as a direct result of termination.
- 92.2 Not used.
- 92.3 If the Authority terminates because of the occurrence of one or more of the events described in sub-clause 90.1(a) or 90.1(c) or under 90.1(e) and where the Infrastructure Agreement is terminated due to an Event of Default (as defined in the Infrastructure Agreement) then, without prejudice to the Authority's other rights and remedies, the final payment due to InfraCo or the Authority, as the case may be, includes a credit to the Authority of the forecast of the additional cost to the Authority resulting from the termination.
- 92.4 Notwithstanding any other provision of the Infrastructure Agreement, InfraCo shall have no claim against the Authority for:

- (a) any loss of profit, loss of contract, loss of business, loss of fees, loss of chance or other similar loss, or
- (b) any indirect or consequential loss

arising out of or in connection with termination of InfraCo's engagement under the Infrastructure Agreement.

Nothing in this clause 92 or elsewhere in the Infrastructure Agreement shall exclude or limit either Party's liability for death or personal injury caused by that Party's negligence.

## **SUSPENSION 93**

93.1 The Authority may at any time instruct InfraCo to suspend progress of part or all of the Infrastructure Services and during such suspension, InfraCo shall (where applicable) protect, store and secure such part of the Infrastructure Services against any deterioration, loss or damage.

93.2 A suspension under clause 93.1 may be treated as a Compensation Event within the meaning of clause 60.

93.3 In the event of a suspension under clause 93.1 InfraCo shall take all reasonable steps to avoid and / or mitigate the costs arising from such suspension whilst nevertheless complying with its obligations under the Infrastructure Agreement.

93.4 If a suspension under clause 93.1 continues for a period of 18 months InfraCo may give notice to the Authority requiring the Authority to state in writing within 14 days of the notice whether it intends to resume the Infrastructure Services or to terminate InfraCo's obligation to provide the Infrastructure Services. If the Authority does not provide a written statement of its intention within 14 days of InfraCo's first notice InfraCo may serve a second notice stating that InfraCo's obligation to provide the Infrastructure Services will terminate 14 days after InfraCo's second notice.

For the avoidance of doubt, InfraCo's right to terminate under this clause 93.4 shall not apply to any Deferral Notice or CVL Asset Notice issued by the Authority pursuant to clauses 5.4 to 5.6 of the Infrastructure Agreement.

## **ADDITIONAL CONDITIONS CONTRACT OF 10**

## **FINANCIAL COVENANTS / GUARANTEE 100**

Not used.

101 Not used.

## **SAFETY BREACHES 102**

InfraCo shall not commit any Safety Breach and shall use all reasonable endeavours in carrying out the Infrastructure

Services to procure that Subcontractors and Others shall not commit any Safety Breach.

**IT REQUIREMENTS 103**

103.1 InfraCo warrants to the Authority that:

- (a) neither the functionality nor the performance of:
  - (i) its work,
  - (ii) any software, electronic or magnetic media, hardware, computer system, application or system forming part of its work,
  - (iii) any part of the railways on which its work is undertaken, or
  - (iv) any part of Network Rail's Network,is affected, made inoperable, difficult or suffers any abnormality by reason of any data-related input or data related processing in or on any part of such software, electronic or magnetic media, hardware or computer system,
- (b) any software, electronic or magnetic media, hardware or computer system used or supplied by InfraCo in connection with the Infrastructure Agreement:
  - (i) is Euro compliant, and
  - (ii) is compliant with the Authority's selected Open Document Format where provided from time to time which promotes collaboration and the sharing of documents,
- (c) does not cause any damage, loss or erosion to or interfere adversely or in any way with the compilation, content or structure of any data, database, software or other electronic or magnetic media, hardware or computer system used by, for or on behalf of the Authority on which it is used or with which it interfaces or comes into contact, and
- (d) any variations, enhancements or actions undertaken by InfraCo in respect of such software, electronic or magnetic media, hardware or computer system does not affect InfraCo's compliance with this warranty.

**AUTHORITY'S BUSINESS 104**

104.1 InfraCo acknowledges that it:

- (a) has sufficient information about the Authority and the Infrastructure Services,
- (b) is aware of the Authority's processes and business,

- (c) has made all appropriate and necessary enquiries to enable it to Provide the Infrastructure Services in accordance with the Infrastructure Agreement,
- (d) is aware of the purposes for which the Infrastructure Services are required and acknowledges that the Authority is reliant upon InfraCo's expertise and knowledge in Providing the Infrastructure Services, and
- (e) shall neither be entitled to any additional payment nor excused from any obligation or liability under the Infrastructure Agreement due to any misrepresentation or misunderstanding by it of any fact relating to the Infrastructure Services.

### **THIRD PARTY AGREEMENTS**

#### **105**

105.1 InfraCo has been provided with and takes due account of the terms of and the duties and obligations of the Authority and any such other third parties under:

- (a) the documents specified in Appendix 27 to Schedule 3B,
- (b) any such further agreements as shall be provided to InfraCo from time to time (as may be amended from time to time), whether in existence before or after the Effective Date and whether provided to InfraCo before or after the Effective Date, and
- (c) any contracts with IDPs, SMEs or suppliers let by the Authority in relation to the CVL Transformation or Associated Projects and any such further agreements InfraCo is aware of whether in existence before or after the Effective Date and whether provided to InfraCo before or after the Effective Date,

together the "**Third Party Agreements**".

105.2 InfraCo warrants that it will perform the Infrastructure Services and its obligations under the Infrastructure Agreement in such a manner as to comply with and so as not to constitute, cause or contribute to any breach by the Authority or any other third parties of their obligations under the Third Party Agreements and shall indemnify the Authority and any other third parties in respect of any loss and / or damage which it or they incur as a result of any breach by InfraCo of this clause 105.

### **CDM REGULATIONS 106**

106.1 For the purposes of the CDM Regulations:

- (a) The Authority shall appoint InfraCo to act as Principal Contractor in respect of the Infrastructure Works (except where the Authority in its absolute discretion agrees to appoint an IDP as a Principal Contractor). Where Others are working on a part of the Site and are also Principal Contractor under its contract, the Authority shall designate which person shall be

		Principal Contractor in respect of which part of the Site.
	(b)	The Authority shall appoint InfraCo to act as Designer for the Infrastructure Works.
	(c)	The Principal Designer shall be InfraCo.
	106.2	InfraCo shall provide the Authority with all information reasonably required to facilitate compliance with the CDM Regulations in relation to the Infrastructure Works and the CVL Transformation and Associated Projects.
	106.3	InfraCo shall comply with the CDM Regulations. InfraCo shall at all times cooperate, so far as is reasonably practicable, with all parties having health and safety responsibilities on or adjacent to the Site and / or in respect of the Infrastructure Works and / or the CVL Transformation and / or Associated Projects for the effective discharge of those responsibilities.
	106.4	InfraCo warrants to the Authority that it is fully aware of the provisions of Regulation 9 (" <b>Duties of designers</b> ") 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.
	106.5	InfraCo shall be fully conversant with the guidance published by the Health and Safety Executive in relation to the CDM Regulations and acknowledges that in relation to the Infrastructure Works it is a "designer" as defined in the CDM Regulations. InfraCo shall use all reasonable skill, care and diligence to comply with its obligations and duties as a designer as defined and specified in the CDM Regulations and in accordance with the guidance.
<b>PERFORMANCE REVIEWS</b>	<b>107</b>	
	107.1	Once in each calendar month, or at such other intervals as the Parties may agree from time to time, the Authority and InfraCo shall undertake a formal review of the performance of InfraCo in relation to the Infrastructure Services in accordance with the procedure set out in Schedule 11 of the Infrastructure Agreement. InfraCo and the Authority shall discuss any ways in which the performance of InfraCo may be improved.
	107.2	Once in each calendar month, or at such other intervals as the Parties may agree from time to time, the Authority and InfraCo shall undertake a formal review of the performance of the IDPs in relation to the Infrastructure Works and InfraCo in relation to the Infrastructure Works. InfraCo and the Authority shall discuss any ways in which the performance of the IDPs and InfraCo may be improved and (in relation to the Infrastructure Works performed by IDPs) InfraCo shall liaise with the IDPs in relation to the same.
	107.3	Within 6 weeks of the Novation Time, InfraCo and the Authority shall agree (acting reasonably) the form of the

reports to be adopted in relation to the performance reviews referred to in this clause 107.

**NOT USED** 108

**DELAY DAMAGES FOR LATE COMPLETION** 109

109.1 In the event that InfraCo fails to Achieve any of the Milestone(s) specified in the Contract Data by the applicable Planned Milestone Delivery Date, InfraCo will pay and / or the Authority may deduct from any amount due by way of liquidated damages the amount of Milestone Delay Payments specified in the Contract Data for each week of delay until the specified Remedy Period expires and / or the Delay Payment Cap is reached in accordance with the process set out in this contract.

109.2 Provided that the Delay Payment Cap has not been exceeded, and subject to any express rights or remedies of the Authority pursuant to this contract, the Milestone Delay Payments payable in accordance with clause 109.1 shall be the Authority's sole and exclusive remedy in respect of any loss of revenue, loss of profits or loss of use in relation to any failure by InfraCo to Achieve the Milestone by the applicable Planned Milestone Delivery Date.

**DESIGN OF INFRASTRUCTURE WORKS** 110

110.1 As part of the Principal Infrastructure Services, InfraCo shall design and include in the IDP Work Packages those elements of design and enhancements set out in the Scope.

**PRELIMINARY DESIGN AND DESIGN DEVELOPMENT** 111

111.1 InfraCo shall develop and complete the design of the CVL Transformation and Associated Projects to the stages and as otherwise specified in the Scope and then provide specified elements of such completed design to the IDPs carrying out works in relation to the CVL Transformation and Associated Projects in accordance with the Scope.

111.2 When undertaking the Preliminary Design, Design Development, and Technical Design (if any) InfraCo must produce all documentation, presentations, samples or models necessary to support any submission to the Authority and to any external Stakeholders, Statutory Undertakers or approval authorities to whom the Authority has an obligation to consult or seek approval.

111.3 When undertaking the Preliminary Design, Design Development, and Technical Design (if any), InfraCo shall achieve the standard and detail of design and produce the design deliverables stated within the Scope.

**DESIGN  
INTEGRATION AND  
COORDINATION**

111.4 InfraCo acknowledges that the design it produces in relation to the CVL Transformation and / or Associated Projects will be relied upon by Others in carrying out their design and performing their works in relation to the CVL Transformation and / or Associated Projects.

**112**

112.1 When undertaking any design in relation to the Infrastructure Services, InfraCo shall ensure that such design is integrated and coordinated with the Technical Design prepared or being prepared for the Programme by Others in accordance with the Scope and instructions of the Authority, and where necessary to Provide the Infrastructure Services.

112.2 InfraCo shall keep the Authority informed of all material aspects of the Infrastructure Services and provide the Authority with such information and comments as it may from time to time require with regard to the Infrastructure Services and the Infrastructure Works promptly and in good time so as not to delay or disrupt the progress of the Infrastructure Services or the Infrastructure Works or cause the Authority to be in breach of any obligation to a third party notified in writing to InfraCo, any applicable law, Standard, or Statutory Requirement.

112.3 InfraCo in Providing the Infrastructure Services warrants, undertakes and represents to the Authority as a condition of the Infrastructure Agreement that the Infrastructure Services (including any design and / or specification prepared as part of the Infrastructure Services) will:

- (a) subject to clause 21.1, be in accordance with the Scope and any performance or output specification or requirements contained or referred to in the Infrastructure Agreement,
- (b) comply with all Statutory Requirements,
- (c) comply with all applicable law,
- (d) comply with all relevant Standards,
- (e) subject to clause 21.1, be integrated with the designs of Others, and

and subject to clause 21.1, InfraCo further warrants, undertakes and represents to the Authority as a condition of the Infrastructure Agreement that any design and / or specification prepared by InfraCo in the course of Providing the Infrastructure Services will not on Completion render the Infrastructure Works incapable of being Available.

112.4 InfraCo shall submit the particulars of its design as the Scope requires to the Authority for acceptance.

112.4A Within 28 days (or such longer period as may be agreed between the Parties) of InfraCo submitting the particulars of design referred to in clause 112.4 to it for acceptance, the



Authority either accepts the particulars of InfraCo's design or notifies InfraCo of its reasons for not accepting it. Reasons for not accepting InfraCo's design are that:

- (a) it does not comply with the Scope,
- (b) it does not comply with the applicable law, Standards or Statutory Requirements,
- (c) it is not integrated and coordinated with the designs of Others where InfraCo is required by the Scope or instructions of the Authority to integrate and / or co-ordinate its design with the designs of Others, or such integration is necessary for InfraCo to Provide the Infrastructure Services,
- (d) it does not comply with the Infrastructure Agreement or the contract,
- (e) it is such that it will not allow the Infrastructure Works to be constructed in accordance with the Infrastructure Agreement,
- (f) it is such that if constructed the Infrastructure Works will not be Available, or
- (g) it is not in a format which is accepted for use by the Authority.

112.5 InfraCo must not provide the Preliminary Design or Design Development to the IDPs until the Authority has accepted the same.

#### **COMPLY WITH RISK MANAGEMENT PLAN**

112.6 Notwithstanding clause 15, the Risk Register, any revision to the Risk Register or any matter agreed or discussed at a risk reduction meeting, InfraCo shall comply with the Risk Management Plan set out in the Scope unless the Authority gives InfraCo an instruction stating how the arrangements to be made and / or taken by InfraCo in accordance with the Risk Management Plan are to be modified.

#### **DESIGN CHECK 113 CERTIFICATE**

113.1 Where required by the Scope or by the Authority, all design prepared by InfraCo and submitted to the Authority shall be supported by a design check certificate in the form attached to the Scope signed by an appropriately qualified and experienced engineer other than the engineer who prepared the design. If the certifying engineer is not an employee of InfraCo, he or she is a Subcontractor.

#### **INFRACO RISK 114**

	114.1	Subject to clause 114.2, the risks allocated to InfraCo under this contract and for which InfraCo is liable are all the risks other than those listed in clause 115 (Retained Risk).
	114.2	Subject to clause 60.1(e) and clause 60.1(n), notwithstanding any other provision to the contrary in this contract, InfraCo shall not be entitled to, and waives any entitlement to, any claim against the Authority for compensation, a Compensation Event, cost, time or any other relief in respect of any act, omission or default of the IDPs. This provision shall not apply to any Compensation Event claim which InfraCo may have against the Authority under clause 60.1 (e) and 60.1 (n) of this contract.
<b>RETAINED RISK</b>	<b>115</b>	
	115.1	Subject to clause 60, the risks allocated to the Authority and for which the Authority is liable are: <ul style="list-style-type: none"> <li>(a) any Exceptional Items, save in respect of any Force Majeure Event which is an event stated in the definition of Disallowed Time Charge; and</li> <li>(b) the Authority Dependencies.</li> </ul>
<b>INFRASTRUCTURE ENHANCEMENT AND CHANGE</b>	<b>116</b>	
	116.1	Either InfraCo or the Authority may propose a Variation to the Infrastructure Services in accordance with the process set out in Appendix 19 (Change Mechanism) of Schedule 3B.
<b>COLLABORATIVE WORKING</b>	<b>117</b>	
	117.1	In carrying out the Infrastructure Services InfraCo shall work in a collaborative manner with the Authority, the IDPs, any other consultants and contractors engaged by the Authority, and stakeholders and Others to the extent and in the manner described within the Alliance Agreement and the Scope.
	117.2	InfraCo shall coordinate its activities with Others as required by the Scope and in accordance with the instructions of the Authority.
<b>ERDF REQUIREMENTS</b>	<b>118</b>	
	118.1	InfraCo shall comply with the ERDF Requirements.
<b>NOT USED</b>	<b>119</b>	
<b>SECTIONAL COMPLETION</b>	<b>120</b>	

In this contract, unless stated as the whole of the Infrastructure Services, each reference and clause reference to:

- (a) the Infrastructure Services,
- (b) Completion, and
- (c) Completion Date,

applies, as the case may be, to either the whole of the Infrastructure Services or any *section* of the Infrastructure Services.

<b>PROJECT ACCOUNT</b>	<b>BANK</b>	<b>121</b>	
<b>Project Account</b>	<b>Bank</b>	121.1	InfraCo shall establish the Project Bank Account with the <i>project bank</i> within three weeks of the Effective Date.
		121.2	Unless stated otherwise in the Contract Data, InfraCo shall pay any charges made and shall be paid any interest paid by the <i>project bank</i> . The charges and interest by the <i>project bank</i> shall not be included in the assessment of the amount due.
		121.3	InfraCo shall submit to the Authority for acceptance details of the banking arrangements for the Project Bank Account. A reason for not accepting the banking arrangements is that they do not provide for payments to be made in accordance with this contract. InfraCo shall provide to the Authority copies of communications with the <i>project bank</i> in connection with the Project Bank Account.
<b>Named Suppliers</b>		121.4	InfraCo shall include in its contracts with Named Suppliers the arrangements in this contract for the operation of the Project Bank Account and the Trust Deed. InfraCo shall notify the Named Suppliers of the details of the Project Bank Account and the arrangements for payment of amounts due under their contracts.
		121.5	InfraCo shall submit proposals for adding a Supplier to the Named Suppliers to the Authority for acceptance. A reason for not accepting is that the addition of the Supplier does not comply with the Scope. The Authority, InfraCo and the Supplier shall sign the Joining Deed after acceptance.
<b>Payments</b>		121.6	InfraCo shall include with its invoice at each assessment date a statement of the amounts due to Named Suppliers in accordance with their contracts.
		121.7	Within the time set out in the banking arrangements to allow the <i>project bank</i> to make payment to InfraCo and Named Suppliers in accordance with the contract: <ul style="list-style-type: none"> <li>(a) the Authority shall make payment to the Project Bank Account of the amount which is due to be paid under the contract, and</li> <li>(b) InfraCo shall make payment to the Project Bank Account of any amount which the Authority has notified InfraCo it intends to withhold from InfraCo's invoice and which is required to make payment in full to Named Suppliers.</li> </ul>

	121.8	InfraCo shall prepare the Authorisation, setting out the sums due to Named Suppliers as assessed by InfraCo and to InfraCo for the balance of the payment due under the contract. After signing the Authorisation, InfraCo shall submit it to the Authority no later than four days before the final date for payment. The Authority shall sign the Authorisation and submit it to the <i>project bank</i> no later than one day before the final date for payment.
	121.9	InfraCo and Named Suppliers shall receive payment from the Project Bank Account of the sums set out in the Authorisation as soon as practicable after the Project Bank Account receives payment.
	121.10	A payment which is due from InfraCo to the Authority is not made through the Project Bank Account.
<b>Effect of payment</b>	121.11	Payments made from the Project Bank Account are treated as payments from the Authority to InfraCo in accordance with this contract or from InfraCo or Subcontractor to Named Suppliers in accordance with their contract as applicable. A delay in payment due to a failure of InfraCo to comply with the requirements of this clause is not treated as late payment under this contract.
<b>Trust Deed</b>	121.12	The Authority, InfraCo and named suppliers shall sign the Trust Deed before the first assessment date.
<b>Termination</b>	121.13	If either Party notifies the other of termination, no further payment shall be made into the Project Bank Account.
<b>PRICE ADJUSTMENT FOR INFLATION</b>	<b>122</b>	Where a figure is described in this contract as being subject to Indexation, the figure shall be multiplied by the quotient of the Retail Prices Index for the January which immediately precedes the commencement of the relevant ODP Year divided by the Retail Prices Index for January 2017.
<b>CHANGES IN THE LAW</b>	<b>123</b>	
	123.1	A change in the law of the country in which the Site is located (and which is not a change in law which a competent and experienced contractor familiar with works similar to the Infrastructure Services and exercising the Required Standard ought reasonably to have, anticipated at the Effective Date) is a Compensation Event if it occurs after the Effective Date. The Authority may notify InfraCo of a Compensation Event for such a change in the law and instruct it to submit quotations. If the effect of a Compensation Event which is a change in the law is to reduce the total Time Charge, the Prices are reduced.
<b>ASSIGNMENT</b>	<b>124</b>	
	124.1	InfraCo shall not assign, transfer, charge or otherwise deal with this contract (or any of its rights or obligations under it) nor grant, declare a trust of, create or dispose of any right or interest in it without the prior written consent of the Authority.

- 124.2 The Authority may assign or transfer all of its rights under or arising out of this contract at any time without the prior consent of InfraCo to a third party in which the Welsh Government shall have a controlling interest, except that the Authority shall not be permitted to assign such rights to the Joint Venture Party, TfWR or any successor provider of railway passenger services, and the Parties shall do all things necessary to give effect to this clause 124.2. The Authority shall use all reasonable endeavours to provide prior written notice to InfraCo of any proposed assignment no less than 14 days prior to such assignment. For the avoidance of doubt, any failure to give such notice shall not affect the validity of such assignment.

## **COLLATERAL WARRANTIES**

### **125**

- 125.1 InfraCo shall procure on the date the sub-contract is entered into (in the case of the Authority) and within 14 days of the Authority's request (in the case of all other parties), that the Subcontractors named or identified by discipline in the Authority's request duly execute and deliver to the Authority deeds of collateral warranty in substantially the form set out in Appendix 9 to Schedule 3B to the Infrastructure Agreement as may reasonably be amended by the Authority.
- 125.2 InfraCo shall, within 14 days of the Authority's request, duly execute and deliver to the Authority deeds of collateral warranty in the form set out at Appendix 9 of Schedule 3B of the Infrastructure Agreement, as may reasonably be amended by the Authority, in favour of:
- (a) Network Rail,
  - (b) persons providing finance in connection with the Infrastructure Services or the CVL Transformation and / or Associated Projects (including any security agent or trustee),
  - (c) any Beneficiary,
  - (d) any other party named in Appendix 9 of Schedule 3B or referred to in the Contract Data.
- 125.3 It is agreed that any liabilities contained within a collateral warranty entered into by InfraCo pursuant to clause 125.2 of this contract are not in addition to and will be contained within the single liability cap set out within this contract in relation to the relevant Infrastructure Services.

## **NATIONAL MINIMUM WAGE**

### **126**

- 126.1 InfraCo shall pay, and shall procure that its Subcontractors and subconsultants shall pay, the Living Wage to their respective employees provided that this requirement does not apply to Apprentices.

For the purposes of this clause, Living Wage and Apprentices shall be as defined in the Infrastructure Agreement.

	126.2	In relation to the CVL Transformation, InfraCo is entitled to recover staff Expenses for those staff living outside the South Wales Metro area who are travelling to/living in the South Wales Metro area until the end of the Preliminary Design and Discovery Phase.
<b>SUPPLEMENTARY CONDITIONS CONTRACT CLAUSES)</b>	<b>148</b>	
	148.1	The <i>supplementary conditions of contract</i> stated in the Contract Data (if any) are part of this contract.

## MAIN OPTION CLAUSES

### Option C: Target contract

#### IDENTIFIED AND 11 DEFINED TERMS

- 11.4 (a) The Activity Schedule is the *activity schedule* unless later changed in accordance with this contract.
- (b) The Price for Infrastructure Services Provided to Date is the Time Charge for the work which has been completed and any Milestone Payments where InfraCo has Achieved the Milestone Criteria for the services by the Planned Milestone Delivery Dates set out in the Milestone Table on or before the assessment date. A completed activity is one which is without Defects.
- (c) The Prices are the lump sum prices for each of the activities on the Activity Schedule unless later changed in accordance with this contract.

#### INFRACO'S 21 OBLIGATIONS

- 21.11 InfraCo shall prepare forecasts of the total Time Charge and Expenses for the whole of the Principal Infrastructure Services or Additional Infrastructure Services (as applicable) and submit them to the Authority. Forecasts shall be prepared at the intervals stated in the Contract Data from the Starting Date until Completion of the whole of the Principal Infrastructure Services or Additional Infrastructure Services (as applicable). An explanation of the changes made since the previous forecast shall be submitted with each forecast.

#### THE 31 PROGRAMME

- 31.4 InfraCo shall provide information which shows how each activity on the Activity Schedule relates to the operations on each programme which InfraCo submits for acceptance.

#### ACCELERATION 34

- 34.3 When the Authority accepts a quotation for an acceleration, the Authority shall change the Prices, the Completion Date and the Planned Milestone Delivery Dates accordingly and accept the revised programme.

#### ASSESSING THE 50 AMOUNT DUE

- 50.7 Payments of Time Charge made by InfraCo in a currency other than the *currency of this contract* are included in the amount due as payments to be made to InfraCo in the same currency. Such payments are converted to the *currency of this contract* in order to calculate InfraCo's share using the *exchange rates*.

## ACCOUNTS AND RECORDS 52

52.1 InfraCo shall keep these records (the "**Minimum Records**") and allow the Authority to inspect them at any time within working hours:

- (a) all necessary information for the evaluation of claims or Compensation Events, whether or not relating to InfraCo or to any Subcontractors (or sub-subcontractors of any tier),
- (b) management accounts, information from management information systems and any other management records,
- (c) accounting records (in hard copy as well as computer readable data),
- (d) contract and subcontract files (including proposals of successful and unsuccessful bidders, bids, rebids, etc.),
- (e) original estimates,
- (f) estimating worksheets,
- (g) correspondence,
- (h) Compensation Event files (including documentation covering negotiated settlements),
- (i) schedules including capital works costs, timetable and progress towards Completion,
- (j) general ledger entries detailing cash and trade discounts including companywide discounts and rebates,
- (k) commitments (agreements and leases) greater than £5,000 (five thousand pounds),
- (l) detailed inspection records,
- (m) such materials prepared in relation to the invitation to tender and subsequent tendering process relating to cost breakdowns, in each case which have not already been provided to the Authority,
- (n) accounts and records of the Price for Work Done to Date and all other amounts to be paid to InfraCo under this contract, and
- (o) test and commissioning results.

52.2 InfraCo shall maintain and procure in each subcontract that each of its Subcontractors (and sub-subcontractors of any tier) maintains and retains the Minimum Records for a minimum of twelve (12) years from Completion with respect to all matters for which InfraCo and its Subcontractors are responsible under this contract. InfraCo shall procure that each subcontract contains open-book audit rights in favour of the Authority and its



authorised representatives (including the Authority's external auditors).

52.3 InfraCo undertakes and shall procure that its Subcontractors (and sub-subcontractors of any tier) undertake their obligations and exercise any rights which relate to the performance of this contract on an open-book basis. The Authority and its authorised representatives may, from time to time during the performance of this contract and for 12 years following Completion, audit on an open-book basis and check any and all information regarding any matter relating to the performance of or compliance with this contract, including any aspect of InfraCo's or any Subcontractor's operations, method statements, costs and Expenses, subcontracts, claims relating to Compensation Events, and financial arrangements or any document referred to therein or relating thereto and the arrangements made by InfraCo or any Subcontractor to comply with its obligations under this clause 52. The Authority's rights pursuant to this clause 52.3 include the right to audit and check and to take copies of and extracts from any document or record of InfraCo or its Subcontractors including Minimum Records.

52.4 InfraCo shall promptly provide (and shall procure that its Subcontractors and sub-subcontractors of any tier promptly provide) all reasonable co-operation in relation to any audit or check including, to the extent reasonably possible in each particular circumstance by:

- (a) granting or procuring the grant of access to any premises used in InfraCo's performance of this contract, whether InfraCo's or Subcontractor's own premises or otherwise,
- (b) granting or procuring the grant of access to any equipment or system (including all computer hardware and software and databases) used exclusively in the performance of this contract, wherever situated and whether InfraCo's own equipment or otherwise,
- (c) making any contracts and other documents and records required to be maintained under this contract (including Minimum Records) (whether exclusively or non-exclusively) available for audit and inspection,
- (d) providing a reasonable number of copies of any subcontracts and other documents or records reasonably required by the Authority's auditor and / or granting copying facilities to the Authority's auditor for the purposes of making such copies, and
- (e) complying with the Authority's reasonable requests for access to staff and senior personnel engaged by InfraCo in the performance of this contract or the CVL Transformation and / or Associated Projects.

52.5 To the extent reasonably possible in each particular circumstance and for the purposes of audit only, InfraCo shall promptly grant or procure the grant of access to any equipment or system (including all computer hardware and software and databases) used non-exclusively in the performance of this

contract, wherever situated and whether InfraCo's own equipment or otherwise.

- 52.6 Access may be at any time without notice provided there is good cause for immediate access without notice and provided that the Authority's authorised representatives shall comply with all reasonable requirements of InfraCo for the purposes of protecting the confidentiality of the information of third parties and no information will be divulged to any third party save in pursuance of statutory obligations.
- 52.7 For the avoidance of doubt this clause 52 is in addition to any legislative requirement or applicable law and does not negate the need for any such retention of records.

#### **THE ACTIVITY SCHEDULE 53**

- 53.1 Information in the Activity Schedule is not part of the Scope.
- 53.2 If InfraCo changes a planned method of completing the Principal Infrastructure Services or Additional Infrastructure Services (as applicable) at its discretion so that the Activity Schedule does not comply with the Accepted Programme, InfraCo submits a revision of the Activity Schedule to the Authority for acceptance.
- 53.3 A reason for not accepting a revision of the Activity Schedule is that:
- (a) it does not comply with the Accepted Programme,
  - (b) any changed Prices are not reasonably distributed between the activities, or
  - (c) the total of the Prices is changed.

#### **INFRACO'S SHARE 54**

- 54.1 The Authority shall assess InfraCo's share of the difference between the total of the Prices and the Price for Infrastructure Services Provided to Date. The difference shall be divided into increments falling within each of the *share ranges*. The limits of a share range are the Price for Infrastructure Services Provided to Date divided by the total of the Prices, expressed as a percentage. InfraCo's share shall equal the sum of the products of the increment within each *share range* and the corresponding InfraCo's share percentage.
- 54.2 If the Price for Infrastructure Services Provided to Date is less than the total of the Prices, InfraCo shall be paid its share of the saving. If the Price for Infrastructure Services Provided to Date is greater than the total of the Prices, InfraCo shall pay its share of the excess.
- 54.3 The Authority shall make a preliminary assessment of InfraCo's share at Completion of the whole of the Principal Infrastructure Services or Additional Infrastructure Services (as applicable) using its forecasts of the final Price for Infrastructure Services Provided to Date and the final total of the Prices. This share

shall be included in the amount due following Completion of the whole of the Principal Infrastructure Services or Additional Infrastructure Services (as applicable).

- 54.4 The Authority shall make a final assessment of InfraCo's share using the final Price for Infrastructure Services Provided to Date and the final total of the Prices. This share shall be included in the final amount due.

#### **ASSESSING COMPENSATION EVENTS**

**63**

- 63.14 If the effect of a Compensation Event is to reduce the total Time Charge and the event is:

- (a) a change to the Scope, other than a change to the Scope which InfraCo proposed and the Authority has accepted, or
- (b) a correction of an assumption stated by the Authority for assessing an earlier Compensation Event,

the Prices shall be reduced.

- 63.15 Assessments for changed Prices for Compensation Events shall be in the form of changes to the Activity Schedule.

#### **IMPLEMENTING COMPENSATION EVENTS**

**65**

- 65.4 The changes to the Prices, the Completion Date and the Planned Milestone Delivery Dates shall be included in the notification implementing a Compensation Event.

#### **PAYMENT ON TERMINATION**

**92**

- 92.5 If there is a termination, the Authority shall assess InfraCo's share.

The Authority's assessment of InfraCo's share shall be added to the amount due to InfraCo on termination if there has been a saving or deducted if there has been an excess.

**OPTION E: Time  
based contract**

**IDENTIFIED AND 11  
DEFINED TERMS**

- 11.4 (a) The Price for Infrastructure Services Provided to Date is the Time Charge for the work which has been completed and any Milestone Payments where InfraCo has Achieved the Milestone Criteria for the services by the Planned Milestone Delivery Dates set out in the Milestone Table on or before the assessment date. Completed work is work completed without Defects.
- (b) The Prices are the Time Charge.

**THE 21  
CONSULTANT'S  
OBLIGATIONS**

- 21.11 InfraCo prepares forecasts of the total Time Charge and Expenses for the whole of the Infrastructure Services and submits them to the Authority. Forecasts are prepared at the intervals stated in the Contract Data from the Starting Date until Completion of the whole of the Infrastructure Services. An explanation of the changes made since the previous forecast is submitted with each forecast.
- 21.12 In the event that the actual total Time Charge and Expenses incurred at an *assessment interval* exceed the forecast of the total Time Charge and Expenses provided by InfraCo to the Authority (the “**Time Charge Excess**”), the Authority shall be entitled to retain a retention of 30% of the value of the Time Charge Excess due at that *assessment interval* and such retention amount shall be paid to InfraCo upon (i) completion of the Preliminary Design and Discovery Phase in respect of any retention withheld in respects of sums due during this phase; (ii) completion of the next Milestone due after each tranche of retention withheld in respect of sums due during the Detailed Design and Management Phase; or (ii) completion of the next Milestone due after each tranche of retention withheld in respect of sums due for the Additional Infrastructure Services.

**ACCELERATION 34**

- 34.4 When the Authority accepts a quotation for an acceleration, it changes the Completion Date, the Planned Milestone Delivery Dates and the forecast of the total Time Charge for the whole of the Infrastructure Services accordingly and accepts the revised programme.

**ASSESSING THE 50  
AMOUNT DUE**

- 50.7 Payments of Time Charge made by InfraCo in a currency other than the *currency of this contract* are included in the amount due as payments to be made to InfraCo in the same currency. Such payments are converted to the *currency of this contract* in order to calculate InfraCo’s share using the *exchange rates*.

**ACCOUNTS AND RECORDS 52**

52.1 InfraCo shall keep these records and allow the Authority to inspect them at any time within working hours:

- (a) all necessary information for the evaluation of claims or Compensation Events, whether or not relating to InfraCo or to any Subcontractors (or sub-subcontractors of any tier),
- (b) management accounts, information from management information systems and any other management records,
- (c) accounting records (in hard copy as well as computer readable data),
- (d) contract and subcontract files (including proposals of successful and unsuccessful bidders, bids, rebids, etc.),
- (e) original estimates,
- (f) estimating worksheets,
- (g) correspondence,
- (h) Compensation Event files (including documentation covering negotiated settlements),
- (i) schedules including capital works costs, timetable and progress towards Completion,
- (j) general ledger entries detailing cash and trade discounts including companywide discounts and rebates,
- (k) commitments (agreements and leases) greater than £5,000 (five thousand pounds),
- (l) detailed inspection records,
- (m) such materials prepared in relation to the invitation to tender and subsequent tendering process relating to cost breakdowns, in each case which have not already been provided to the Authority,
- (n) accounts and records of the Price for Work Done to Date and all other amounts to be paid to InfraCo under this contract, and
- (o) test and commissioning results.

**IMPLEMENTING COMPENSATION EVENTS 65**

**ADDITIONAL  
OVERHEAD AND  
ADDITIONAL  
PROFIT**

65.4 The changes to the forecast amount of the Prices, the Completion Date and the Planned Milestone Delivery Dates are included in the notification implementing a Compensation Event.

**65A**

65A.1 Where Main Option E (Time based contract) applies and where InfraCo's costs in respect of any Milestone increase as a direct result of any qualifying Compensation Event by more than 20% of the Prices for the Principal Infrastructure Services, in addition to the Fixed Overhead and Fixed Profit InfraCo shall be entitled to claim additional overhead ("**Additional Overhead**") and additional profit ("**Additional Profit**") strictly subject to the following:

- (a) the Additional Overhead and Additional Profit shall be limited to only that related to resources charged on a cost-plus basis and any additional InfraCo group overheads directly resulting from the qualifying Compensation Event,
- (b) Additional Overhead and Additional Profit shall not include the cost of any additional subcontracted resources or resources charged on a day-rate basis by any Affiliate of InfraCo,
- (c) any Additional Overhead and Additional Profit shall be calculated on the same basis as the Fixed Profit and Fixed Overhead included in the CVL Cost Template, and
- (d) the Prices for the Principal Infrastructure Services and the Additional Overhead and Additional Profit shall not include any additional element for the production of InfraCo's quotation for the qualifying Compensation Event.

65A.2 The Additional Overhead and Additional Profit (if any) shall become due when InfraCo has Achieved the Milestone for the Principal Infrastructure Services by the Planned Milestone Delivery Date set out in the Milestone Table.

Part B of Appendix 5 of Schedule 3B

Principal Infrastructure Services

**Contents**

- Contract Data Part One
- Contract Data Part Two
- Annex 1 – Scope
- Annex 2 - Commercial Information
- Annex 3 – Principal Infrastructure Services Delivery Plan
- Annex 4 – Outline Target Price
- Annex 5 – Final Target Price

## Contract Data

### Part one – Data provided by the *Authority*

Statements  
given in all  
contracts

#### 1 General

##### **The *conditions of contract* are**

the Conditions of Contract for Infrastructure Services at Part A of Appendix 5 to Schedule 3B of the Infrastructure Agreement utilising:

- Main Option E of the Conditions of Contract in relation to Principal Infrastructure Services performed during the Preliminary Design and Discovery Phase; and
- Main Option C of the Conditions of Contract in relation to the Principal Infrastructure Services performed during the Detailed Design and Management Phase.

##### **The *Adjudicator* is**

Name: Not named. To be agreed in accordance with Appendix 7 to Schedule 3B of the Infrastructure Agreement or failing agreement as nominated by the Chairman for the time being of the Nominating Authority.

##### **The *Principal Infrastructure Services* are**

the preparation of the Preliminary Design, Final Target Price, design management, design coordination and integration, and the Delivery Partner Services all as more fully described in the Scope and the contract documents and any other services referred to in the Scope. The Principal Infrastructure Services shall be carried out by InfraCo in accordance with the Conditions of Contract for Infrastructure Services.

**The *Scope* is** at Annex 1 of this Part B of Appendix 5.

**The *law of the contract* is** as stated in this contract.

**The *period for reply* is** 14 days except in relation to design submissions. In relation to design submissions, the *period for reply* shall be 28 days from the design submission provided that InfraCo shall provide not less than 14 days' advance notice in writing to the Authority of any design submission. Where InfraCo does not provide 14 days' advance notice of any design submission the *period for reply* shall be extended accordingly by no more than 14 days.

**The *records retention* is** 15 years following Completion or earlier termination

**The *tribunal* is** litigation.

**The *matters to be included in the Risk Register* are** detailed in Appendix 21 (Concept Design) of this Schedule 3B.

***Schedule 3B* is** Schedule 3B of the Infrastructure Agreement between the Authority and InfraCo.

**The *Authority's Project Manager* is** Transport for Wales.

With respect to the Principal Infrastructure Services, **the *site* is** all areas necessary for the CVL Transformation to be carried out and the volumes above and below it which are



affected by work or services included in this contract including land outside CVL Limits of Deviation or ownership temporarily or permanently required for construction and relevant operational purposes.

## 2 The Parties main responsibilities

The Authority shall provide access to the persons, places and things as set out in the Infrastructure Works Plan.

## 3 Time

- **The starting date** is the Grant Agreement Date.
- **InfraCo submits revised programmes at** monthly intervals. Month end is the last Sunday of the month and InfraCo submits the programme for Acceptance at the end of the first Friday of each calendar month starting from the *starting date*. Further details are captured in the Programme Control Management Plan that filter down to the Design/IDPs in order to achieve this.
- **Project Completion** has the meaning given to it in paragraph 4B.4(e)(iii) of Annex 1 (Scope) of Part B of Appendix 5 to this Schedule 3B.

## 4 Quality

- **The quality policy statement and quality plan are** provided within 1 month of the *starting date*.
- **The defects date is** 52 weeks after Completion of the whole of the Principal Infrastructure Services.

## 5 Payment

The payment mechanisms which shall apply to the Principal Infrastructure Services are set out in paragraphs 3.6, 3.6A, 3.6B, and 3.7 of Schedule 3B.

**The CVL capital budget is** [REDACTED] (including VAT).

The **CVL capital budget** includes but is not limited to the cost of:

- design,
- programme management,
- implementation,
- inflation,
- optimism bias,
- VAT, and
- the cost of the development of the following infrastructure elements to the CVL and non-CVL routes as part of the CVL Transformation (save for Gabalfa New Station (NST02), Car Parks Programme (INT02c), Treforest Estate New Station (NST01), Station Waiting Room & Shelters Programme (STN02a) and Taff's Well Depot (RS08):
  - Railway control systems,
  - Train power systems,
  - Electric power and plant,
  - Permanent way,
  - Operational telecommunications systems,

- Buildings and property,
- Civil engineering,
- Enabling works, and
- Depots and stabling.

Except to the extent expressly agreed otherwise by the Parties pursuant to a Package Order, Gabalfa New Station (NST02), Car Parks Programme (INT02c), Treforest Estate New Station (NST01), Station Waiting Room & Shelters Programme (STN02a) and Taff's Well Depot (RS08) are expressly excluded from the payment provisions set out in Schedule 3B as applicable to the Principal Infrastructure Services.

**Where Option C applies:**

- The *assessment interval* is monthly as specified in clause 50.1
- **Milestone Table**

The Milestone Table for the Principal Infrastructure Services is set out in Appendix 11 of Schedule 3B.

- **Milestone Delay Payments**

The Milestone Delay Payments are set out in the Milestone Table.

- **Delay Payment Cap**

The Delay Payment Cap is set out in the Milestone Table.

- **The currency of this contract is** Pounds Sterling (£)
- **The interest rate is** a rate equivalent to two percent (2%) per annum above the base lending rate published by Royal Bank of Scotland plc (or such other bank as the Authority may, after consultation with InfraCo, determine from time to time) during any period in which an amount payable under this contract remains unpaid.
- **Fixed Profit** and **Fixed Overhead** are not applicable where Option C applies.

**Where Option E applies:**

- **The assessment interval is** at calendar monthly intervals. The amount due shall exclude any Fixed Overhead and Fixed Profit and any Additional Overhead and Additional Profit (if applicable). The Fixed Profit and Fixed Overhead and any Additional Overhead and Additional Profit (if applicable) shall become due when InfraCo has Achieved the Milestone for the Principal Infrastructure Services by the Planned Milestone Delivery Date set out in the Milestone Table.

- **Milestone Table**

**The Milestone Table for the Principal Infrastructure Services is** set out in Appendix 11 of Schedule 3B.

- **Milestone Delay Payments**

**The Milestone Delay Payments are** set out in the Milestone Table.

- **Delay Payment Cap**

The Delay Payment Cap is set out in the Milestone Table.

- **The currency of this contract is** Pounds Sterling (£)
- **The interest rate is** a rate equivalent to two percent (2%) per annum above the base lending rate published by Royal Bank of Scotland plc (or such other bank as the Authority may, after consultation with InfraCo, determine from time to time) during any period in which an amount payable under this contract remains unpaid.
- **The Fixed Profit and the Fixed Overhead** are as set out in the CVL Cost Template as set out in Appendix 21 of this Schedule 3B.

**8. Indemnity and insurance**      **The amounts of insurance and the periods for which InfraCo maintains insurance are** as per clause 81 of Schedule 3B.

**The amounts of insurance and the periods for which the Authority maintains insurance are** as per clause 81 of Schedule 3B.

**Optional statements**      **If the Authority has decided the completion date for the whole of the Principal Infrastructure Services**

The *completion* date for the whole of the Principal Infrastructure Services is set out in the Milestone Table.

**If the Authority states any expenses**

- The expenses stated by the Authority are set out in Annex 2 (Commercial Information) of Part B of Appendix 5 of Schedule 3B.

**If Option C or E is used**

- InfraCo shall prepare forecasts of the total Time Charge and *expenses* at intervals no longer than four weeks. The forecast shall include:

- a detailed estimate of the total Time Charge and *expenses* for the next four weeks in such form as reasonably required by the Authority; and
- a forecast of the total Time Charge and *expenses* looking twelve weeks' ahead in such detail and form as reasonably required by the Authority; and
- a forecast of the total Time Charge and *expenses* looking twenty-four weeks' ahead in such detail and form as reasonably required by the Authority,

and in each case shall include the following information against each Planned Milestone Delivery Date:

- estimated fees, as direct costs including multiplier (capped) for salary on-costs
- Direct costs of sub-contractors (to be paid in arrears);
- Fixed Overheads
- Fixed Profit

**If Option C is used**

InfraCo's *share percentages* and the *share ranges* are set out in Annex 2.

The *supplementary conditions of contract* are:

- [ ]

The parties agree that, in the event of any inconsistency or conflict between the supplementary conditions of contract and the provisions of Schedule 3B.1 to Schedule 3B.12 and Appendix 1 (Definitions of Schedule 3B), the supplementary conditions of contract shall prevail.

# Part two – Data provided by InfraCo

- InfraCo is:

Name: Amey Keolis Infrastructure/Seilwaith Amey Keolis Limited (Company Number: 11389544)

Address: C/O Amey Rail Maindee Depot, Off Caerleon Road, Newport, United Kingdom, NP19 9DZ

.....  
.....

- **The key persons are** set out in the Infrastructure Service Delivery Plan.
- **The infrastructure services director is** set out in the Infrastructure Service Delivery Plan.
- **The staff rates are** the price charged for staff on a time basis set out at Appendix 25 to Schedule 3B. They include all costs to InfraCo including basic salary, any additional payments or benefits and social costs such as insurances or pension payments. InfraCo General Overheads and Profit are allowed for in *the staff rates*. Office expenses (including rental and heating) are not allowed for in the *staff rates* except in relation to the design schedule of rates. These rates or (at InfraCo's discretion) lower rates shall be used to prepare Compensation Events. InfraCo shall supply, on request by the Authority's Project Manager, calculations supporting the quoted rates. When assessing Compensation Events, the Authority's Project Manager is not bound to use the rates in Appendix 25 and may (acting reasonably) use lower rates.

InfraCo states the number of hours to be worked by the above staff per week: .....

- **The project bank is**.....
- **The named suppliers are**.....
- **The following matters will be included in the Risk Register:** Those matters set out in the Infrastructure Service Delivery Plan.

.....

- **Optional statements**      **The programme identified in the Contract Data is** in the Infrastructure Service Delivery Plan.  
  
   **If Option C is used**
  - **The activity schedule is** at Annex 2.

## Annex 1

### Scope

#### Scope of the Principal Infrastructure Services

- 0 In carrying out the Principal Infrastructure Services, InfraCo agrees that whilst such Principal Infrastructure Services are listed broadly according to a possible chronology, such Principal Infrastructure Services may need to be carried out in a different order or on more than one occasion. If InfraCo is in any doubt as to whether the Authority would wish InfraCo to proceed with a particular service InfraCo shall promptly seek the Authority's instructions.

The Principal Infrastructure Services to be performed by InfraCo shall comprise all or any of:

- a. the services set out or referred to in this Annex 1 including the obligation to act as agent of the Authority with respect to the orders placed under the IDP Framework Contracts in accordance with, and subject to, the Scope;
- b. the Discovery Phase Services (as defined in Schedule 3A of the Infrastructure Agreement); and
- c. all such other services as the Authority may reasonably expect to be provided by a contractor providing services of the type being provided by InfraCo pursuant to Schedule 3B of the Infrastructure Agreement in respect of a project such as the CVL Transformation, including any other services as may be reasonably incidental to the carrying out of the Principal Infrastructure Services.
- d. The Principal Infrastructure Services set out in this Annex 1 include:
  - i. Principal Infrastructure Services to be provided during the Preliminary Design and Discovery Phase (including the Discovery Phase Services (as defined in Schedule 3A of the Infrastructure Agreement)); and
  - ii. Principal Infrastructure Services to be provided during the Detailed Design and Management Phase.

#### **Infrastructure Works Plan**

### **1 INFRASTRUCTURE WORKS PLAN**

***The services set out in this paragraph 1 shall be performed during the Preliminary Design and Discovery Phase.***

- 1.1 As part of the Principal Infrastructure Services, following appointment InfraCo shall undertake an appraisal of the Initial Infrastructure Works Plan contained within Appendix 4 and consistent with the Authority's Plan of Works make a written proposal to the Authority setting out a process and timetable to review and develop the Initial Infrastructure Works Plan into the fully detailed Infrastructure Works Plan for the CVL Transformation. The Infrastructure Works Plan will incorporate a plan for provision of the deliverables for each appropriate stage (stage A to G) in the Authority's Plan of Works. InfraCo shall include the 20 Concept Design products developed to the appropriate stage in the Authority's Plan of Works unless otherwise agreed in writing with the Authority.
- 1.2 The Infrastructure Works Plan shall include (but not be limited to) detailed information on:
  - (a) the timing and duration of critical activities required to be carried out by InfraCo and its Sub-contractors to Achieve each Milestone and Milestone Deliverable by the relevant Planned Milestone Delivery Date;

- (b) the process for monitoring InfraCo progress against the Infrastructure Works Plan and the format of reporting such information to the Authority; and
  - (c) the timing of any required Authority Dependencies and / or Exceptional Items required to allow InfraCo to meet certain Milestones including any preparation and / or planning activities between InfraCo, the Authority and Others as required to assist the Authority to deliver the Authority Dependencies.
- 1.3 InfraCo shall request any further information about the CVL Transformation and the Site from the Authority as required and notified to InfraCo and ensure that the Infrastructure Works Plan complies with the Authority's requirements.
- 1.4 InfraCo shall prepare the Infrastructure Works Plan and submit it to the Authority for acceptance within six (6) weeks of the Grant Agreement Date or such other timescale as agreed between the Parties and each subsequent Infrastructure Works Plan shall be provided in advance of each stage gate as set out in Appendix 13 (Authority's Plan of Works) to Schedule 3B and upon the Authority's request where there have been any material changes to the Infrastructure Works Plan and at such other intervals as agreed between the Parties. The Infrastructure Works Plan (and each subsequent Infrastructure Works Plan) shall be in the form to align with the Authority's Plan of Works (as modified from time to time by the Authority at the Authority's discretion) and shall contain the information and deliverables agreed between InfraCo and the Authority (both acting reasonably) after the Grant Agreement Date pursuant to paragraph 1.1 of this Annex 1 with such amendments as the Authority may require.
- 1.5 InfraCo shall meet regularly and communicate with the Authority and the Authority's Project Manager and such other of the Authority's advisers or consultants as may be necessary to discuss the development of the Infrastructure Works Plan and to request all information and Documentation necessary to develop a fully detailed Infrastructure Works Plan for the Authority's approval.
- 1.6 InfraCo will notify the Authority of its intention to submit the Infrastructure Work Plan (or part thereof) at least 4 weeks prior to such submission.
- 1.7 Within 4 weeks (or such other reduced timescale as may be identified by the Authority) of InfraCo submitting the Infrastructure Works Plan (and each subsequent Infrastructure Works Plan) to the Authority for acceptance, the Authority *will* either accept the Infrastructure Works Plan or notify InfraCo of its reasons for not accepting it, subject to the notice in paragraph 1.6 of this Annex 1 being provided. The process for accepting the document will be the Authority's Design Acceptance Process.
- 1.8 InfraCo will take into account the Authority's comments and provide such further information and clarification as the Authority shall reasonably require and resubmit the Infrastructure Works Plan to the Authority.
- 1.9 Subject to paragraph 1.10 of this Annex 1, no Infrastructure Works Plan is accepted until the Authority has accepted it in writing and, for the avoidance of doubt, the Authority failing to reply within 4 weeks of InfraCo's submitting an Infrastructure Works Plan to the Authority for acceptance shall in no circumstances be construed as or constitute deemed acceptance of that Infrastructure Works Plan.
- 1.10 Upon acceptance of the draft Infrastructure Works Plan (as it may be revised or amended) such plan shall stand as the Infrastructure Works Plan and will be deemed to replace the Initial Infrastructure Works Plan.
- 1.11 If the Authority does not either notify InfraCo that it does not accept the Infrastructure Works Plan (and each subsequent Infrastructure Works Plan) or notify InfraCo of its reasons for not accepting it within 4 weeks of InfraCo submitting the Infrastructure Works Plan (and each subsequent Infrastructure Works Plan) to the Authority for acceptance, then InfraCo may notify the Authority in writing of such failure. If the Authority still fails to notify InfraCo that that it does not accept the Infrastructure Works Plan (and each

subsequent Infrastructure Works Plan) or notify InfraCo of its reasons for not accepting it within 2 weeks from such notice from InfraCo then the Authority shall be deemed to have accepted the Infrastructure Works Plan.

- 1.12 Any changes to the Infrastructure Works Plan which InfraCo expects, or may reasonably expect, will result in a delay to the Completion Date or Planned Milestone Delivery Dates shall be promptly notified by InfraCo to the Authority.

## **2 MAINTENANCE OF INFRASTRUCTURE WORKS PLAN**

***The services set out in this paragraph 2 shall apply during both the Preliminary Design and Discovery Phase and the Detailed Design and Management Phase.***

- 2.1 As part of the Principal Infrastructure Services, InfraCo shall review and update (and with a maximum of six (6) months between such reviews and update, and as appropriate) the Infrastructure Works Plan from the Grant Agreement Date until Completion of the whole of the Infrastructure Works. An explanation of the changes made since the previous version of the Infrastructure Works Plan shall be submitted to the Authority with each update.
- 2.2 Subject to paragraph 1.10 of this Annex 1, no Infrastructure Works Plan is accepted until the Authority has accepted it in writing. For the avoidance of doubt, the Authority failing to reply within 4 weeks of InfraCo's submitting an Infrastructure Works Plan to the Authority for acceptance shall in no circumstances be construed as or constitute deemed acceptance of that Infrastructure Works Plan.

### **Code of Construction Practice**

***The services set out in this paragraph 2A shall apply during both the Preliminary Design and Discovery Phase and the Detailed Design and Management Phase.***

## **2A CODE OF CONSTRUCTION PRACTICE**

- 2A.1 InfraCo shall develop and submit to the Authority and any relevant planning authorities a Code of Construction Practice Part 2 prior to the commencement of any construction works as part of the CVL Transformation and in any event within three (3) months of the Grant Agreement Date or such other timescale as agreed between the Parties. All Infrastructure Services and Infrastructure Works will be provided in accordance with the Code of Construction Practice Part 2 unless otherwise agreed with the Authority and the relevant Local Authority(ies).
- 2A.2 InfraCo shall request any further information about the CVL Transformation and the Site from the Authority as required and notified to InfraCo and ensure that the Code of Construction Practice Part 2 complies with the Authority's and Local Authority's(ies) requirements.
- 2A.3 InfraCo shall meet regularly and communicate with the Authority, Local Authority(ies) and the Authority's Project Manager and such other of the Authority's advisers or consultants as may be necessary to discuss the development of the Code of Construction Practice Part 2 and to request all information and Documentation necessary to develop a fully detailed Code of Construction Practice Part 2 for the Authority's approval.
- 2A.4 InfraCo will notify the Authority of its intention to submit the Code of Construction Practice Part 2 (or part thereof) at least 4 weeks prior to such submission.
- 2A.5 Within 4 weeks (or such other reduced timescale as may be identified by the Authority) of InfraCo submitting the Code of Construction Practice Part 2 (and each subsequent Code of Construction Practice Part 2) to the Authority and Local Authority(ies) for acceptance, the Authority will either accept the Code of Construction Practice Part 2 or notify InfraCo of its reasons for not accepting it, subject to the notice in paragraph 4.6 of



this Annex 1 being provided. The process for accepting the document will be the Authority's Design Acceptance Process.

- 2A.6 InfraCo will take into account the Authority's (and Local Authority(ies)) comments and provide such further information and clarification as the Authority (and Local Authority(ies)) shall reasonably require and resubmit the Code of Construction Practice Part 2 to the Authority and Local Authority(ies).
- 2A.7 Subject to paragraph 2A.8 of this Annex 1, no Code of Construction Practice Part 2 is accepted until the Authority has accepted it in writing and, for the avoidance of doubt, the Authority failing to reply within 4 weeks of InfraCo's submitting a Code of Construction Practice Part 2 to the Authority for acceptance shall in no circumstances be construed as or constitute deemed acceptance of that Code of Construction Practice Part 2.
- 2A.8 Upon agreement of the draft Code of Construction Practice Part 2 (as it may be revised or amended) such plan shall stand as the Code of Construction Practice Part 2 and will be deemed to replace the Code of Construction Practice Part 2.
- 2A.9 If the Authority does not either notify InfraCo that it does not accept the Code of Construction Practice Part 2 (and each subsequent Code of Construction Practice Part 2) or notify InfraCo of its reasons for not accepting it within 4 weeks of InfraCo submitting the Code of Construction Practice Part 2 (and each subsequent Code of Construction Practice Part 2) to the Authority for acceptance, then InfraCo may notify the Authority in writing of such failure. If the Authority still fails to notify InfraCo that that it does not accept the Code of Construction Practice Part 2 (and each subsequent Code of Construction Practice Part 2) or notify InfraCo of its reasons for not accepting it within 2 weeks from such notice from InfraCo then the Authority shall be deemed to have accepted the Code of Construction Practice Part 2.
- 2A.10 Any changes to the Code of Construction Practice Part 2 which InfraCo expects, or may reasonably expect, will result in a delay to the Completion Date or Planned Milestone Delivery Dates shall be promptly notified by InfraCo to the Authority.

### **Design Services**

## **3 CONCEPT DESIGN TO PRELIMINARY DESIGN**

***The services set out in this paragraph 3 shall be performed during the Preliminary Design and Discovery Phase.***

- 3.1 From the Grant Agreement Date and throughout the Preliminary Design and Discovery Phase, InfraCo shall develop and prove the Concept Design against the Outline Target Price to prepare a Preliminary Design Proposal and Final Target Price, taking into account all the project-specific requirements and in accordance with the Authority's requirements, standards, manuals and processes, including the requirements set out in the Scope, drawings, architectural design, specifications, construction planning and logistics and all associated supporting information as required by the Authority or as defined within the CVL Engineering Requirements document, and shall be submitted as part of the CVL Transformation Proposal. The Concept Design products shall as a minimum have been developed to Stage C of the Authority's Plan of Works (or such other Stage as specified in the Infrastructure Works Plan) as part of the Infrastructure Works Plan and shall be submitted as part of the CVL Transformation Proposal.
- 3.2 InfraCo shall advise upon the selection, availability and price of materials, methods of working, building systems and equipment; advise on the time required for construction and on all aspects of "buildability" in relation to the proposed design for each element of the CVL Transformation and on the feasibility of construction tolerances.

- 3.3 InfraCo shall review the proposed Preliminary Design with the Authority (and Others as required) with consideration to whole life costs, obsolescence, alternative design and construction approaches and cost implications and alternative phasing and programming approaches and the cost implications of them. The process for accepting the Preliminary Design will be the Authority's Design Acceptance Process. Once accepted, this shall be the "Preliminary Design Proposal".
- 3.4 InfraCo shall review the Scope, proposed Preliminary Design, and Infrastructure Works Plan for the purpose of providing value management and value engineering advice and for compliance with safety requirements and sound construction practice.
- 3.5 InfraCo shall carry out thorough risk management processes including risk identification, risk avoidance plans, risk mitigation plans and the like. InfraCo shall arrange and facilitate regular risk assessment workshops to which the Authority and Authority's Project Manager shall be invited to participate. InfraCo shall carry out surveys, studies, investigations and the like as part of risk mitigation plans in order to expose, reduce, remove or manage potential risks.
- 3.6 If at any time during the Preliminary Design and Discovery Phase InfraCo makes a discovery which InfraCo believes (in its professional opinion) will prevent or is likely to prevent the CVL Asset Transfer or the CVL Transformation or Associated Projects, InfraCo shall immediately notify the Authority and raise the matter for consideration at the next Risk Review meeting.
- 3.7 During the Preliminary Design and Discovery Phase, InfraCo shall identify allowances for preliminaries and other project costs in the CVL Transformation Proposal, including land costs, utility costs and Network Rail charges. Where existing utilities are to be relocated as a direct consequence of, and are directly affected by provision of the on-street Metro extensions to the Core Valley Line services, the cost of such relocation will be met by the Authority.
- 3.8 InfraCo shall meet regularly and communicate with the Authority and the Authority's Project Manager and such other of the Authority's advisers or consultants as may be necessary to discuss the further development of Concept Design and to request all information and Documentation necessary to develop a fully detailed revised Concept Design for the Authority's approval.
- 3.9 InfraCo will notify the Authority of its intention to submit a revised Concept Design at least 4 weeks prior to such submission.
- 3.10 Within 4 weeks (or such other reduced timescale as may be identified by the Authority) of InfraCo submitting the revised Concept Design (and each subsequent revised Concept Design) to the Authority for acceptance, the Authority will either accept the revised Concept Design or notify InfraCo of its reasons for not accepting it, subject to the notice in paragraph 3.9 of this Annex 1 being provided. The process for accepting the document will be the Authority's Design Acceptance Process.
- 3.11 InfraCo will take into account the Authority's comments and provide such further information and clarification as the Authority shall reasonably require and resubmit the revised Concept Design to the Authority.
- 3.12 Subject to paragraph 3.13 of this Annex 1, no revised Concept Design is accepted until the Authority has accepted it in writing and, for the avoidance of doubt, the Authority failing to reply within 4 weeks of InfraCo's submitting the Revised Detailed Design Proposal to the Authority for acceptance shall in no circumstances be construed as or constitute deemed acceptance of Revised Detailed Design Proposal.
- 3.13 Upon acceptance of the draft revised Concept Design (as it may be revised or amended) such plan shall stand as the revised Concept Design and will be deemed to replace any previous revised Concept Design.

- 3.14 If the Authority does not either notify InfraCo that it does not accept the revised Concept Design (and each subsequent revised Concept Design) or notify InfraCo of its reasons for not accepting it within 4 weeks of InfraCo submitting the revised Concept Design (and each subsequent revised Concept Design) to the Authority for acceptance, then InfraCo may notify the Authority in writing of such failure. If the Authority still fails to notify InfraCo that it does not accept the revised Concept Design (and each subsequent revised Concept Design) or notify InfraCo of its reasons for not accepting it within 2 weeks from such notice from InfraCo then the Authority shall be deemed to have accepted the revised Concept Design.
- 3.15 Any changes to the revised Concept Design which InfraCo expects, or may reasonably expect, will result in a delay to the Completion Date or Planned Milestone Delivery Dates shall be promptly notified by InfraCo to the Authority.

#### **4 CVL TRANSFORMATION PROPOSAL**

***The services set out in this paragraph 4 shall be performed during the Preliminary Design and Discovery Phase.***

- 4.1 InfraCo shall submit the CVL Transformation Proposal (taking into account any Authority changes instructed following the Grant Agreement Date) to the Authority for acceptance at the date as set out in the Milestone Table in Part B of Appendix 5 of Schedule 3B alongside the following information which shall be developed by InfraCo as part of the Principal Infrastructure Services during the Preliminary Design and Discovery Phase:
- (a) Preliminary Design Proposal;
  - (b) Confirmation of:
    - (i) the Final Target Price; and
    - (ii) the Final Target Price for the CVL Transformation is within the CVL Capital Budget envelope. The Final Target Price shall include but is not limited to:
      - (A) the value of any retained risk, which shall be based on a quantified risk assessment and which shall be subject to the Authority's approval. If the value of the retained risk is not considered to be reasonable, then the Authority may specify the value of the retained risk;
      - (B) proposed fixed and firm charge for the Infrastructure Manager Services contained within Schedule 3A of the Infrastructure Agreement and as required by Schedule 8.5 of the Infrastructure Agreement;
      - (C) an allowance for the Infrastructure Delivery Alliance;
  - (c) proposals for the Infrastructure Delivery Alliance and the Alliance Agreement, including risk share between the alliance partners;
  - (d) Asset Management Plan and Asset Knowledge Management Plan;
  - (e) Engineering Implementation Plan;
  - (f) System Integration Plan;
  - (g) Quantified Risk Assessment which is linked to the submitted Final Target Price for CVL Transformation;
  - (h) any proposed Network Rail/ODP business transfer agreement;

- (i) statement on regulatory position (including exemptions/approvals required by ORR);
- (j) update on mobilisation plan and readiness for CVL Asset Transfer;
- (k) any IDP/ODP Risk Share proposal;
- (l) latest form of CVL Asset Lease;
- (m) ODP's ability to meet criteria sufficient to satisfy any relevant funding streams including ERDF and DfT;
- (n) any Technical Design completed or other products within Stages C, D, E and F of the Authority's Plan of Works;
- (o) current Infrastructure Works Plan;
- (p) process for IDP management;
- (q) IDP Works Packages (including any risk share);
- (r) any proposed Network Rail Access Agreements and / or Connection Agreements;
- (s) evidence that the necessary consents, licences and / or approvals for the commencement of the Infrastructure Manager's role are in place;
- (t) a provisional agreement between InfraCo and Network Rail and InfraCo and ORR that that the CVL Assets are capable of acceptance by InfraCo;
- (u) revised CVL Cost Templates (as amended from time to time) including a valid Option C pricing proposal (which shall be within the CVL Capital Budget and capable of acceptance by the Authority and shall include such information as set out in the CVL Cost Template and as otherwise required by the Contract Data) and Milestone Payments for the remainder of the Principal Infrastructure Services to be provided by InfraCo during the Detailed Design and Management Phase. The Authority acknowledges that as part of the Option C pricing proposal and the parties entering into the Alliance Agreement that InfraCo may propose an amendment to the Compensation Event position for Option C in relation to IDP default;
- (v) any revised Code of Construction Practice Part 2;
- (w) any revised Concept Design; and
- (x) any other information reasonably required by the Authority in respect of assessing CVL Asset Transfer,

(together, the "**CVL Transformation Proposal**").

- 4.2 The Preliminary Design and Discovery Phase ended on 31 March 2020 and the Detailed Design and Management Phase began on 1 April 2020. The Notice to Proceed was issued by the Authority to ODP on 20 October 2020.

#### **4A QUANTIFIED RISK ASSESSMENT (QRA)**

***The services set out in this paragraph 4A shall be performed during the Preliminary Design and Discovery Phase and during the Detailed Design and Management Phase.***

- 4A.1 InfraCo shall produce a quantified risk assessment ("**QRA**") to identify the expected financial and programme impacts of the risks of the CVL Transformation.

- 4A.2 The QRA shall include a financial assessment of the risks, using best industry practice and assumptions, including estimates of the consequential impacts. InfraCo shall estimate values at 50% and 80% confidence levels for both time and cost. InfraCo shall consult with the Authority in producing the QRA and shall incorporate the Authority's view into the QRA.
- 4A.3 InfraCo shall submit a complete QRA within at the Authority's Plan of Works Stage Gate B and shall update the QRA quarterly thereafter in consultation with the Authority and any appointed IDPs.
- 4A.4 InfraCo shall demonstrate in the IDP/InfraCo Risk Share Proposal which risks identified in the QRA are transferred to InfraCo and IDPs.
- 4A.5 The total costs of the Preliminary Design Proposal including the value of any risks in the QRA retained by the Authority must be within the CVL Capital Budget.

#### **4B AUTHORITY REVIEW OF THE CVL TRANSFORMATION PROPOSAL**

If and to the extent required by the Authority, the services set out in this paragraph 4B shall be performed following issue of the CVL Transformation Proposal as part of the Preliminary Design and Discovery Phase.

- 4B.1 Following submission of the CVL Transformation Proposal by InfraCo, the Authority shall consider the CVL Transformation Proposal. The Authority may (at its sole discretion) issue a Notice to Proceed.
- 4B.2 InfraCo shall provide all reasonable assistance to the Authority at the request of the Authority in its review of the CVL Transformation Proposal including but not limited to the following:
- (a) InfraCo shall review the proposed Preliminary Design with the Authority (and Others as required) with consideration to alternative design and construction approaches and cost implications and alternative phasing and programming approaches and the cost implications of them;
  - (b) InfraCo shall review the Scope, proposed Preliminary Design, and Infrastructure Works Plan for the purpose of providing value engineering advice and for compliance with safety requirements and sound construction practice; and
  - (c) InfraCo shall make such adjustments and refinements to the CVL Transformation Proposal (including but not limited to the Preliminary Design) as the Authority may reasonably require.

The process for accepting the Preliminary Design will be the Authority's Design Acceptance Process as set out in the CVL Engineering Requirements.

- 4B.3 Following the process set out in this paragraph 4B, if and when required by the Authority, InfraCo shall submit a further revised CVL Transformation Proposal to the Authority for approval and the Parties shall follow the process set out in this paragraph 4B as many times as required by the Authority.
- 4B.4 In the event that the Final Target Price for the CVL Transformation agreed between the Parties is less than the Outline Target Price, then InfraCo shall be entitled to [REDACTED] (exclusive of VAT) of the difference between the Final Target Price and the Outline Target Price (the **"InfraCo's Target Cost Saving"**), subject to the following principles:
- (a) InfraCo's Target Cost Saving shall be reduced by an amount equal to the amount by which the Final CVL Transformation Outturn Cost exceeds the Final CVL Transformation Target Price. In the event that the Final CVL Transformation Outturn Cost exceeds the Final CVL Transformation Target Price by more than InfraCo's Target Cost Saving, then InfraCo's Target Cost Saving shall be zero.

- (b) To the extent that InfraCo omits work and services from the CVL Transformation (other than where instructed by the Authority or as a result of any value engineering permitted and agreed by the Authority), such that the Final CVL Transformation Outturn Cost is reduced (the “**CVL Omission Value**”), then InfraCo’s Target Cost Saving shall be reduced by a value equivalent to the CVL Omission Value.
- (c) Any increase to the Final CVL Transformation Target Price which arises due to any default, act or omission of InfraCo shall be disregarded for the purposes of the above assessment.
- (d) Any InfraCo Target Cost Saving (as may be reduced in accordance with paragraph (a) or paragraph (b) above) shall only become due and payable on Project Completion of the CVL Transformation as notified by the Authority in writing to InfraCo, provided that the Authority shall have discretion to instruct InfraCo to issue an earlier application for payment in relation to the sum referred to in this clause 4B.4. Any InfraCo Target Cost Saving shall then be payable in accordance with clause 51 of Appendix 5 of this Schedule 3B.
- (e) In this paragraph 4B.4,
  - (i) Final CVL Transformation Outturn Cost means the total cost due and payable by the Authority under the IDP Works Packages, this Schedule 3B and any Package Order issued pursuant to this Schedule 3B or Sell2Wales or any other relevant public sector procurement notified by the Authority in respect of the CVL Transformation on or before the completion of the CVL Transformation as notified by the Authority to InfraCo in writing.
  - (ii) Final CVL Transformation Target Price means the Final Target Price as adjusted for the value of any variations and/or Compensation Events properly instructed by the Authority pursuant to the IDP Works Packages, this Schedule 3B or any Package Order issued pursuant to this Schedule 3B or Sell2Wales or any other relevant public sector procurement notified by the Authority in respect of the CVL Transformation on or before the completion of the CVL Transformation as notified by the Authority to InfraCo in writing.
  - (iii) Project Completion means once Milestone 18 (including sub-deliverable ‘Transformation Works Complete’) and Milestone 5 (each as set out in the Milestone Table) have been Achieved.

#### **4C DETAILED DESIGN AND MANAGEMENT PHASE**

- 4C.1 Following issue of the Notice to Proceed, the Detailed Design and Management Phase shall begin on the date stated in the Notice to Proceed and InfraCo shall immediately proceed to perform the Principal Infrastructure Services during the Detailed Design and Management Phase and shall comply with the agreed CVL Transformation Proposal.

#### **5 DESIGN DEVELOPMENT**

***The services set out in this paragraph 5 shall be performed during the Detailed Design and Management Phase.***

- 5.1 From the start of the Detailed Design and Management Phase, InfraCo shall, on an ongoing basis, in conjunction with the IDPs, prepare a more detailed design proposal (based on the Preliminary Design) to meet the requirements of Part B of Appendix 5 (“**Revised Detailed Design Proposal**”) and update such Revised Detailed Design Proposal as necessary, InfraCo shall prepare and report to the Authority on the

Infrastructure Works Plan (including the cost plan and budget) and recommend economies in terms of cost and time which may be made to the proposed Infrastructure Works Plan, provided they are consistent with the Authority's goals and requirements by reference to the Scope or any amendment thereto and sound construction practice and agree the same with the Authority. InfraCo shall also prepare the procedures for cost planning and control of the CVL Transformation.

- 5.2 InfraCo shall co-ordinate the drawings and specifications having regard to the IDP Works Packages of the CVL Transformation.
- 5.3 InfraCo shall report to and advise the Authority on the cost and time implications including, if appropriate, the time and cost implications on other IDPs and on the possible effect on the Programme of proposed design changes.
- 5.4 Where savings in the CVL Capital Budget are identified by InfraCo or by the Authority, InfraCo shall prepare and submit to the Authority for consideration proposals for further extension of electrification of the CVL Transformation.
- 5.5 InfraCo shall meet regularly and communicate with the Authority and the Authority's Project Manager and such other of the Authority's advisers or consultants (including IDPs) as may be necessary to discuss the development of Revised Detailed Design Proposal and to request all information and Documentation necessary to develop a fully detailed Revised Detailed Design Proposal for the Authority's approval.
- 5.6 InfraCo will notify the Authority of its intention to submit a Revised Detailed Design Proposal at least 4 weeks prior to such submission.
- 5.7 Within 4 weeks (or such other reduced timescale as may be identified by the Authority) of InfraCo submitting the Revised Detailed Design Proposal (and each subsequent Revised Detailed Design Proposal) to the Authority for acceptance, the Authority will either accept the Revised Detailed Design Proposal or notify InfraCo of its reasons for not accepting it, subject to the notice in paragraph 5.6 of this Annex 1 being provided. The process for accepting the document will be the Authority's Design Acceptance Process.
- 5.8 InfraCo will take into account the Authority's comments and provide such further information and clarification as the Authority shall reasonably require and resubmit the Revised Detailed Design Proposal to the Authority.
- 5.9 Subject to paragraph 5.10 of this Annex 1, no Revised Detailed Design Proposal is accepted until the Authority has accepted it in writing and, for the avoidance of doubt, the Authority failing to reply within 4 weeks of InfraCo's submitting the Revised Detailed Design Proposal to the Authority for acceptance shall in no circumstances be construed as or constitute deemed acceptance of Revised Detailed Design Proposal.
- 5.10 Upon acceptance of the draft Revised Detailed Design Proposal (as it may be revised or amended) such plan shall stand as the Revised Detailed Design Proposal and will be deemed to replace any previous Revised Detailed Design Proposal.
- 5.11 If the Authority does not either notify InfraCo that it does not accept the Revised Detailed Design Proposal (and each subsequent Revised Detailed Design Proposal) or notify InfraCo of its reasons for not accepting it within 4 weeks of InfraCo submitting the Revised Detailed Design Proposal (and each subsequent Revised Detailed Design Proposal) to the Authority for acceptance, then InfraCo may notify the Authority in writing of such failure. If the Authority still fails to notify InfraCo that it does not accept the Revised Detailed Design Proposal (and each subsequent Revised Detailed Design Proposal) or notify InfraCo of its reasons for not accepting it within 2 weeks from such notice from InfraCo then the Authority shall be deemed to have accepted the Revised Detailed Design Proposal.

- 5.12 Any changes to the Revised Detailed Design Proposal which InfraCo expects, or may reasonably expect, will result in a delay to the Completion Date or Planned Milestone Delivery Dates shall be promptly notified by InfraCo to the Authority.
- 5.13 The process for accepting the Infrastructure Works Plan will be the Authority's Design Acceptance Process.

## **6 DESIGN INTEGRATION AND COORDINATION**

***The services set out in this paragraph 6 shall be performed and paragraph 6 shall apply during both the Preliminary Design and Discovery Phase and the Detailed Design and Management Phase.***

InfraCo shall:

- 6.1 Ensure all design and all aspects of the Principal Infrastructure Services shall reflect the Authority's Plan of Works and have regard where necessary to the need for outputs to be available in accordance with the Network Rail Guide to Rail Investment Process,
- 6.2 Establish a design delivery strategy in order to provide clear and early identification of design packages, the responsibility for delivery of those packages, the dependencies between design package and between any design package and any other matter including any appropriate hold points and hold point conditions that must be complied with before such design or any dependent design shall to proceed beyond such hold point,
- 6.3 Promulgate such design delivery strategy and establish a procedure to establish whether or not the strategy is being adhered to by InfraCo and Others,
- 6.4 Adhere to the design delivery strategy in planning and management of the CVL Transformation,
- 6.5 Provide clear and detailed written report on the compliance of design with the design delivery strategy and the programme and verify and provide a written report that the relevant stage of the design is complete before proceeding to the next stage of the Authority's Plan of Works in relation to each element of the CVL Transformation as relevant to the proposed construction methodology,
- 6.6 Establish a design process programme with detailed programme levels as needed to reflect actual and likely dependencies to include appropriate identified float and include a resilience strategy to minimise the impact of late or incomplete design on the overall design programme,
- 6.7 Establish a process by which all design packages may be spatially and functionally modelled and coordinated and integrated into a single or as required elemental design packages to suit packages of works for construction or fabrication. The programming software and software system requirements for such modelling and coordination shall be agreed between the Parties (acting reasonably) within 6 weeks of the Grant Agreement Date,
- 6.8 Undertake the spatial and functional modelling and coordination and integration of design packages on a progressive and incremental basis so that any issues are identified and resolved including identification of the party responsible for the relevant design package and any necessary resolution of issues,
- 6.9 Prepare regular and detailed reports about the modelling coordination and integration of design and of the design with the CVL Transformation,
- 6.10 In respect of all the design activity packages, set the outputs and standards to be adopted by each any every design activity package whether such design activity is undertaken by InfraCo or Others so that the progress of each design activity can be independently



monitored and managed, progress of overall design can be monitored and managed reflecting all such characteristics in the programme,

- 6.11 Establish the standards and protocols to be adopted in the provision of all design activity packages by InfraCo or Others having regard to the nature of the design and the need to integrate, share and interrogate the design,
- 6.12 Establish an appropriate design audit methodology to flag the checks to be undertaken by the design originator to allow the efficient and effective coordination and integration of each design activity,
- 6.13 Prepare a design programme *in appropriate levels of detail* including the incorporation of design work to be carried out by InfraCo, IDPs and Others (if applicable),
- 6.14 Prepare the Detailed Integration Design,
- 6.15 Co-ordinate the Technical Design prepared or being prepared for the Programme by Others or by InfraCo as part of the AKI Infrastructure Works (if any) including but not by way of limitation, by the preparation jointly with Others of any such coordination drawings for the CVL Transformation and / or Associated Projects as are required and by setting out the works for the CVL Transformation and / or Associated Projects jointly with Others and by re-sequencing all or any part of the Principal Infrastructure Services as necessary to coordinate with them in accordance with the requirements set out in Part B of Appendix 5 (as such requirements may be further detailed or adjustment by the Authority from time to time) and where necessary to Provide the Principal Infrastructure Services, so as to ensure that all designs and implementation works are compatible and integrate with each other and that on Completion the design produced by InfraCo and by Others and the Infrastructure Works will be successfully integrated one with the other,
- 6.16 Achieve the standard and detail of design and produce the design deliverable stated within the Scope,
- 6.17 Manage and coordinate Others who have been awarded a related design package,
- 6.18 Where the design or advice or other professional input of Others is to be incorporated into or be applicable in respect of the CVL Transformation and / or Associated Projects, InfraCo shall have a duty (such duty being consistent with and not extending beyond the scope of clause 21.2 of the Conditions of Contract for Infrastructure Services) to examine and assess such design or advice or other professional input, to report to the Authority where it considers the same may be inaccurate or of an inappropriate standard and recommend appropriate remedial action, and to monitor the carrying out of the same and / or its incorporation into the CVL Transformation.
- 6.19 Provide support during negotiations with relevant authorities and Others as required, and
- 6.20 InfraCo's software and systems including but not limited to programme are to be accepted by the Authority and InfraCo shall procure that the Authority has a licence to use and maintain access to such system and software for the duration of the Principal Infrastructure Services and for no less than seven years from the date of signature of the Infrastructure Agreement or two years after completion or termination of the CVL Transformation (whichever is the later).

## **7 PROGRAMME MANAGEMENT**

***The services set out in this paragraph 7 shall be performed during both the Preliminary Design and Discovery Phase and the Detailed Design and Management Phase.***

- 7.1 InfraCo shall prepare a procurement programme consistent with the Accepted Programme which reflects the breakdown of IDP Works Packages and sequence of works in accordance with the Preliminary Design (to include site-specific hour by hour

programmes where reasonably required by the Authority or a Stakeholder in respect of possessions and any other time-critical activities).

- 7.2 Initially InfraCo shall prepare an outline, logic-linked, resourced and cost loaded electronic construction programme consistent with the Stage of design in the Authority's Plan of Works, provided in an editable original file format co-ordinated with the procurement programme. InfraCo shall subsequently update and expand this to provide a detailed logic-linked, resourced and cost loaded electronic construction programme consistent with the Stage of Design in the Authority's Plan of Works, which should be detailed week to week and show how the execution of the CVL Transformation is to be achieved within the Accepted Programme and indicating any off-Site design or manufacture required and the lead times for development of the Preliminary Design and for each IDP Works Package. This programme shall clearly identify the critical path(s) for the CVL Transformation (to include site-specific hour by hour programmes where reasonably required by the Authority or a Stakeholder in respect of possessions and any other time-critical activities) and be provided in an electronic editable original file format.
- 7.3 InfraCo shall prepare for agreement by the Authority a project manual and a project execution plan in conjunction with the Authority and the Authority's Project Manager. The project execution plan shall include a management regime for inspections, hold points and sign-offs and InfraCo shall agree the same with the Authority, such plan to be reviewed and updated for agreement by the Authority at a quarterly interval or as otherwise agreed by the Authority.
- 7.4 InfraCo shall prepare information schedules giving dates for the release of information from InfraCo to the IDPs and including, in particular, the approvals period agreed for IDPs' design information; expand, update or adapt the information schedules as may be necessary to reflect further information, IDP's detailed programmes or changed circumstances; manage the submission and approval of the IDP's design information.
- 7.5 InfraCo shall expand, update and adapt on a monthly basis the procurement programme, construction programme, safety policy and IDP's detailed programmes. Where appropriate InfraCo shall make proposals for the acceleration of all or part of any IDP Works Package(s).

## **8 STATUTORY AND OTHER APPROVALS**

***The services set out in this paragraph 8 shall be performed during both the Preliminary Design and Discovery Phase and the Detailed Design and Management Phase.***

- 8.1 InfraCo, its sub-consultants and sub-contractors shall, and shall use all reasonable endeavours (except in as far as there is a statutory requirement on InfraCo) to ensure Others compliance with all relevant statutory requirements in relation to the CVL Transformation.
- 8.2 InfraCo shall ensure that the Site is registered with the "Considerate Constructors Scheme" ("CCS") and use reasonable endeavours to ensure the Site is managed in an appropriate manner so that the Site score is maximised when audited by the CCS.
- 8.3 InfraCo shall consult with local or other authorities on matters of principle in connection with the CVL Transformation and for the development of the Authority's requirements, and where appropriate, assist Others with the same.
- 8.4 InfraCo shall make and negotiate all necessary applications for outline town planning approval having agreed the same with the Authority, revise and resubmit the same if necessary and negotiate with the various authorities or statutory undertakers which have an interest in the CVL Transformation. Where appropriate, assist Others with the same.
- 8.5 InfraCo shall make and negotiate all necessary applications for and give all notices required to be given for detailed town planning and listed building consents, building by-

law, building act, building and fire regulations approvals and all other statutory approvals and consents required for the CVL Transformation. Where appropriate, assist Others with the same.

- 8.6 InfraCo shall do all that is necessary to satisfy the requirements of local and statutory authorities and statutory undertakers and other bodies having jurisdiction over the CVL Transformation: advise on any cost implications of such requirements and suggest to the Authority possible alternative design solutions. Where appropriate, assist Others with the same.
- 8.7 InfraCo shall liaise with local and statutory authorities and statutory undertakers in connection with road closures, traffic restrictions, hoardings, services mains, diversions and connections at the Site and ensure that such arrangements comply with their requirements. Where appropriate, assist Others with the same.
- 8.8 InfraCo shall keep the Authority constantly informed, and with a minimum interval between such updates of two weeks, of the cost and programme implications involved in any such negotiations, applications and approvals, referred to above.
- 8.9 InfraCo shall assist, where appropriate, the Authority in making and negotiating with statutory undertakers all approvals, agreements, leases and consents necessary in relation to the CVL Transformation.
- 8.10 InfraCo shall provide advice and assist Others, as required by the Authority, in making and negotiating all other applications and approvals necessary for the CVL Transformation.
- 8.11 InfraCo shall prepare, in conjunction with Others, any special reports or appraisals for the use of the Authority or reasonably required in connection with the approvals and consents referred to in the foregoing paragraph or for negotiations with any adjoining owners, public authorities, licensing authorities, financing bodies and others.
- 8.12 InfraCo shall provide information, where appropriate, to Others for the purposes of consultation and liaison with planning authorities, building control authorities, fire authorities, environmental authorities, licensing authorities and statutory undertakers.
- 8.13 InfraCo shall ensure, in consultation with the Authority and Others that the CVL Transformation complies with the Authority's insurers standards and requirements and their approval is obtained. Facilitate any inspection regimes required by the Authority's insurers.
- 8.14 InfraCo shall provide cost information for consultation with the Authority and report monthly on progress of statutory approvals on a regular basis.
- 8.15 InfraCo shall provide all relevant support to the Authority in the obtaining of any Order or other planning applications where such applications are commenced and progressed by the Authority. Other relevant and required planning permissions shall be the responsibility of InfraCo.
- 8.16 InfraCo shall record and maintain a set of design standards (the "**Design Standards**") for the CVL through the period of the CVL Transformation and shall provide such annually to the Authority.
- 8.17 InfraCo shall be responsible for satisfying any statutory requirement to appoint the Independent Competent Person.

#### **8A MULTI-DISCIPLINARY REVIEW**

***The services set out in this paragraph 8A shall be performed during both the Preliminary Design and Discovery Phase and the Detailed Design and Management Phase.***

- 8A.1 InfraCo shall hold multi-disciplinary design review meetings ("**Multi-Disciplinary Reviews**") at least every Quarter during the CVL Transformation and in addition at any interval during the CVL Transformation where it is considered by InfraCo or the Authority (each party acting reasonably) that a major design decision is required. Attendees shall include experts from within InfraCo's team in the disciplines of CVL civil, signalling and power design, rail operations, rolling stock, performance and timetabling, and infrastructure management including asset management and operational management. The Authority and other attendees that are deemed to be required by the Authority from time to time shall be given written notice no less than 10 Business Days in advance of any such meetings and shall be entitled to attend any such meetings.
- 8A.2 InfraCo shall present at the Multi-Disciplinary Reviews any proposed design decisions which InfraCo expects in its opinion (acting reasonably) may have a material impact on the Rail Services and / or Infrastructure Manager Services including following the completion of the CVL Transformation.
- 8A.3 InfraCo shall determine at the Multi-Disciplinary Reviews whether in its opinion (acting reasonably) each design decision is a Proposed Consequential Change.
- 8A.4 For each Proposed Consequential Change, the Multi-Disciplinary Review shall:
- (a) seek solutions that will bring advantage to all those who are affected, and
  - (b) make and consider proposals for design options including a 'minimum impact' option which minimises impact on CVL Rail Services and Infrastructure Manager Services and a recommended option which InfraCo considers will maximise value for money to the Authority and which can evidence such matters to enable appropriate decision by the Authority.
- 8A.5 InfraCo shall inform the Authority of each Proposed Consequential Change from the Multi-Disciplinary Reviews and submit to the Authority a range of design options for consideration together with a summary of the estimated impact of each option.
- 8A.6 The Authority shall, within 10 Business Days or other period as identified by the Authority, consider each Proposed Consequential Change and:
- (a) accept one of the design options proposed by InfraCo, or
  - (b) request additional information to enable the Authority to consider and decide whether or not to accept any of the design options,
  - (c) reject the design options proposed by InfraCo and / or propose alternative design options, or
  - (d) defer a decision in relation to acceptance of a design option until such time as InfraCo has addressed any queries or concerns raised by the Authority.
- 8A.7 If the Authority accepts a design option proposed by InfraCo referred to in this paragraph 8A, the consequential impact on the Infrastructure Manager Services shall be treated as a Change and Schedule 9 of the Infrastructure Agreement shall apply.
- 8A.9 Not used.
- 8A.10 Where a Change occurs under this paragraph 8A or Schedule 9 of the Infrastructure Agreement which impacts the Scope, Infrastructure Works Information or this Schedule 3B in any material manner, it shall be considered a Compensation Event under Clause 60.1 of Part A of Appendix 5 and Clause 60.1 of Part A of Appendix 6.

#### **IDPs and Infrastructure Works**

***The services set out below under the heading "IDPs and Infrastructure Works" shall be performed during both the Preliminary Design and Discovery Phase and the Detailed Design and Management Phase.***

## **9 IDP APPOINTMENT TO FRAMEWORK PANELS AND IDP WORKS PACKAGES**

- 9.1 The Authority has entered or shall enter into a number of Framework Agreements with the selected IDPs and has formed or shall form the IDP Framework Panels which are set out in Appendix 14 (Framework Agreement Information) to Schedule 3B for delivery of works packages in relation to the CVL Transformation and Associated Projects / Infrastructure Works ("**IDP Works Packages**").
- 9.2 Draft IDP Work Packages to which the Framework Panels relate are set out in Appendix 14 (Framework Agreement Information).
- 9.3 As part of the Principal Infrastructure Services, InfraCo shall provide the Authority with all reasonable assistance and guidance in relation to establishing, administering and developing the Framework Panels and the selection of the IDPs to the Framework Panels as more particularly set out in this Annex 1 of Part B of Appendix 5 (Scope).

## **9A SME APPOINTMENT AND SME WORKS PACKAGES**

- 9A.1 InfraCo acknowledges the Authority's requirements to involve SMEs in delivery of the CVL Transformation and Associated Projects/Infrastructure Works ("**SME Works Packages**") and that management of such SMEs is included within the Principal Infrastructure Services alongside the IDPs.
- 9A.2 The Authority has produced a short form version of the IDP Contract and has configured procurement systems which enable SMEs to be invited to tender for SME Works Packages, including procurement routes including Sell2Wales.
- 9A.3 To enable SMEs to tender for SME Works Packages, InfraCo will propose to the Authority by 31 July 2018:
- (a) details of how the selection process described in Annex 1 of Part B of Appendix 5 of Schedule 3B can be adapted to enable SMEs to compete for services and works, and
  - (b) inclusion of SMEs in the best value criteria set out for agreement in Appendix 16 of Schedule 3B,

and otherwise InfraCo's obligations set out in this Annex 1 in relation to IDPs shall apply equally to SMEs.

## **10 IDP SELECTION FROM FRAMEWORK PANELS AND QUOTATION PROCEDURE**

- 10.1 The Authority has entered into or intends to enter into a number of Framework Agreements with IDPs. The Authority will form Framework Panels which are set out in the Framework Information.
- 10.2 The Authority shall appoint the IDPs from the Framework Panels to Provide each IDP Works Package with assistance from and recommendation of InfraCo in accordance with the selection procedure set out in this paragraph 10.
- 10.3 The Authority shall enter into the IDP Works Packages, but shall require InfraCo to manage the tendering process for the selection of the IDPs for work packages. This shall include preparing the work packages, seeking quotes, evaluating the responses and recommending a preferred IDP for each work package. InfraCo will run the IDP selection for work packages in an open and transparent way enabling fair competition for the work packages from IDPs. Part of InfraCo consortium and any InfraCo Affiliates may (at the Authority's discretion) be appointed to deliver IDP Works Packages should they be

selected as an IDP provided that the delivery is demonstrably and objectively best value in the reasonable opinion of the Authority and other IDPs appointed to the Framework Panels are able to compete openly and fairly for the same Infrastructure Works and provided that the selection process is carried out in a manner and with resources that are demonstrably independent following the process set out in Appendix 16 to Schedule 3B. InfraCo shall not act uncompetitively in specifying IDP work packages or in its recommendations to the Authority regarding the selection of IDPs.

- 10.4 In selecting the IDPs and discharging its duties, InfraCo shall at all times:
  - (a) exercise and demonstrate independence and impartiality in the selection of the IDPs for each IDP Works Package and in procuring and providing works and services,
  - (b) agree with the Authority criteria for assessing best value in respect of the IDPs, including competitive tendering for such IDP Works Package where more than one IDP is able to deliver the relevant IDP Works Package, and work with the Authority to amend such criteria to reflect developing priorities (all within the rules of the Framework Agreement),
  - (c) work with the Authority to amend such criteria to reflect developing priorities,
  - (d) as part of the selection process, use all reasonable endeavours to obtain from the IDPs the maximum level of discount available in respect of each IDP Works Package, and
  - (e) exploit market and technical opportunities to deliver best value in respect of each of the IDP Works Packages in accordance with the Process for Best Value set out in Appendix 16 of this Schedule 3B (as revised from time to time).
- 10.5 InfraCo shall discuss and agree with the Authority's Project Manager and the Authority, the division of the IDP Works Packages and tender lists.
- 10.6 InfraCo shall advise on the pre-purchasing by the Authority of items of plant, materials or goods which are on long delivery periods.
- 10.7 InfraCo shall advise upon the requirements for IDPs to carry out Technical Design including any off-Site design and off-Site manufacture of components.
- 10.8 InfraCo shall prepare technical schedules (including programme information, scopes, and Contract Data) for each IDP Works Package; check in particular (but without limitation) that it includes all matters relevant to health and safety, that the "Scope of Works" document is consistent with other documentation forming part of the invitation to tender and that the Contract Data is properly completed.
- 10.9 Where appropriate, InfraCo shall interview each proposed bidder for the IDP Framework Panels and IDP Works Package together with the Authority's Project Manager and the Authority, to ascertain such bidder's suitability and to explain the scope of the works comprising the IDP Works Package and the nature of the CVL Transformation and also the duties and functions for InfraCo, the Authority's Project Manager and Others involved in the CVL Transformation. Interview in conjunction with the Authority's Project Manager each bidder during the bid period to reasonably endeavour to ensure that their bids will comply in all respect with the bid documents.
- 10.10 InfraCo shall prepare the package tender estimates for all IDP Works Packages prior to issue.
- 10.11 InfraCo shall open all bids received in the presence of the Authority's Project Manager and the Authority, deliver immediately to the Authority's Project Manager and the Authority a brief report in tabular form reporting on the bids received and interview as many bidders as may be appropriate in conjunction with the Authority's Project Manager

and the Authority as appropriate to resolve any queries raised by the analysis and explore how economies can be found.

- 10.12 InfraCo shall monitor the content of the IDP Works Packages to ensure that all work comprising the CVL Transformation is included in an IDP Works Package.
- 10.13 InfraCo shall receive and take account of the comments of the Authority's Project Manager and the Authority on the invitation to tender documents and dispatch the invitation to tender documentation when finalised on behalf of the Authority to the tenderers in the lists approved by the Authority.
- 10.14 InfraCo shall consider in the case of each contractor on each tender list whether a parent company guarantee, performance bond or insolvency bond is required and make recommendations to the Authority in the light of the financial standing of the IDP and / or the group of companies of which it is a member. InfraCo shall prioritise the commercial interests of the Authority when making any recommendations to the Authority.
- 10.15 Where appropriate, InfraCo shall conduct any negotiations that may be appropriate to secure the IDPs and advise the Authority and the Authority's Project Manager of all meetings with bidders prior to the placing of a contract and arrange for Authority and the Authority's Project Manager to attend the same.
- 10.16 Unless otherwise instructed by the Authority, IDP Works Packages will be issued following Package Order competitions prepared and assessed in accordance with the quotation procedure to be set out in the relevant Framework Agreement.
- 10.17 Package Order competitions may be conducted on a phased basis so as to identify the IDPs who are instructed to submit a quotation. Details will be provided to relevant IDPs at the start of relevant Package Order competitions.
- 10.18 Where several quotations are received in respect of an IDP Works Package, the Authority may at its sole discretion override InfraCo's tender evaluation and select the best value IDP.
- 10.19 InfraCo shall maintain records of all procurement processes used by InfraCo to select the IDPs for the IDP Works Packages and make such records available to the Authority on the Authority's request.
- 10.20 Where an IDP fails to properly perform and comply with the requirements of an IDP Works Package, InfraCo shall notify the Authority of the same and where requested to do so by the Authority shall produce a new IDP Works Package to cover completion of the works within the IDP Works Package which the IDP has failed to perform and any remedial works which may be required. Such new IDP Works Package may then be tendered and awarded to an IDP in accordance with the provisions of this Annex 1 or, subject to considerations of timeliness, value or other relevant matters the Authority may instruct InfraCo to perform such IDP Works Package as part of the AKI Infrastructure Works. For the avoidance of doubt, such works if instructed as part of the AKI Infrastructure Works shall not be included within the calculation of 15% of the CVL Capital Budget as set out in Paragraph 6.3 of Schedule 3B.5 of Schedule 3B of the Infrastructure Agreement.

## **11 IDP APPOINTMENT AND WORK PACKAGES**

- 11.1 The appointment of IDPs shall follow the form of contract set out in Appendix 17 (Template Form of IDP Contract).
- 11.1A InfraCo shall propose a Project Control Framework to the Authority within 2 months of the Contract Date for the Authority's approval.
- 11.2 From the Novation Time, InfraCo shall utilise the approved Programme Control Management Plan standard for development and management of IDP Work Packages.

- 11.2A Within 2 months of the Novation Time and at quarterly intervals thereafter, the Programme Control Management Plan shall be reviewed and updated by InfraCo for agreement by the Authority and the Authority's Project Manager.
- 11.3 InfraCo shall prepare and collate all documents comprising the IDP Works Packages (ensuring that such documents are complete) for signature by each of the IDPs and the Authority.
- 11.4 InfraCo shall analyse the tenders and programmes received in collaboration with the Authority's Project Manager and report to the Authority with recommendations for acceptance; advise the Authority as to whether it is appropriate for any IDP to be required to procure a performance bond or parent company guarantee as security for its obligations under any IDP Works Package. Advise the Authority specifically of any proposed amendments to the tender documents and seek the Authority's agreement to them.
- 11.5 InfraCo shall produce a formal tender report indicating recommendation of IDP for the package and include reasons and comparisons to justify the report conclusions. Circulate to the Authority's Project Manager for comment before issue to Authority for approval/signature.
- 11.6 Prior to the commencement of relevant IDP works InfraCo shall check that each IDP executes an IDP Works Package as a deed prior to commencement of work on the CVL Transformation and all ancillary documents such as bonds and guarantees as referred to in the IDP Works Package are executed at the time and in the manner required by the IDP Works Package and advise the Authority accordingly; check that the same are properly executed by any IDP, parent company or surety and advise the Authority accordingly and advise the Authority to secure legal opinions in the agreed form from overseas companies; and, keep proper records of when all such documents, deeds and bonds are despatched for execution and when they are returned.
- 11.7 InfraCo shall advise the Authority and the Authority's Project Manager of any materials or plant which should be ordered prior to securing of the appropriate IDP Works Packages in order to achieve the Accepted Programme and Infrastructure Works Plan. Prepare in consultation with the Authority the necessary documentation and expedite delivery of the purchased items.
- 11.8 On becoming aware, InfraCo shall advise the Authority and Project Manager of any inconsistencies between any preliminary information issued for construction purposes and the Authority's requirements by reference to the Scope.
- 11.9 InfraCo shall advise the Authority's Project Manager and Authority on the call-off of the IDPs and on the responsibilities of the parties and the Authority under the IDP Works Packages.
- 11.10 All IDP Work Packages shall be agreed with the Authority prior to issue to the IDP.
- 11.11 Subject to clause 25.4B of the Conditions of Contract for Infrastructure Services, InfraCo will procure and grant all necessary rights that are (or should be) in its possession, and will enter into such additional agreements reasonably required by the IDPs and / or the Authority to enable the IDPs to access and / or take temporary possession of the CVL Assets to provide Infrastructure Works in accordance with their obligations pursuant to the IDP Works Packages.

## **12 CHANGE TO IDP WORK PACKAGES**

- 12.1 Any change to the agreed IDP Work Packages shall require the prior written acceptance of the Authority excluding any change progressed under the authority of the Delivery Partner Services in paragraph 17 of this Annex 1 (Scope).



- 12.2 The Parties shall agree (acting reasonably) a process for any InfraCo proposals and Authority approval of changes to the agreed IDP Work Packages.

### **13 IDP WORK PACKAGE DEVELOPMENT**

- 13.1 InfraCo shall be responsible for developing the IDP Works Packages.
- 13.2 Following the development of an IDP Works Package InfraCo shall on behalf of the Authority:
- (a) Provide the relevant IDP Works Package(s) to all relevant IDPs capable of delivery of the same,
  - (b) Provide a time for IDPs to submit a quotation for the delivery of the IDP Works Package(s) in compliance with the Framework Agreements,
  - (c) Upon expiry of such time frame review all received quotations against the best value criteria agreed with the Authority,
  - (d) Submit to the Authority the proposed best value IDP quotation, and
  - (e) Provide a report including all quotations not recommended and the reasons for such recommendation.
- 13.3 The Authority has absolute discretion as to contracting with any IDP for each IDP Works Package.
- 13.4 InfraCo shall provide Delivery Partner Services for any IDP Works Package which the Authority contracts an IDP to deliver.

### **14 BEST VALUE REVIEW OF IDP WORKS PACKAGES**

- 14.1 InfraCo shall review with each IDP all IDP Works Packages being carried out by the relevant IDP at least once annually starting from the Grant Agreement Date with the purpose of stimulating improved terms, technical or commercial innovation from the IDPs to deliver better value to the Authority. InfraCo shall give the Authority no less than ten (10) Business Days' notice of each such review and the Authority and / or its representatives shall be entitled to attend such reviews.
- 14.2 InfraCo shall report to the Authority annually starting from the Effective Date the outcomes of the IDP reviews, including the matters identified below ("**Best Value Review Report**"):
- (a) estimated financial impact,
  - (b) service and commercial benefits (including community benefits and social value),
  - (c) issues and risks of any opportunities identified,
  - (d) evidence of continuous improvement with regards to best value, and
  - (e) confirmation whether in InfraCo's opinion:
    - (i) the IDP carrying out the relevant IDP Works Package offers best value to the Authority, or
    - (ii) use of an alternative IDP for that IDP Works Package could offer best value to the Authority.
- 14.3 The Authority has a right of audit concerning all aspects of the selection of IDPs to deliver IDP Works Packages.

## 15 COST MANAGEMENT

15.1 InfraCo shall agree a cost management system with the Authority including access by the Authority to a dashboard and provision to the Authority of a monthly report on:

- (a) costs for the CVL Transformation (including each of the IDP Works Packages),
- (b) reimbursable preliminaries,
- (c) InfraCo's staff and Site organisation costs (including those during the pre-construction period),
- (d) contingency and inflation,
- (e) forecast cost against cost and explanation of variance,
- (f) forecast outturn cost against the Final Target Price and explanation of variance, and
- (g) FF&E (if applicable).

The format and content of the report and dashboard shall be proposed by InfraCo for agreement with the Authority within one (1) month of the Grant Agreement Date.

15.2 InfraCo shall prepare a cash flow forecast for the construction of the CVL Transformation on the Site and update that cash flow forecast for each element of the CVL Transformation as necessary.

15.3 InfraCo shall keep proper accounts of all monies expended pursuant to the IDP Works Packages and produce a final detailed cost statement of the CVL Transformation broken down to work packages showing the total cost of the CVL Transformation.

15.4 InfraCo shall provide such assistance as the Authority may reasonably require in pursuing each and every remedy which the Authority may have against Others involved in the CVL Transformation.

15.5 InfraCo shall provide such assistance as the Authority may reasonably require in defending any claim made against the Authority by Others involved in the CVL Transformation.

15.6 InfraCo shall provide information, advice and assistance as the Authority may reasonably require in connection with any tax considerations including the benefit of capital allowances which arise in connection with the CVL Transformation.

15.7 InfraCo shall arrange and attend quarterly risk reduction meetings and maintain the risk register from the Grant Agreement Date onwards. Such review by InfraCo shall be used to inform InfraCo's Quantified Risk Assessment.

15.8 InfraCo shall carry out such further or other cost exercises or appraisals as the Authority may from time to time require (in addition to those mentioned above) in connection with the CVL Transformation and report to the Authority in relation thereto.

## 15A MILESTONE BUDGET

15A.1 InfraCo shall provide to the Authority a monthly budget for PIS (the "**Monthly Budget**") based initially on the Final Tender Financial Model, attributing forecast spend to individual Milestones to give a budget for each Milestone (the "**Milestone Budget**").

15A.2 InfraCo may, from time to time, propose to the Authority changes to the Monthly Budget where such changes would be beneficial to the Authority, potentially increasing or decreasing Milestone Budgets.

- 15A.3 The Authority may (but is not obliged to) agree to vary the Monthly Budget in line with the proposals, in which case InfraCo shall correspondingly revise the relevant Milestone Budget(s).
- 15A.4 InfraCo shall be entitled to vary the Monthly Budget (and consequently Milestone Budget(s)) as a result of a Compensation Event pursuant to clauses 60 to 65 included in Schedule 3B Appendix 5 Part A.
- 15A.5 InfraCo shall diligently attribute outturn costs to each Milestone, and shall identify the same on the relevant application for payment and invoice pursuant to clauses 50 and 51 included in Schedule 3B Appendix 5 Part A.
- 15A.6 [REDACTED]

## 16 INSURANCE

- 16.1 InfraCo shall assist the Authority in the notification, preparation, submission and negotiation of all insurance claims including claims arising under policies maintained by the Authority under this Agreement, and provide such information in connection therewith as may be required.

### Delivery Partner Services

## 17 DELIVERY PARTNER

- 17.1 As part of the Principal Infrastructure Services, for the delivery of the IDP Work Packages, InfraCo shall:
- (a) be a delivery partner with the IDPs for the delivery to the Authority of the Infrastructure Services ("**Delivery Partner**"),
  - (b) provide information to the IDPs as may be requested from time to time,
  - (c) Chair and minute all meetings with the Authority, the Authority's Project Manager and / or the IDPs,
  - (d) Assist in general project construction troubleshooting, and
  - (e) Perform the roles of Employer's Agent, the Project Manager and the Supervisor (as applicable) under the IDP Works Packages and administer and report on the performance of the IDP Works Packages.
- 17.2 InfraCo shall act as agent of the Authority with respect to orders placed under the Framework Agreements and management of the IDP Work Packages (unless otherwise notified by the Authority) in all respects other than those which:
- (a) serve to result in financial commitments of the Authority under such Framework Agreements or IDP Work Packages, or
  - (b) result in an adjustment to the critical path or milestones for the CVL Transformation,

which in each case shall be subject to such limits of authority as the Authority may provide to InfraCo in writing from time to time or as otherwise confirmed by the Authority in writing.

- 17.3 The obligations contained in this clause 17 shall constitute the services provided as a delivery partner (the “**Delivery Partner Services**”).

## **18 IDP DRAWINGS AND DESIGN INFORMATION**

- 18.1 InfraCo shall provide for the receipt, review, co-ordination, logging and distribution of drawing, catalogues, samples, test reports and other like matters via the project extranet system, and ensure that adequate procedures are included in the IDP Works Packages for the same.
- 18.2 InfraCo shall review each IDP's drawings with the Authority and the Authority's Project Manager, where appropriate, for the purpose of checking that there are no inconsistencies or conflicts of design among any of the services to be installed in the CVL Transformation or between any of them and any parts of the structure of the CVL Transformation and to check that they will all function together efficiently. InfraCo shall advise the Authority in writing of the same.
- 18.3 InfraCo shall issue design information for the purposes of construction to the IDPs, via the project extranet system and use all reasonable endeavours to ensure that any design information issued only for the purposes of construction are used by the IDPs for manufacture or construction.

## **19 INFRASTRUCTURE WORKS**

- 19.1 InfraCo is responsible for the coordination of the Infrastructure Works and the CVL Transformation. InfraCo may issue such instructions as may be necessary to coordinate the supply of the design and the execution and completion of the Infrastructure Works and the Infrastructure Services provided that InfraCo may not issue instructions to increase cost without the Authority's consent.
- 19.2 InfraCo shall ensure that IDPs organise the areas of the Site in which they are carrying out works, in compliance with the Authority's Code of Construction Practice – Part 1, during the period of construction with due regard to safety precautions, fire protection, security, transportation, delivery of goods, materials, plant and equipment (including that of the IDPs), control of pollution, maintenance of good personnel and labour/industrial relations and general Site services including, inter alia, allocation of space for the IDP's offices and compounds, the details of which will be documented within InfraCo/IDP Code of Construction Practice – Part 2 and shall comply with the InfraCo Code of Construction Practice – Part 2.
- 19.3 InfraCo shall:
- (a) where the areas of the Site in which Infrastructure Works or Infrastructure Services are being carried out are under InfraCo's control, restrict access to the areas of the Site to authorised persons only,
  - (b) where the areas of the Site in which Infrastructure Works are being carried out are within the control of IDPs, specify that access to the areas of the Site shall be restricted to authorised persons only and carry out regular checks to see that this requirement is being complied with, and
  - (c) prepare and issue a manual of rules and regulations appertaining to the CVL Transformation to be observed by all persons having business upon the Site.
- 19.4 InfraCo shall provide management, control, administration and planning of the work of the IDPs, including to:
- (a) ensure co-operation occurs between the works of each of the IDPs, and

- (b) inspect IDP's methods of working and temporary works to see that the same are adequate and safe.
- 19.5 InfraCo shall visit as necessary the premises of the IDPs and their suppliers, whether the same are located in the United Kingdom or overseas, and conduct regular meetings with the IDPs to monitor all aspects of progress both on and off Site relevant to the latest agreed programmes and to review all information requirements and provide a monthly written report thereon to the Authority.
- 19.6 InfraCo shall procure detailed investigation works to be carried out at the Site as and when required.
- 19.7 InfraCo shall propose and agree testing, quality assurance and control procedures for the CVL Transformation with the Authority. InfraCo shall manage the implementation of these procedures.
- 19.8 InfraCo shall use reasonable endeavours to ensure that the IDPs provide project specific quality assurance plans as soon as reasonably practicable after the appointment of any such IDPs. InfraCo shall check regularly that such quality assurance plans are being adhered to and where work is being carried out that is not compliant with such quality assurance plans take appropriate steps to ensure compliance with such quality assurance plans.
- 19.9 InfraCo shall arrange and chair Site progress meetings at agreed intervals with the Authority and the Authority's Project Manager. After the Site progress meetings, InfraCo shall prepare and circulate minutes of such meetings to all those present within two Business Days.
- 19.10 InfraCo shall establish and maintain a liaison with occupiers of nearby buildings and land to facilitate the reasonably uninterrupted progress of the CVL Transformation and use all reasonable endeavours to ensure that schedules of dilapidations for adjoining buildings are prepared by InfraCo or IDPs both before and after construction of the CVL Transformation.
- 19.11 InfraCo shall provide such management services as the Authority may require in the procurement, delivery and storage of materials for the CVL Transformation ordered by the Authority.
- 19.12 InfraCo shall co-ordinate the work of IDPs and co-ordinate the work of the IDPs with work of statutory undertakers (including gas, water, sewerage and electricity undertakings).
- 19.13 InfraCo shall provide a reasonable estimate of the time required to reinstate the CVL Transformation following the occurrence of an insured event.
- 19.14 InfraCo shall provide all necessary superintendence to oversee the planning, arranging, directing, management, inspection and testing by the IDPs of their respective Infrastructure Works and compliance with their IDP Works Packages, including the discharge by the Authority of its responsibilities thereunder.
- 19.15 In conjunction with the IDPs, InfraCo shall source construction goods and materials, terms and conditions, and oversee compliance with obligations.
- 19.16 InfraCo shall liaise with IDPs (and Subcontractors) and Others concerning their requirements for access routes to the Site, including but not limited to load bearing capacities, height restrictions, and assisting with necessary arrangements to accommodate these.
- 19.17 InfraCo shall attend Site as reasonably required to perform the Principal Infrastructure Services, and comply with all applicable safety regulations, and take care for the safety of all persons entitled to be on the Site.

- 19.18 InfraCo shall promote regular communication with the public and CVL lineside neighbours during the Infrastructure Works to be undertaken on the CVL Transformation. This shall include open days at local venues, up to date information on InfraCo's website, social media, letter drops and disruption 'look ahead' posters at stations.

## **20 ADMINISTRATION OF IDP WORKS PACKAGES**

- 20.1 InfraCo shall perform and discharge its duties as may be necessary and as required to be carried out by InfraCo in the Delivery Partner Services, subject always to the limitations of InfraCo's authority set out in this Agreement.
- 20.2 InfraCo shall issue instructions and directions to the IDPs as required in writing by the Authority and the Authority's Project Manager. Wherever possible, all instructions must have cost and time effects agreed with the relevant IDPs before they are issued by InfraCo. InfraCo shall ensure that only instructions properly issued under the IDP Works Package are issued.
- 20.3 InfraCo shall collect and check applications for payment from IDPs, prepare valuations as may be required by the provisions of the IDP Works Package and review and agree them. Where an Affiliate of InfraCo is acting as an IDP, the Authority's Project Manager shall approve applications for payment to that Affiliate and valuations required by the provisions of InfraCo Works Package prepared by InfraCo.
- 20.4 InfraCo shall prepare and sign all certificates and promptly issue those certificates to the Authority, with a copy to the IDP, as required by the IDP Works Packages. InfraCo shall report immediately to the Authority on any claim or notice of a claim for payment made by any IDP for loss and / or expense or extension of time, identify and inform the Authority as soon as practicable of any sums to be contra-charged against any of the IDPs and conduct jointly with the Authority such negotiations as may be appropriate in connection therewith with the IDPs. InfraCo shall advise the Authority on the status of the IDPs at the date of issue of interim and final certificates under the IDP Works Packages for the purposes of Chapter 3 of Part 3 of Finance Act 2004 and the Income Tax (Construction Industry Scheme) Regulations 2005, or statutory modifications or any re-enactments thereof.
- 20.5 InfraCo shall advise the Authority on and issue on its behalf all notices required to comply with Part 11 of the Act.
- 20.6 InfraCo shall provide such management, control, administration and planning of the work of the IDPs so as to reasonably endeavour to ensure full compliance by the IDPs with all the requirements of the IDP Works Packages use all reasonable endeavours to ensure that the Authority's directions in regard to handling of materials and goods at the Site are complied with by the IDPs.
- 20.7 InfraCo shall see that all "daywork" claims under any IDP Works Package are properly settled and agreed.
- 20.8 InfraCo shall advise on the desirability of making payment for off-Site goods and materials. Negotiate and agree interim and final accounts under the IDP Works Packages with the IDPs.
- 20.9 InfraCo shall collate complete and accurate records of the CVL Transformation and take fortnightly progress photographs to be stored electronically.
- 20.10 InfraCo shall assist with Authority inspections and testing throughout, including checking that all milestones and checks (pre-commissioning and commissioning) for each IDP are achieved, and monitoring and assisting with the processing of all milestone payment requests to support the Authority.

## **21 PRE-COMPLETION INSPECTION, COMMISSIONING AND "AS BUILT" INFORMATION**

- 21.1 InfraCo shall prepare a detailed completion plan for the CVL Transformation. This should include the process and criteria for acceptance of the IDP Works Packages, details of commissioning programmes, methodology for snagging and de-snagging, collation of record drawings, as-built drawings, operation and maintenance manuals and health and safety file data, preparations for training facilities management staff, methodology for maintenance of mechanical and electrical systems, the plans and timings associated with the transfer of the completed asset into the rail services operation, including details of the proposed process for the transfer of the completed asset into railway operations, and detail of the assumptions and calculations used, once complete and prior to hand-over. The as built information shall be provided in a controlled copy and in an editable version of its original file format such that it can be amended by InfraCo or Authority in the future to reflect in life changes to the as-built condition. InfraCo shall examine and manage the IDPs' detailed proposals for carrying out commissioning procedures and performance testing and the programming of the activities of other IDPs to reflect the commissioning procedures and performance testing.
- 21.2 InfraCo shall request in good time from the IDP the products identified in paragraph 21.1 and shall provide such to the Authority.
- 21.3 InfraCo shall action any defects in the IDPs' design, workmanship and / or materials identified by InfraCo and instruct such action as may be appropriate to correct such defects; use reasonable endeavours to secure the prompt remedying of all defects by IDPs.
- 21.4 InfraCo shall support the IDPs and Others in commissioning the Infrastructure Works by attending key acceptance and commissioning tests on behalf of the Authority, overseeing performance test certification processes including assisting with discharging responsibilities of the Authority.
- 21.5 InfraCo shall procure an internet connection on the areas of the Site in which they are carrying out works and make this available to the Authority.
- 21.6 InfraCo shall receive (and provide) design drawings, operational/maintenance manuals, health and safety files, and certificates.
- 21.7 InfraCo shall approve work process handovers/process closures/transfers.
- 21.8 InfraCo shall provide project back office administration support services including but not limited to processing of invoices, bookkeeping, maintaining spreadsheets, etc.
- 21.9 InfraCo shall report to and liaise with the Authority throughout, including providing all reasonably requested information, cooperation and assistance to such technical consultants as the Authority may appoint to assist in relation to the CVL Transformation.
- 21.10 InfraCo shall assist with obtaining, collating and compiling user and operation manuals prepared by each relevant IDP pursuant to its IDP Works Package.

## **22 COMPLETION**

- 22.1 InfraCo shall advise the Authority of the anticipated date for the issue of each of:
- (a) certificates of completion of the IDP Works Packages and SME Works Packages, and
  - (b) the certificates of Completion.
- 22.2 InfraCo shall give the Authority ten Business Days' notice of any inspections prior to the issue of any certificates, such notice to be accompanied by a copy of the then current snagging list. InfraCo shall provide as much notice as reasonably possible of any postponement of the inspection.

- 22.3 After consultation with the Authority, InfraCo shall issue and sign a certificate of completion of the IDP Works Packages, the CVL Transformation and / or any sections as required by the IDP Works Packages.

## **23 POST COMPLETION**

- 23.1 InfraCo shall attend and actively contribute to any post-project review carried out following completion of construction activities on Site.
- 23.2 InfraCo shall co-ordinate the making good of all defects in the CVL Transformation which appear within two years of Project Completion.
- 23.3 When requested by the Authority, InfraCo shall prepare a defect rectification plan containing InfraCo's proposals for remedying any defect, the programme for doing so and the access required to the CVL Transformation. InfraCo shall liaise with the Authority, the IDPs and Others as necessary to produce and complete the defect rectification plan.

## **24 HEALTH AND SAFETY**

- 24.1 InfraCo shall establish and maintain a written safety policy for the Site, providing to the Authority within 1 month of the Effective Date and enforce the same inter alia by including appropriate documents in the IDP Works Packages.
- 24.2 InfraCo shall use reasonable endeavours to ensure that every IDP is informed of the minimum amount of time which will be required for planning and preparation before it begins construction work.
- 24.3 InfraCo shall see that the IDPs are supplied at all times with sufficient information about any risks to health and safety and any safety precautions to enable them to plan and undertake their works safely.
- 24.4 Monitor compliance by the IDPs with InfraCo's Site safety plan and policy and all statutory requirements and verify that all necessary approvals have been obtained. InfraCo shall co-ordinate the provision of all relevant pre-construction information and approve all construction phase health and safety plans.
- 24.5 InfraCo shall advise the Authority of its obligations under the CDM Regulations.
- 24.6 InfraCo shall prepare a construction phase plan in accordance with the CDM Regulations before the start of the construction phase.
- 24.7 InfraCo shall co-ordinate all information received from the IDPs and Others carrying out work at the Site who are not IDPs and include such information as necessary in the construction phase plan. InfraCo shall update, review, revise and refine the construction phase plan as necessary and arrange for it to be implemented.
- 24.8 InfraCo shall perform the Principal Designer role and undertake Health & Safety coordination.
- 24.9 InfraCo shall perform the Principal Contractor role unless it is agreed with the Authority that an IDP should be appointed as Principal Contractor, in which case InfraCo shall provide advice and support to the Authority in making such IDP appointments.

## **25 TWAO APPLICATION**

- 25.1 The Parties acknowledge and agree that the application for the Order is to be made in the name of InfraCo.



- 25.2 Notwithstanding paragraph 25.1, (subject to the provisions of the TFA relating to the Order) InfraCo and the Authority agree jointly to promote the Order in the form approved by the Responsible Officers.
- 25.3 Any subsequent modifications to the Order will be subject to the approval of InfraCo and the Authority.
- 25.4 Subject to the terms of this Infrastructure Agreement, InfraCo and the Authority shall provide proactive support for the promotion of the Order.
- 25.5 The Authority and InfraCo shall provide to any appropriate inquiry procedure such witness or witnesses in support of the case for the Order as are reasonably considered necessary by the Project Management Team.
- 25.6 Neither party may seek to withdraw from the application for the Order once the application has been made without providing three (3) months' prior written notification to the other party unless in circumstances where it is agreed between the parties that it would be mutually beneficial and advantageous to the Project for the application for the Order to be withdrawn at less than three (3) months' notice.
- 25.7 Each party must keep the other fully informed in relation to matters coming to their attention that relate to the progress of the application for the Order in order to promote well-informed decision making at an early stage wherever reasonably practicable.

## **26 TWAO ORDER**

- 26.1 Subject to the provisions of paragraph 29, as part of the Principal Infrastructure Services, InfraCo shall in its role as Applicant:
- (a) take all reasonable instruction from the Project Manager concerning the submission of the application for the Order;
  - (b) take all reasonable instruction from the Project Manager concerning and subsequent action concerning the Order or its application until conclusion of the process for the making of the Order;
  - (c) as soon as reasonably practicable carry out any such reasonable instruction of the Project Manager; and
  - (d) as soon as reasonably practicable inform the Project Manager of any correspondence or other notice received concerning the Order and provide the Project Manager with the content of such correspondence or notice concerning the Order.

## **27 TWAO PROJECT GOVERNANCE**

27.1 InfraCo and the Authority shall establish a project management team (the “**Project Management Team**”), comprising of a:

- (a) project director, to be employed by the Authority;
- (b) project manager, to be employed by the Authority;
- (c) project lead, to be employed by InfraCo;
- (d) external legal advisers, financial advisers and other specialist advisers acting for, or on behalf of, the Authority and InfraCo to be invited as and when appropriate.

27.2 The Project Management Team will be responsible for taking all steps to progress the application for the Order, and reporting progress to the Responsible Officers.

27.3 The Authority shall coordinate the functioning of the Project Management Team which is to meet every four (4) weeks (unless otherwise agreed by the Parties), to co-ordinate and direct project work relating to the Order.

27.4 The Authority and InfraCo commit to provide sufficient suitably qualified and experienced staff and resources to enable the Project Management Team to function adequately and effectively. The identities of the members of the Project Management Team shall be as identified by the parties to each other from time to time.

27.5 The Project Management Team shall be responsible for all liaison and negotiations with any Third Party and for settling the terms of any agreement with a Third Party or undertaking or revision to the Order arising from Third Party discussions (subject to complying with the provisions relating to any such agreements, undertakings or revisions contained in the TFA).

27.6 Press releases, advertisements and other publicity and communications in connection with the Order and as agreed by the Project Manager are to be co-ordinated by the Project Management Team.

## **28 TWAO – AUTHORITY RESPONSIBILITIES**

28.1 The Authority shall:

- (a) provide prompt instruction to InfraCo concerning the application for the Order and any response or other action that may be required as part of the process or application for the Order;
- (b) provide to InfraCo the text of the Order and any other documentation required as part of the application; and

- (c) provide translation into the Welsh language of any such documentation as may be required.

28.2 Nothing in this Infrastructure Agreement requires the Authority to do anything that breaches its statutory duties, or unlawfully fetters its discretion in the exercise of statutory functions, under Part 1 of the Transport and Works Act 1992.

## **29 TWAO – COSTS AND CONTRIBUTIONS**

29.1 Subject to the provisions of this paragraph 29, the Authority shall pay InfraCo all reasonable costs and expenses of InfraCo in performing the TWAO Services in accordance with the provisions of Part A of Appendix 5 of Schedule 3B (such TWAO Services being deemed to form part of the Principal Infrastructure Services) including costs and expenses relating to:

- (a) resources in carrying out the TWAO Services;
- (b) all amounts payable to Third Parties in relation to the subject matter of the Order, where the Authority has not paid the Third Parties directly;
- (c) the application fee for the Order required to be paid under rule 19 of the Application Rules, where the Authority has not paid that fee itself;
- (d) any notices required under the Application Rules or the Inquiry Rules, other than those notices placed by the Authority; and
- (e) InfraCo's participation in the Project Management Team.

29.2 The Authority and InfraCo agree that, notwithstanding any other provision of the Infrastructure Agreement that:

- (a) charges for the TWAO Services shall not be included in any calculation of a Milestone budget;
- (b) the day rates as set out in Appendix 25 of Schedule 3B shall be used for calculating applicable charges for the TWAO Services;
- (c) amounts paid pursuant to paragraphs 26 to 29B shall not be taken into account in calculating the Final Target Price, the Outline Target Price, the Final CVL Transformation Outturn Cost or the Final CVL Transformation Target Price;
- (d) none of the activities described in paragraphs 26 to 29B shall be required to be undertaken or completed in order to achieve Completion, Project Completion, any Milestone, any Milestone Criteria or any Milestone Deliverable;

- (e) neither the performance nor non-performance of any of the activities described in paragraphs 26 to 29B shall cause or contribute to any Milestone Delay Payments.
- 29.3 InfraCo shall inform the Authority in advance of any costs in respect of the provision of the TWAO Services being incurred when they exceed ten thousand pounds (£10,000) in aggregate and shall obtain the Authority's prior consent prior to such costs being incurred.
- 29.4 The Authority shall be responsible for the costs incurred by InfraCo in relation to the draft application for the Order and the related documentation and drafting and negotiating the TWAO Deed of Amendment.

### **30 TWAO – ODP LIABILITIES**

- 30.1 The Authority shall indemnify InfraCo against all liabilities, costs, expenses, damages and losses suffered or incurred by InfraCo arising out of or in connection with the TWAO Services that would not have arisen if the Order had been applied for or promoted by another person, including any such liabilities, costs, expenses, damages and losses arising as a result of any adverse impact on InfraCo's obligations, rights and reliefs under this Infrastructure Agreement.
- 30.2 The indemnity in paragraph 30 above will apply in perpetuity regardless of whether any interest, right, power or privilege relating to the Core Valley Lines is transferred to InfraCo and, if an interest, right, power or privilege relating to the Core Valley Lines is transferred to InfraCo, even after InfraCo ceases to have any interest, right, power or privilege in the Core Valley Lines.

## Annex 2

### Commercial Information

#### **Expenses**

The *expenses* stated by the Authority are as follows:

Item	Amount
Car mileage (InfraCo's staff vehicle)	[REDACTED] [REDACTED] [REDACTED] [REDACTED]
Public Transport	[REDACTED] [REDACTED] [REDACTED]
Other disbursements by prior written agreement with the Authority's Project Manager.	[REDACTED]
Overnight accommodation and evening meal.	[REDACTED] [REDACTED] [REDACTED]
Equipment hire (extra ordinary equipment required by InfraCo to complete the Infrastructure Services requested, where InfraCo would not normally be expected to hold such equipment).	[REDACTED]

InfraCo is not entitled to recover staff *expenses* for those staff living outside the South Wales Metro Area, who are travelling to/living in the South Wales Metro Area after the end of the Preliminary Design and Discovery Phase.

#### **Engineering Job Descriptions**

To assist InfraCo in correctly categorising its staff for the purposes of completing the table of rates, guidance on roles, responsibilities and capabilities is provided at Appendix 25 of this Schedule 3B.

#### **Applications for payment**

Applications for payment and invoices submitted by InfraCo under clause 50.2 of Part A of Appendix 5 of Schedule 3B shall include the following information:

Schedule of Time Charge to include the following, each of which shall be allocated to the relevant work breakdown structure / activity schedule task reference:

1. Name;
2. Role / Grade;
3. Location of work;

4. Base location;
5. Days worked;
6. Daily rate (in accordance with the Schedule of Rates in Contract Data); and
7. Brief description of work undertaken / copy of timesheet.

Schedule of Expenses to include the following by individual, each of which shall be allocated to the relevant work breakdown structure/ activity schedule task reference:

8. Category of expense (eg mileage, public transport, hotel etc);
9. Cost; and
10. Supporting invoices / receipts.

**Estimated Fees** are as detailed in the CVL Cost Templates included in Appendix 21 (Concept Design).

Where Option C applies, the Activity Schedule is based on the Transformation Delivery Programme set out within the Infrastructure Works Plan.

### Annex 3

#### Principal Infrastructure Services Delivery Plan

The Principal Infrastructure Services Delivery Plan is included as “R8.1 Appendix A. The CVL Transformation Delivery Programme” (as revised from time to time) at Appendix 4 of Schedule 3B of the Infrastructure Agreement.

#### Annex 4

#### Outline Target Price

The Outline Target Price is included within the CVL Cost Template contained within the Final Tender Financial Model.



## Annex 5

### Final Target Price

The Final Target Price is included within the CVL Cost Template contained within the Final Tender Financial Model.

# Package Order

[]

(the **Authority**)

and

[]

(InfraCo)

[Design Consultancy Services][Management Services]

Contract No. []

20[XX]

**THIS PACKAGE ORDER** is made the

day of

202[●]

## **BETWEEN**

- (1) **TRANSPORT FOR WALES**, a company incorporated in England and Wales with registered number 09476013 and whose registered office is at 3 Llys Cadwyn, Pontypridd, Wales, CF37 4TH (the "**Authority**"); and
- (2) **AMEY KEOLIS INFRASTRUCTURE/SEILWAITH AMEY KEOLIS LIMITED** incorporated and registered in England and Wales with company number 11389544 whose registered office is at Transport For Wales Cvi Infrastructure Depot Ty Trafnidiaeth, Treforest Industrial Estate, Gwent Road, Pontypridd, United Kingdom, CF37 5UT (the "**InfraCo**").

## **BACKGROUND**

- 1 The Authority and InfraCo have entered into an Infrastructure Agreement dated [●] in relation to the CVL Transformation.
- 2 Pursuant to Schedule 3B of the Infrastructure Agreement ("**Schedule 3B**") InfraCo has issued a quotation to Provide a Package Order for Additional Infrastructure Services (as defined in Schedule 3B) that has been accepted by the Authority. The Parties are required to execute this Package Order before InfraCo begins to Provide the Additional Infrastructure Services in relation to the Package.
- 3 The Authority will pay InfraCo the amount due and carry out its duties in accordance with this contract.
- 4 InfraCo will Provide the Additional Infrastructure Services in accordance with this contract.
- 5 The Package Order and the Conditions of Contract for Infrastructure Services (as defined in Schedule 3B) together with the completed Contract Data Parts One and Two, the Scope (Annex 1), the Commercial Information (Annex 2), the Principal Infrastructure Services Delivery Plan (Annex 3), and the Package Budget (Annex 4) and the documents referred to in them form this contract. References in the Conditions of Contract for Infrastructure Services to "the contract" are references to this contract. This Package Order and the Conditions of Contract for Infrastructure Services shall take precedence over any other document forming part of this contract.
- 6 InfraCo shall also perform its obligations under this Package Order in accordance with the requirements of Schedule 3B.1 to Schedule 3B.12 and Appendix 1 (Definitions) of Schedule 3B. In the event of any inconsistency or conflict between the provisions of this Package Order and the provisions of Schedule 3B, then the provisions of the Schedule 3B.1 to Schedule 3B.12 and Appendix 1 (Definitions) of Schedule 3B shall prevail, save where Schedule 3B or this Package Order expressly state otherwise.
- 7 All defined terms in this contract shall have the same meaning given to them in Schedule 3B.

Executed as a deed and delivered on the date above by:

Executed as a deed by **TRANSPORT FOR WALES** acting by a director, in the presence of:

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

Executed as a deed by [NAME OF EXECUTING COMPANY] acting by [two directors] [a director and its secretary]

.....
[SIGNATURE OF FIRST DIRECTOR]
Director
.....
[SIGNATURE OF SECOND DIRECTOR OR SECRETARY]
[Director OR Secretary]

**Package Order**

- Contract Data Part One
- Contract Data Part Two
- Annex 1 – Scope
- Annex 2 – Commercial Information
- Annex 3 – Additional Infrastructure Services Delivery Plan
- Annex 4 – Package Budget

## Contract Data

### Part one – Data provided by the *Authority*

Statements  
given in all

contracts

#### 1 General

**The conditions of contract are** the Conditions of Contract for Infrastructure Services at Part A of Appendix 5 to Schedule 3B of the Infrastructure Agreement utilising Main Option [●]. *[Note: Work Package Orders may be issued on a Main Option C (Target Contract) or Main Option E (Time based contract) basis at the Authority's sole discretion. If other Options are used, the Data which will apply will be based substantially on the principles contained within this Part C of Appendix 6 to Schedule 3B with such amendments as are necessary to suit that particular Option.]*

**The Authority is**

- Name: Transport for Wales
- Address: 3 Llys Cadwyn, Pontypridd, Wales, CF37 4TH

**The Adjudicator is**

- Name: Not named. To be agreed in accordance with Appendix 7 to Schedule 3B of the Infrastructure Agreement or failing agreement as nominated by the Chairman for the time being of the Nominating Authority.

**The Authority's Project Manager is** Transport for Wales.

**The Scope is** at Annex 1 of Part C of Appendix 5 to Schedule 3B.

**The law of the contract is** as stated in the Infrastructure Agreement.

The *period for reply* is 14 days except in relation to design submissions. In relation to design submissions, the *period for reply* shall be 28 days from the design submission provided that InfraCo shall provide not less than 14 days' advance notice in writing to the Authority of any design submission. Where InfraCo does not provide 14 days' advance notice of any design submission the *period for reply* shall be extended accordingly by no more than 14 days.

**The records retention is** 15 years following Completion or earlier termination

**The tribunal is** litigation.

**The following matters will be included in the Risk Register:**

*[to be completed for each Package Order]*

**The [Design Package][Management Package] is:**

*[to be completed for each Package Order]*

**Schedule 3B is** Schedule 3B of the Infrastructure Agreement between the Authority and InfraCo.

	<b>The site is</b> <i>[to be completed for each Package Order]</i> .
<b>2 The Parties main responsibilities</b>	The Authority provides access to the following persons, places and things as set out in Annex 1 (Scope).
<b>3 Time</b>	<p><b>The starting date is</b> <i>[to be completed for each Package Order]</i>.</p> <p>InfraCo submits revised programmes at each <i>assessment interval</i>.</p> <p><b>Project Completion is</b> <i>[to be completed for each Package Order]</i>.</p>
<b>4 Quality</b>	<p><b>The quality policy statement and quality plan are</b> provided within 1 month of the <i>starting date</i>.</p> <p><b>The defects date is</b> 52 weeks after Completion of the whole of [the Additional Infrastructure Services]/[the on site construction work for the Package to which the Additional Infrastructure Services relate].</p>
<b>5 Payment</b>	<p><b>The assessment interval is</b> at calendar monthly intervals as specified in clause 50.1.</p> <p><b>The currency of this contract is</b> the Pounds Sterling (£)</p> <p><b>The interest rate is</b> a rate equivalent to two percent (2%) per annum above the base lending rate published by Royal Bank of Scotland plc (or such other bank as the Authority may, after consultation with InfraCo, determine from time to time) during any period in which an amount payable under this contract remains unpaid.</p> <p><b>The Fixed Profit is</b> <i>[to be inserted for each Package Order]</i> and <b>the Fixed Overhead is</b> <i>[to be inserted for each Package Order]</i>.</p>
<b>6 Indemnity and insurance</b>	<p>The amounts of insurance and the periods for which InfraCo maintains insurance are [as set out in clause 81 of Schedule 3B / <i>otherwise to be inserted for each Package Order</i>].</p> <p>The amounts of insurance and the periods for which InfraCo maintains insurance are [as set out in clause 81 of Schedule 3B / <i>otherwise to be inserted for each Package Order</i>].</p>
<b>Optional statements</b>	<p>If the Authority has decided the <b>completion date</b> for the whole of the Additional Infrastructure Services</p> <p>The <i>completion date</i> for the whole of the Additional Infrastructure Services is <i>[to be inserted for each Package Order]</i></p> <p><b>If no programme is identified in part two of the Contract Data</b></p> <p>InfraCo is to submit a first programme for acceptance within <i>[to be inserted for each Package Order]</i> weeks of the Effective Date.</p> <p><b>If the Authority states any expenses</b></p> <ul style="list-style-type: none"> <li>• The expenses stated by the Authority are at Annex 2.</li> </ul> <p><b>If Option C or E is used</b></p> <ul style="list-style-type: none"> <li>• InfraCo prepares forecasts of the total Time Charge and <i>expenses</i> at intervals of no longer than four weeks. The forecast shall include:</li> </ul>

- (a) a detailed estimate of the Total Time Charge and *expenses* for the next four weeks in such form as reasonably required by the Authority;
- (b) a forecast of the Total Time Charge and *expenses* looking twelve weeks' ahead in such detail and form as reasonably required by the Authority; and
- (c) a forecast of the Total Time Charge and *expenses* looking twenty-four weeks' ahead in such detail and form as reasonably required by the Authority; and

and in each case shall include the following information against each Planned Milestone Delivery Date:

- (a) estimated Fees, as direct costs including multiplier (capped) for salary on-costs
- (b) Direct costs of sub-contractors (to be paid in arrears);
- (c) Fixed Overheads
- (d) Fixed Profit

**If Option C is used**

InfraCo's *share percentages* and the *share ranges* are set out in Annex 2.

The *supplementary conditions of contract* are:

- [ ]

The parties agree that, in the event of any inconsistency or conflict between the supplementary conditions of contract and the provisions of Schedule 3B.1 to Schedule 3B.12 and Appendix 1 (Definitions of Schedule 3B), the supplementary conditions of contract shall prevail.

# Part two – Data provided by InfraCo

**InfraCo is:**

Name: Amey Keolis Infrastructure/Seilwaith Amey Keolis Limited (Company Number: 11389544)  
Address: C/O Amey Rail Maindee Depot, Off Caerleon Road, Newport, United Kingdom, NP19 9DZ

.....  
.....

**The *key persons* are** set out in the Infrastructure Service Delivery Plan.

**The *staff rates*** are the price charged for staff on a time basis set out at Appendix 25 to Schedule 3B. They include all costs to InfraCo including basic salary, any additional payments or benefits and social costs such as insurances or pension payments. InfraCo General Overheads and Profit are allowed for in *the staff rates*. Office expenses (including rental and heating) are not allowed for in the *staff rates* except in relation to the design schedule of rates. These rates or (at InfraCo's discretion) lower rates shall be used to prepare Compensation Events. InfraCo shall supply, on request by the Authority's Project Manager, calculations supporting the quoted rates. When assessing Compensation Events, the Authority's Project Manager is not bound to use the rates in Appendix 25 and may (acting reasonably) use lower rates. InfraCo states the number of hours to be worked by the above staff per week: .....

- **The *project bank* is**.....
- **The *named suppliers* are**.....

**The following matters will be included in the Risk Register:** Those matters set out in the Infrastructure Service Delivery Plan.

**Optional statements**

**The programme identified in the Contract Data is** in the Infrastructure Service Delivery Plan.

**If Option C is used**

- **The *activity schedule* is** at Annex 2.



## Annex 1

### Scope

#### Scope of the Additional Infrastructure Services

*[Drafting Note: The particular scope for Additional Infrastructure Services is to be set out here for each individual Package Order for Additional Infrastructure Services. Additional Infrastructure Services may include any or all of the following as required by the Authority and are likely to reflect the whole or aspects of the Scope of Services for the Principal Infrastructure Services:]*

- 1** *Additional Infrastructure Services may include at the Authority's sole discretion all or any such services as the Authority may reasonably expect to be provided by a contractor providing services of the type being provided by InfraCo pursuant to Schedule 3B of the Infrastructure Agreement and any relevant Package Order in respect of a project such as the CVL Transformation and any Associated Projects, including any other services as may be reasonably incidental to the carrying out of the Additional Infrastructure Services.*

#### **(B) DESIGN**

- a. When undertaking any design as part of the Additional Infrastructure Services InfraCo shall use the Required Standard to:*
  - (a) ensure that the design is integrated and coordinated with the other designs prepared or being prepared for the Programme by other design consultants of the Authority or by IDPs or by Others.*
  - (b) achieve the standard and detail of design and produce the design deliverables stated within the Scope.*
- b. The scope of the Additional Infrastructure Services includes a management and coordination role in respect of Others who have been awarded a related design package.*

#### **(C) EXTERNAL STAKEHOLDERS**

- a. When undertaking any Package Order InfraCo must produce all documentation, presentations samples or models necessary to support any submission to any external Stakeholders, Statutory Undertakers or approval Authorities to whom the Authority has an obligation to consult or seek approval.*

#### **(D) PROJECT REQUIREMENTS**

- a. In undertaking a Package Order InfraCo shall comply with the operational requirements, engineering requirements, environmental and planning requirements, and the health and safety requirements and standards ("The Project Requirements") included within the Scope.*

#### **(E) AUTHORITY'S POLICIES**

- a. In undertaking a Package Order InfraCo shall comply with the Authority's Policies and the Authority's management processes and procedures included within the Package Order.*

#### **(F) SERVICE ACTIVITIES**

- a. In undertaking a Package Order InfraCo shall perform and / or take account of the service activities including but not limited to those indicated in this section to the extent described within the Scope:*

- (c) *Quality Management,*
- (d) *Environmental Management,*
- (e) *Planning, Environmental and Traffic & Highways Consents,*
- (f) *Health and Safety Management,*
- (g) *Technical Assurance,*
- (h) *Standards Management,*
- (i) *Value Engineering,*
- (j) *Architecture Design Process,*
- (k) *Systems Engineering,*
- (l) *Requirements Management,*
- (m) *Interface Management,*
- (n) *Issues Management,*
- (o) *Assumptions Management,*
- (p) *Engineering Safety Management,*
- (q) *Human Factors,*
- (r) *Reliability, Availability and Maintainability Management,*
- (s) *Electromagnetic Compatibility,*
- (t) *Configuration Management,*
- (u) *Verification and Validation,*
- (v) *Construction Programme Development,*
- (w) *Buildability and Construction Planning,*
- (x) *Procurement Support,*
- (y) *Cost Estimating and Cost Control,*
- (z) *Risk Management (Project Risks),*
- (aa) *Contract Controls,*
- (bb) *Information Management and Document Management.]*

## Annex 2

### Commercial Information

#### **Expenses**

The *expenses* stated by the Authority are as follows:

Item	Amount
Car mileage (InfraCo's staff vehicle)	[REDACTED]
Public Transport	[REDACTED]
Other disbursements by prior written agreement with the Authority's Project Manager.	[REDACTED]
Overnight accommodation and evening meal.	[REDACTED]
Equipment hire (extra ordinary equipment required by InfraCo to complete the Infrastructure Services requested, where InfraCo would not normally be expected to hold such equipment).	[REDACTED]

In relation to Associated Projects, InfraCo is entitled to recover staff *expenses* for those staff living outside the South Wales Metro Area, who are travelling to / living in the South Wales Metro Area.

InfraCo states the number of hours to be worked by the above staff per week: .....

#### **Engineering Job Descriptions**

To assist InfraCo in correctly categorising its staff for the purposes of completing the table of rates, guidance on responsibilities and capabilities for various grades is provided at Appendix 25 of this Schedule 3B.

The Activity Schedule is *[Insert for each Package Order]*.

Annex 3

Additional Infrastructure Services Delivery Plan

*[Note: Annex to be populated prior to entering into the Package Order.]*

Annex 4

Package Budget

*[Note: Annex to be populated prior to entering into the Package Order.]*

**Appendix 6 of Schedule 3B**

Package Order and Conditions of Contract re Infrastructure Works

Part A of Appendix 6 of Schedule 3B

Conditions of Contract for AKI Infrastructure Works

These Conditions of Contract shall apply to any AKI Infrastructure Works provided by InfraCo.

This Part A of Appendix 6 is based on the NEC3 ECC Option C Consolidated Conditions of Contract, the copyright of which belongs to the Institution of Civil Engineers and has been amended as set out herein. The terms of this Part A of Appendix 6 may not be reproduced, stored in a retrieval system or transmitted by any means without the prior written consent of the Authority, save in relation to the administration of the contract.

**CONTENTS**

CORE CLAUSES

- |    |                                   |
|----|-----------------------------------|
| 1  | General                           |
| 2  | InfraCo's main responsibilities   |
| 3  | Time                              |
| 4  | Testing and Defects               |
| 5  | Payment                           |
| 6  | Compensation Events               |
| 7  | Title                             |
| 8  | Risks and Insurance               |
| 9  | Termination                       |
| 10 | Additional Conditions of Contract |

## **CORE CLAUSES**

### **1 GENERAL**

#### **ACTIONS 10**

- 10.1 The Authority, InfraCo, the Authority's Project Manager and the Supervisor shall act as stated in this contract and in a spirit of mutual trust and co-operation. The Authority and InfraCo work together in a collaborative manner acting in good faith to achieve successful delivery of the AKI Infrastructure Works consistent with an economic and efficient whole-life cost approach and in a way which offers best value for money for the Authority.
- 10.2 InfraCo shall at all times perform its obligations in such a way so as to minimise and mitigate the impact upon the Rail Services and the Infrastructure Manager Services.

#### **IDENTIFIED AND 11 DEFINED TERMS**

- 11.1 In these conditions of contract, terms identified in the Contract Data are in italics and defined terms have capital initials.
- 11.2 No alteration or amendments for which this contract does not otherwise make provision may be made to this contract except where expressly recorded in writing by a document expressed to be supplemental to this contract and signed by the Parties.
- 11.3 The definitions and interpretation provisions are as set out in the Contract Definitions at Appendix 1 (Definitions) of Schedule 3B to the Infrastructure Agreement.
- 11.4 For the avoidance of doubt, where in these conditions of contract there are references to "AKI Infrastructure Works", any right of InfraCo to suspend or terminate or otherwise obtain relief set out herein shall apply to the particular Package Order for AKI Infrastructure Services, and not to the AKI Infrastructure Works as a whole.

#### **INTERPRETATION 12 AND THE LAW**

- 12.1 These conditions of contract, and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims), shall be governed by and construed in accordance with the laws of England and Wales.
- 12.2 Appendix 7 (Dispute Resolution) of Schedule 3B shall exclusively apply to any dispute or difference between the Parties concerning the AKI Infrastructure Works on any matter or thing of whatsoever nature arising under Schedule 3B and / or any Package Order or this contract or in connection therewith or its subject matter or formation.

#### **COMMUNICATIONS 13**

- 13.1 Each instruction, certificate, quotation for Compensation Event, submission, proposal, record, acceptance, notification, reply and other communication which this contract requires shall be communicated in a form which can be read, copied and recorded. Writing is in the *language of this contract* as stated in clause 19 of the Infrastructure Agreement. Where directed by the Authority InfraCo shall provide or receive communications in a format prescribed by the Authority. Unless specified in the Contract Data, the form of communications platform for the sharing of documents and other communications between the Parties and process for its operation shall be agreed between the Parties within four (4) weeks of the Effective Date and amended as agreed by the Parties through the Term.
- 13.2 Other than signed documents which have been electronically scanned, notifications, instructions and quotations for Compensation Events under this contract shall not be effective if made by electronic format ('for information' copies of notifications may however be issued electronically).
- 13.3 A communication shall have effect when it is received at the last address notified by the recipient for receiving communications or, if none is notified, at the address of the recipient stated in the Contract Data.
- 13.4 Any communication sent by hand shall be deemed to be received upon delivery at such address.
- 13.5 If this contract requires the Authority or InfraCo to reply to a communication, unless otherwise stated in this contract, it shall reply within the *period for reply*.
- 13.6 The Authority shall reply to a communication submitted or resubmitted to it by InfraCo for acceptance. If its reply is not acceptance, the Authority shall state its reasons and InfraCo shall resubmit the communication within the *period for reply* taking account of these reasons. A reason for withholding acceptance is that more information is needed in order to assess InfraCo's submission fully.
- 13.7 The Authority may extend the *period for reply* to a communication if the Authority and InfraCo agree to the extension before the reply is due. The Authority shall notify InfraCo of the extension which has been agreed.
- 13.8 The Authority's Project Manager shall issue its certificates to the Authority and InfraCo. The Supervisor shall issue its certificates to the Authority's Project Manager and InfraCo.
- 13.9 A notification which this contract requires is communicated separately from other communications.
- 13.10 The Authority's Project Manager may withhold acceptance of a submission by InfraCo. Withholding acceptance for a reason stated in this contract is not a Compensation Event.



- 13.11 InfraCo shall retain copies of drawings, specifications, computer data files, reports and other documents which record the services for the *records retention*. The copies shall be retained in the form stated in the Infrastructure Works Information. InfraCo shall provide the Authority with explanations of the documents as reasonably required.
- 13.12 Any communication required under this contract from InfraCo to Others shall be copied simultaneously to the Authority.
- 13.13 The content of minutes of meetings shall not constitute the issue of instructions the notification of Compensation Events or changes in the Infrastructure Works Information.

**THE AUTHORITY'S  
PROJECT  
MANAGER AND  
THE SUPERVISOR**

- 14.1 Neither a communication from the Authority, Project Manager or Supervisor nor the Authority's Project Manager's or the Supervisor's review or acceptance of a communication from InfraCo or of its work shall change InfraCo's responsibility to Provide the AKI Infrastructure Works or its liability for its design.
- 14.2 The Authority's Project Manager and the Supervisor, after notifying InfraCo, may delegate any of their actions and may cancel any delegation. A reference to an action of the Authority's Project Manager or the Supervisor in this contract includes an action by its delegate.
- 14.3 The Authority's Project Manager may give an instruction to InfraCo which changes the Infrastructure Works Information or a Milestone or Planned Milestone Delivery Date.
- 14.4 The Authority may replace the Authority's Project Manager or the Supervisor after it has notified InfraCo of the name of the replacement.

**INFRACO'S  
REPRESENTATIVE**

- 14.1A InfraCo shall ensure that at all times a competent and experienced person is appointed to act as InfraCo's Representative. InfraCo's Representative acts on behalf of InfraCo under this contract. InfraCo's Representative may, after notifying the Authority and the Authority's Project Manager, delegate any of its actions and may cancel any delegation. A reference to an action of InfraCo's Representative in this contract includes an action by its delegate. InfraCo's Representative is a Key Person for the purposes of clause 24 and the Authority may require InfraCo to remove and replace InfraCo's Representative in accordance with that clause.

**ADDING TO THE  
WORKING AREA**

- 15.1 InfraCo may submit a proposal for adding an area to the Working Areas to the Authority's Project Manager for

acceptance. A reason for not accepting is that the proposed area is either not necessary for Providing the AKI Infrastructure Works or used for work not in this contract.

## **EARLY WARNING 16**

16.1 InfraCo and the Authority's Project Manager shall give an early warning by notifying the other as soon as either becomes aware of any matter which could:

- (a) increase the total of the Prices,
- (b) increase the Price for Work Done to Date beyond the Final Target Price or any forecast (as applicable),
- (c) delay Completion or Project Completion,
- (d) change the Accepted Programme,
- (e) delay meeting a Planned Milestone Delivery Date,
- (f) impair the usefulness of the Infrastructure Services or the Infrastructure Works to the Authority or the performance of the AKI Infrastructure Works and / or the Infrastructure Works and / or the Infrastructure Services and / or the CVL Transformation and / or Associated Projects in use,
- (g) result in a failure to meet the Consents,
- (h) adversely affect the work of the Authority, InfraCo, an IDP, or Others,
- (i) constitute a Defect,
- (j) adversely affect the Authority (including by increasing the monies payable by the Authority to Others engaged on the CVL Transformation and / or Associated Projects) and / or cause any disruption to the operation of the Rail Services,
- (k) result in a breach of this contract or any subcontract,
- (l) lead to InfraCo terminating or suspending any subcontract,
- (m) cause a change to the IDP Procurement Plan, or
- (n) cause a breach of any applicable law.

In the notification InfraCo and the Authority's Project Manager shall state whether the early warning must be dealt with immediately or can wait until the next scheduled risk reduction meeting.

InfraCo shall give an early warning by notifying the Authority's Project Manager of any other matter which could increase its total cost. The Authority's Project Manager shall enter early warning matters in the Risk Register. Early warning of a matter for which a Compensation Event has previously been notified is not required.

In the notification InfraCo shall state whether, and to what extent, the Material Discovery and / or any matter which could delay Achieving a Planned Milestone Delivery Date or delay Completion is the result of an Exceptional Item or a failure of the Authority to provide, or procure, an Authority Dependency.

- 16.2 Risk reduction meetings shall be held at the intervals set out in the Contract Data. In addition to the intervals set out in the Contract Data, the Authority's Project Manager or InfraCo may instruct the other to attend additional risk reduction meetings. Each may instruct other people (including but not limited to IDPs) to attend if the other agrees.
- 16.3 At a risk reduction meeting, those who attend shall, having regard to and subject to any provisions in the Infrastructure Agreement, the Framework Agreements, or IDP Works Packages relating to which party (if any) is to be responsible for each registered risk, co-operate in:
  - (a) making and considering proposals for how the effect of the registered risks can be avoided or reduced,
  - (b) seeking solutions that will bring advantage to all those who will be affected,
  - (c) deciding on the actions which will be taken and who, in accordance with this contract, the Infrastructure Agreement, the Framework Agreements, or IDP Works Packages, will take them, and
  - (d) deciding which risks have now been avoided or have passed and can be removed from the Risk Register.
- 16.4 InfraCo shall revise the Risk Register to record the decisions made at each risk reduction meeting and issue the revised Risk Register to the Authority's Project Manager. If a decision needs a change to the Infrastructure Works Information, the Authority's Project Manager shall instruct the change at the same time as it issues the revised Risk Register.

## **AMBIGUITIES AND INCONSISTENCIES**

### **17**

- 17.1 InfraCo has examined the Infrastructure Works Information and all other documents forming this contract and warrants to the Authority that it is not aware, as at the Effective Date of any ambiguity or discrepancy within or between any of the contract documents which might adversely affect the carrying out of the AKI Infrastructure Works for the tendered Prices in accordance with this contract.
- 17.2 The Authority's Project Manager or InfraCo shall notify the other as soon as either becomes aware of an ambiguity or inconsistency in or between:
  - (a) the documents which are part of the Infrastructure Agreement,
  - (b) the contract and the documents which are part of this contract,

- (c) the documents which are part of this contract and any other Package Order entered into between the Authority and InfraCo in relation to other AKI Infrastructure Works or Additional Infrastructure Services,
- (d) the Infrastructure Agreement and the documents entered into with the IDPs, or
- (e) the documents entered into with the IDPs.

17.3 The Authority's Project Manager shall give an instruction resolving the ambiguity or inconsistency. Such instruction is not a Compensation Event where the Authority's Project Manager assesses:

- (a) that the ambiguity or inconsistency is in respect of works or services that it was the responsibility of InfraCo to perform as part of the Infrastructure Services or other AKI Infrastructure Works; or
- (b) that the ambiguity or inconsistency in question arises between the Infrastructure Works Information and / or Site Information; or
- (c) that a prudent and experienced contractor familiar with works similar to the AKI Infrastructure Works would have identified such an ambiguity or inconsistency at the Effective Date from the information then available to it; or
- (d) that InfraCo has been in receipt of the document in which the ambiguity or inconsistency is found for a period of more than three months.

For the avoidance of doubt, notification by InfraCo of an ambiguity or inconsistency within three (3) months from InfraCo's receipt of the document which contains that ambiguity or inconsistency shall be a condition precedent to InfraCo's entitlement to a Compensation Event.

## **ILLEGAL AND 18 IMPOSSIBLE REQUIREMENTS**

18.1 InfraCo shall notify the Authority's Project Manager as soon as it considers that the Infrastructure Works Information requires InfraCo to do anything which is illegal or impossible. If the Authority's Project Manager agrees, it shall give an instruction to change the Infrastructure Works Information appropriately.

## **NOT USED 19**

## **QUALITY STATEMENT 19A**

19A.1 The Quality Statement sets out InfraCo's proposals for the management and resourcing of the AKI Infrastructure Works.

19A.2 InfraCo warrants:

- (a) that the representations contained in the Quality Statement are accurate in every respect and may be fully relied upon by the Authority where the standards represented exceed the minimum originally specified by the Authority, and
- (b) that the Quality Statement does not constitute a qualification to its tender. Should any discrepancy arise between the Quality Statement and other contractual documents, the Infrastructure Works Information takes precedence.

## **QUALITY MANAGEMENT**

### **19B**

- 19B.1 InfraCo shall implement and operate a quality management system for Providing the AKI Infrastructure Works as stated in the Infrastructure Works Information. The quality management system shall comply with the requirements stated in the Infrastructure Works Information.
- 19B.2 InfraCo shall provide the Authority's Project Manager, within the period stated in the Contract Data, with a quality policy statement and a quality plan for acceptance in accordance with the Infrastructure Works Information.
- 19B.3 InfraCo shall comply with an instruction from the Authority's Project Manager to InfraCo to correct a failure to comply with the quality management plan.
- 19B.4 A reason for not accepting the quality plan is that:
  - (a) it is inadequately prepared or is not practicable,
  - (b) it does not incorporate the information which this clause requires, or
  - (c) it does not represent a realistic approach for the AKI Infrastructure Works.
- 19B.5 Any Subcontractor appointed by InfraCo shall operate a quality system enabling it to comply with InfraCo's quality management system.

## **2 INFRACO'S MAIN RESPONSIBILITIES**

### **PROVIDING THE AKI INFRASTRUCTURE WORKS**

- 20.1 InfraCo acknowledges that the performance of its duties under this contract is necessary for the purposes of the CVL Transformation and / or Associated Projects.

InfraCo shall Provide the AKI Infrastructure Works in accordance with the terms of this contract and in compliance

with any applicable law, Statutory Requirements, the Consents and the relevant Standards.

Subject to the above paragraph, InfraCo shall Provide the AKI Infrastructure Works in accordance with the Required Standard. In exercising this Required Standard, InfraCo shall comply with the Sustainable Development Strategy, the CVL Engineering Requirements and the Code of Construction Practice and the instructions of the Authority.

InfraCo shall proceed regularly and diligently and use all reasonable endeavours to prevent and / or reduce any delay in the progress of the AKI Infrastructure Works.

## **STANDARD OF CARE**

- 20.2 InfraCo shall be liable for any Defect in the AKI Infrastructure Works unless InfraCo can prove that InfraCo did comply with its obligations under this contract. If InfraCo corrects a Defect for which it is not liable under this contract it is a Compensation Event.

## **NO DELETERIOUS MATERIALS**

- 20.3 Subject to the Infrastructure Works Information and any changes to it, InfraCo warrants to the Authority that to the extent InfraCo is either obliged to specify or approve products or materials for use in the AKI Infrastructure Works or shall so specify or approve, InfraCo will not specify or approve any Deleterious Materials.
- 20.4 If in the course of Providing the AKI Infrastructure Works, InfraCo becomes aware that it or any person has specified, approved or used any such products or materials, InfraCo shall immediately notify the Authority in writing. This clause does not create any additional duty for InfraCo to inspect or check the work of Others which is not required by the Infrastructure Agreement and / or any Package Order.
- 20.5 InfraCo shall advise the Authority's Project Manager on the practical implications of:
- (a) the design of all of the AKI Infrastructure Works, and
  - (b) on the practical implications of the design of the CVL Transformation and / or Associated Projects to the stages and as otherwise specified in the Infrastructure Works Information, and
  - (c) on subcontracting arrangements in relation to the AKI Infrastructure Works.

## **DEFINED COST**

- 20.6 InfraCo shall prepare forecasts of the total Defined Cost for the whole of the AKI Infrastructure Works in consultation with the Authority's Project Manager and submit them to the Authority's Project Manager. Forecasts are prepared at the intervals stated in the Contract Data from the Starting Date until Completion of the whole of the AKI Infrastructure Works (or, if no interval is stated in the Contract Data, at monthly intervals on the last calendar day of the month). Each forecast shall be in a format prescribed in the Infrastructure Works Information and contains an explanation of the changes made since the previous forecast is submitted with each forecast.
- 20.7 InfraCo shall perform the value engineering activities set out in the Infrastructure Works Information.
- 20.8 The Authority's Project Manager acts on behalf of the Authority with the authority set out in this clause 20.8 or as otherwise stated in the Contract Data. Except to the extent that the Authority may otherwise specify by written notice to InfraCo or as otherwise stated in the Contract Data, the Authority's Project Manager has full authority to receive and issue applications, certificates, consents, instructions, notices, requests or statements and otherwise to act for the Authority under this contract. All instructions from the Authority's Project Manager are in writing and signed by the Authority's Project Manager. For the avoidance of doubt the Authority's Project Manager does not have the authority to vary the terms of this contract.
- 20.9 InfraCo shall:
- (a) integrate and co-ordinate the design and implementation of the AKI Infrastructure Works and the design and implementation of the Authority's Works (including, but not by way of limitation, by the preparation jointly with Others of any such coordination drawings for the CVL Transformation and / or Associated Projects as are required and by setting out the works for the CVL Transformation and / or Associated Projects jointly with them and by re-sequencing all or any part of the AKI Infrastructure Works as necessary to coordinate with them) in accordance with the requirements set out in the Infrastructure Works Information (as such requirements may be further detailed or adjusted by the Authority from time to time) and where necessary to Provide the AKI Infrastructure Works,
  - (b) comply with any instructions of the Authority's Project Manager in relation to the same, and
  - (c) notify the Authority's Project Manager of any information which it needs in order to programme and manage such coordination,
- so as to ensure that all designs and implementation works for the CVL Transformation and / or Associated Projects are compatible and integrate with each other and that on

Completion the AKI Infrastructure Works will be successfully integrated with the Authority's Works.

20.10 Subject to InfraCo complying with its obligations under clause 20.9, this contract, and InfraCo's obligations in relation to the Infrastructure Services, the Authority is responsible for the co-ordination of the CVL Transformation and / or Associated Projects and the Authority's Works. The Authority's Project Manager may issue such instructions as may be necessary to coordinate the supply of the design and the execution and completion of the AKI Infrastructure Works with the Authority's Works and there shall be no cost attributable to the Authority, nor any claim for any Compensation Event save to the extent that the instruction imposes requirements that no reasonable contractor undertaking the AKI Infrastructure Works on the terms of this contract could have reasonably anticipated at the Effective Date.

20.11 InfraCo in Providing the AKI Infrastructure Works warrants, undertakes and represents to the Authority as a condition of this contract that the AKI Infrastructure Works (including any design and / or specification prepared as part of the AKI Infrastructure Works) will:

- (a) subject to clause 20.1, be in accordance with the Infrastructure Works Information and any performance or output specification or requirements contained or referred to in this contract,
- (b) be safe to construct and use, clean, service, use, dismantle and demolish,
- (c) comply with all Statutory Requirements,
- (d) comply with all applicable law,
- (e) comply with all relevant Standards, and
- (f) subject to clause 20.1, be integrated with the designs of Others.

InfraCo further warrants, undertakes and represents to the Authority as a condition of this contract that any design and / or specification prepared by InfraCo in Providing the AKI Infrastructure Works will not on Completion render the Works incapable of being Available.

#### **COMPLY WITH LAWS AND REGULATIONS**

20.12 In performing the AKI Infrastructure Works and its obligations under this contract, InfraCo shall comply with the applicable law, the Standards, the Consents and the Statutory Requirements to the extent that they impose duties, obligations or restrictions on InfraCo.

20.13 In the event that InfraCo does not fulfil its obligations under this contract due to the infringement of any applicable law Standard,



or Statutory Requirement and the Authority thereby incurs costs to which it would not otherwise be liable, the amount of such costs shall be reimbursed by InfraCo to the Authority as a debt due on demand.

## **COMPLY WITH APPLICABLE STANDARDS**

- 20.14 In so far as the Standards relate to any technical standards (as opposed to procedural standards) required by the Authority or Network Rail, InfraCo warrants that it will perform the AKI Infrastructure Works so that they comply with any such Authority or Network Rail standards in force at the Effective Date.

## **TIMELY PROVISION OF INFORMATION**

- 20.15 InfraCo shall provide information and things which this contract requires it to provide in accordance with the Accepted Programme and without the need for programmes or timetables to be extended.

## **INFRACO'S DESIGN**

### **21**

- 21.1 InfraCo has the responsibility for completing the design of the AKI Infrastructure Works to the stages and as otherwise specified in the Infrastructure Works Information. InfraCo is not paid under these conditions of contract for design work performed by it under the Conditions of Contract for Infrastructure Services. Design work performed by InfraCo as part of the Principal Infrastructure Services or Additional Infrastructure Services is included in the Defined Cost and the Price for Work Done to Date and the Prices and forms part of the Infrastructure Works Information.

- 21.1A When undertaking any design of the AKI Infrastructure Works InfraCo shall:

- (a) produce all documentation, presentations, samples or models necessary to support any submission to the Authority and to any external Stakeholders, Statutory Undertakers or approval Authorities to whom the Authority has an obligation to consult or seek approval, and
- (b) achieve the standard and detail of design and produce the design deliverables stated in the Infrastructure Works Information.

- 21.1B InfraCo in Providing the AKI Infrastructure Works warrants, undertakes and represents to the Authority as a condition of this

contract that the AKI Infrastructure Works (including any design and / or specification prepared as part of the AKI Infrastructure Works will:

- (a) subject to clause 20.1, be in accordance with the Infrastructure Works Information and any performance or output specification or requirements contained or referred to in the Infrastructure Agreement,
- (b) comply with all Statutory Requirements,
- (c) comply with all applicable law,
- (d) comply with all relevant Standards,
- (e) subject to clause 20.1, be integrated with the designs of Others, and
- (f) subject to clause 20.1, InfraCo further warrants, undertakes and represents to the Authority as a condition of the Infrastructure Agreement that any design and / or specification prepared by InfraCo in the course of Providing the AKI Infrastructure Works will not on Completion render the Infrastructure Works incapable of being Available.

21.2 InfraCo shall submit the particulars of its design as the Infrastructure Works Information requires to the Authority's Project Manager for acceptance.

Within the *period for reply* (or such longer period as may be agreed between the Parties) of InfraCo submitting the particulars of its design for acceptance, the Authority's Project Manager either accepts the particulars of InfraCo's design or notifies InfraCo if its reasons for not accepting it.

Reasons for not accepting InfraCo's design are that it does not comply with either the Infrastructure Works Information, the Standards, Statutory Requirements, this contract or the applicable law or that:

- (a) it is not integrated and coordinated with the design of Others where InfraCo is required by the Infrastructure Works Information or instructions of the Authority to integrate and / or coordinate its design with the design of Others, or such integration is necessary for InfraCo to Provide the AKI Infrastructure Works,
- (b) it is such that it will not allow the AKI Infrastructure Works, the Authority's Works, or the CVL Transformation and / or Associated Projects to be constructed in accordance with this contract or the Infrastructure Works Information,
- (c) it is such that if constructed the Infrastructure Works will not be Available and / or the AKI Infrastructure Works and / or the Authority's Works and / or the CVL Transformation and / or Associated Projects will not be capable of being used for its intended purpose, or

- (d) it is not in a format which is accepted for use by the Authority.

InfraCo shall not proceed with the relevant work until the Authority's Project Manager has accepted its design, responding within the *period for reply*.

- 21.3 InfraCo may submit its design for acceptance in parts if the design of each part can be assessed fully.

## **USING INFRACO'S DESIGN 22**

- 22.1 The Authority may use and copy InfraCo's design for any purpose specified in clause 110.
- 22.2 InfraCo acknowledges that the design it produces in relation to the CVL Transformation and / or Associated Projects shall be relied upon by Others in carrying out their design and performing their works in relation to the CVL Transformation and / or Associated Projects.

## **DESIGN OF EQUIPMENT 23**

- 23.1 InfraCo shall submit particulars of the design of an item of Equipment to the Authority's Project Manager for acceptance if the Authority's Project Manager instructs InfraCo to. A reason for not accepting is that the design of the item will not allow InfraCo to Provide the AKI Infrastructure Works in accordance with:
  - (a) the Infrastructure Works Information,
  - (b) InfraCo's design which the Authority's Project Manager has accepted, or
  - (c) the applicable law.

## **THIRD PARTY AGREEMENTS 23A**

- 23A.1 InfraCo has been provided with and takes due account of the terms of and the duties and obligations of the Authority and any such other third parties under:
  - (a) the documents specified in Appendix 27 to Schedule 3B,
  - (b) any such further agreements as shall be provided to it from time to time (as may be amended from time to time), whether in existence before or after the Effective Date and whether provided to InfraCo before or after the Effective Date, and
  - (c) any contracts with IDPs, SMEs or suppliers let by the Authority in relation to the CVL Transformation or Associated Projects and any such further agreements

InfraCo is aware of whether in existence before or after the Effective Date and whether provided to InfraCo before or after the Effective Date,

together the **"Third Party Agreements"**.

23A.2 InfraCo warrants that it will perform its obligations under this contract in such a manner as to comply with and so as not to constitute, cause or contribute to any breach by the Authority or any other third parties of their obligations under the Third Party Agreements and shall indemnify the Authority and any other third parties in respect of any loss and / or damage which it incurs as a result of any breach by InfraCo of this clause 23A.

23A.3 Subject to a duty to minimise costs and mitigate any risks arising, any associated costs incurred by InfraCo in complying with any Third Party Agreements notified after the Grant Agreement Date shall be a Compensation Event.

## PEOPLE

### 24

24.1 InfraCo shall either employ each Key Person named to do the job stated in the Contract Data or employ a replacement person who has been accepted by the Authority's Project Manager. InfraCo shall submit the name, relevant qualifications and experience of a proposed replacement person to the Authority's Project Manager for acceptance. A reason for not accepting the person is that:

- (a) its relevant qualifications and experience are not as good as those of the person who is to be replaced,
- (b) it is, in the Authority's Project Manager's or the Authority's reasonable opinion, inappropriate because the Authority's Project Manager or the Authority has received specific information from the Serious Fraud Office or the Crown Prosecution Service or because the Authority's Project Manager or the Authority has been made aware of any relevant material fact or allegation concerning the suitability of the person to act in relation to Providing the AKI Infrastructure Works. If the Authority's Project Manager or the Authority deems such a person to be inappropriate in accordance with this clause 24.1(b), InfraCo does not permit such person to perform any further duties in relation to the Provision of the AKI Infrastructure Works without the prior written consent of the Authority, or
- (c) in the Authority's Project Manager's or the Authority's reasonable opinion, the person's activities are incompatible with the any operations or activities carried out by the Authority for the purposes contemplated by this contract or any other of the Authority's duties or other functions.

24.2 The Authority's Project Manager may, having stated its reasons, instruct InfraCo to remove any person under its control. InfraCo

shall then arrange that, after one day, such person has no further connection with the work included in this contract.

**WORKING WITH  
THE AUTHORITY  
AND OTHERS**      **25**

- 25.1      InfraCo shall cooperate with the Authority's Project Manager and Others in obtaining and providing information which they require in connection with the AKI Infrastructure Works, the Authority's Works, and the CVL Transformation and / or Associated Projects. InfraCo shall cooperate with Others, co-ordinate its activities with them and share the Working Areas with them as stated in the Infrastructure Works Information and, where necessary, InfraCo shall hold and attend meetings with Others. InfraCo shall inform the Authority of these meetings beforehand and the Authority may attend them. InfraCo shall notify the Authority if any other person is not fully and actively cooperating with it.
- 25.2      The Authority and InfraCo shall provide services and / or works and other things as stated in the Infrastructure Works Information. Any cost incurred by the Authority (including cost payable by the Authority to its contractors) as a result of InfraCo not providing the AKI Infrastructure Works and other things which it is to provide as stated in the Infrastructure Works Information shall be assessed by the Authority's Project Manager and paid by InfraCo.
- 25.3      If the Authority's Project Manager decides that the work does not or will not meet the Milestone Criteria stated for a Planned Milestone Delivery Date by the date stated and, as a result, the Authority incurs or will incur additional cost either:
- (a)      in carrying out work, or
  - (b)      by paying an additional amount to Others in carrying out work,
- on the delivery of the CVL Transformation and / or the Associated Projects, the additional cost which the Authority has paid or will incur shall be paid by InfraCo. The Authority's Project Manager shall assess the additional cost as soon as practicable after the date when the Milestone Criteria for the Planned Milestone Delivery Date is met. The Authority's Project Manager's assessment is without prejudice to any other rights and remedies the Authority may have arising from InfraCo's failure to meet a Planned Milestone Delivery Date.
- 25.4      Unless provided for in the Infrastructure Works Information or authorised by written instruction by the Authority's Project Manager, InfraCo shall Provide the AKI Infrastructure Works and correct Defects in such a way as not to cause delay or disruption to the Authority and / or Others.
- 25.5      In the event that the AKI Infrastructure Works cause delay or disruption to the Authority and / or Others, InfraCo shall take all

reasonable steps to mitigate and minimise such delay or disruption.

## **SUBCONTRACTING 26**

- 26.1 If InfraCo subcontracts work, it is responsible for Providing the AKI Infrastructure Works as if it had not subcontracted. This contract applies as if a Subcontractor's employees and equipment were InfraCo's.
- 26.2 InfraCo submits the name of each proposed Subcontractor to the Authority's Project Manager for acceptance. Reasons for not accepting the Subcontractor include (but are not limited to):
- (a) that its appointment will not allow InfraCo to Provide the AKI Infrastructure Works,
  - (b) InfraCo has not complied with any requirements in the Infrastructure Works Information regarding the appointment or acceptance of Subcontractors,
  - (c) the proposed Subcontractor does not have an acceptable health and safety track-record on other projects,
  - (d) the identity of the proposed subcontractor is not acceptable to the Authority,
  - (e) InfraCo has selected an Affiliate of InfraCo as a Subcontractor and such Subcontractor has not been reasonably selected on the basis of a fair and open competition and / or the proposed sub-contract terms are on terms which are unreasonably favourable to such Affiliate,
  - (f) the proposed Subcontractor is unable to demonstrate to the satisfaction of the Authority that it has professional indemnity insurance at a level that is, in the Authority's opinion sufficient (subject to a maximum of [REDACTED]) having regard to the nature and extent of the services and / or works to be carried out by the proposed Subcontractor,
  - (g) the proposed subcontract conditions do not include a provision:
    - (i) stating that the proposed Subcontractor shall not be entitled to a Compensation Event in circumstances where InfraCo is not entitled to a Compensation Event,
    - (ii) stating InfraCo shall be entitled to suspend performance of the proposed subcontract where requested to do so by the Authority and the proposed Subcontractor shall not be entitled to a Compensation Event in respect of such suspension, or

- (iii) stating the proposed Subcontractor shall not be entitled to any loss of profits, loss of fees, loss of chance or other similar losses or any indirect losses or consequential losses arising out of termination of the Subcontractor's engagement under the proposed sub-contract.

InfraCo shall not appoint a proposed Subcontractor until the Authority's Project Manager has accepted the proposed Subcontractor.

- 26.3 InfraCo shall submit the proposed contract for each subcontract to the Authority's Project Manager for acceptance unless the Authority's Project Manager has agreed that no submission is required.

InfraCo shall not appoint a Subcontractor on the proposed subcontract conditions submitted until the Authority's Project Manager has accepted them. Reasons for not accepting them include:

- (a) they will not allow InfraCo to Provide the AKI Infrastructure Works,
- (b) they do not include a statement that the parties to the subcontract shall act in a spirit of mutual trust and co-operation,
- (c) InfraCo has not complied with any requirements in the Infrastructure Works Information regarding the appointment or acceptance of Subcontractors,
- (d) the terms of the proposed subcontract do not adequately reflect the terms of this contract or are inconsistent with the terms of this contract,
- (e) the proposed subcontract works represent too large a proportion of the total AKI Infrastructure Works,
- (f) the proposed subcontract conditions do not include any of the key flowdown provisions listed in the Infrastructure Works Information,
- (g) the proposed subcontract does not oblige the Subcontractor to provide a form of collateral warranty in favour of the Authority or other stated beneficiaries within the timescales specified in clause 101 or clause 101A (as applicable) on the terms set out in Appendix 9 of Schedule 3B of the Infrastructure Agreement,
- (h) the proposed subcontract does not require the Subcontractor to grant a non-exclusive, perpetual, irrevocable, royalty-free licence to the Authority to use Third Party Background IPR (including the right to assign, novate and otherwise transfer and / or grant sub-licences) of an equivalent extent and nature to those required by this contract, or

- (i) the proposed subcontract does not require the Subcontractor to warrant and undertake that it has the right to grant to the Authority a licence to use the Third Party Background IPR equivalent to the warranty given by InfraCo pursuant to clause 110.6.

26.4 InfraCo shall submit the proposed contract data for each subcontract for acceptance to the Authority's Project Manager if:

- (a) an NEC contract is proposed, and
- (b) the Authority's Project Manager instructs InfraCo to make the submission.

A reason for not accepting the proposed contract data is that its use will not allow InfraCo to Provide the AKI Infrastructure Works.

26.5 (c) Not used

## OTHER RESPONSIBILITIES

### 27

27.1 InfraCo shall obtain approval of its design from Others where necessary.

27.2 InfraCo shall on reasonable notice provide access to work being done and to Plant and Materials being stored for this contract for:

- (a) the Authority's Project Manager,
- (b) the Supervisor, and
- (c) Others notified to it by the Authority's Project Manager.

27.3 InfraCo shall obey an instruction which is in accordance with this contract and is given to it by the Authority's Project Manager or the *Supervisor*.

27.4 InfraCo shall act in accordance with the health and safety requirements stated in the Infrastructure Works Information and co-operate with persons having health and safety responsibilities on or adjacent to the Site for the effective discharge of all such responsibilities. Without prejudice to the generality of the above, if a Safety Breach is committed by one of InfraCo's employees or agents or by any Subcontractor (or one of the Subcontractor's employees or agents) then the Authority may (at its sole discretion) choose to serve a warning notice upon InfraCo instead of exercising its right to terminate with immediate effect pursuant to clause 91.8 and unless, within thirty (30) days of receipt of such warning notice, InfraCo removes or procures the removal of the relevant person or Subcontractor (as the case may be) from the Site and (if necessary) procures the provision of the affected works by another person or Subcontractor this constitutes a material



breach of this contract and entitles the Authority to terminate the contract in whole or in part with immediate effect in accordance with clause 91.8.

**CONSTRUCTION  
(DESIGN AND  
MANAGEMENT)  
REGULATIONS  
2015**

27.5 Not used

**27A**

27A.1 For the purposes of the CDM Regulations:

- (a) the Authority appoints InfraCo to act as Principal Contractor in respect of the AKI Infrastructure Works. Where Others are working on a part of the Site and is also Principal Contractor under its contract, the Authority's Project Manager shall designate which person shall be Principal Contractor in respect of which part of the Site,
- (b) the Authority appoints InfraCo to act as a Designer for the AKI Infrastructure Works, and
- (c) the *Principal Designer* is as stated in the Contract Data.

27A.2 InfraCo shall provide the Authority and *Authority's Project Manager* with all information reasonably required to facilitate compliance with the CDM Regulations in relation to the AKI Infrastructure Works and / or the Authority's Works and / or the CVL Transformation and / or Associated Projects.

27A.3 InfraCo shall comply with the CDM Regulations. InfraCo 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 Site and / or in respect of the AKI Infrastructure Works and / or the Authority's Works and / or the CVL Transformation and / or Associated Projects for the effective discharge of those responsibilities.

27A.4 InfraCo 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.

27A.5 InfraCo is fully conversant with the guidance published by the Health and Safety Executive in relation to the CDM Regulations and acknowledges that in relation to the Works it is a "designer" as defined in the CDM Regulations. InfraCo shall use all reasonable skill, care and diligence to comply with its obligations and duties as a designer as defined and specified in the CDM Regulations and in accordance with the guidance.

**27B** Not used

**LIEN AND ENCUMBRANCE****27C**

- 27C.1 InfraCo will not create, or allow its Sub-contractors or Sub-consultants to create, any lien or encumbrance on any property of the Authority and shall use all reasonable endeavours to not allow Others to create, any lien or encumbrance on any property of the Authority relating to the CVL Transformation and / or Associated Projects and / or the Site.

**ACCIDENTS ON SITE****27D**

- 27D.1 InfraCo shall report to the Authority's Project Manager details of any serious accident or fatality to any person employed by or contracted to it on the Site as soon as possible after an accident occurs.

**GOODS VEHICLES OPERATOR'S LICENCE****27E**

- 27E.1 Without prejudice to the requirements set out in the Infrastructure Works Information, each goods vehicle used by InfraCo or its Subcontractors in connection with the contract shall display the vehicle licence disc relevant to the goods operator's licence under which the vehicle is operated or, in the absence of an operator's licence disc, the vehicle carries documentation giving the operator's licence number, name and address.

**ROUTING OF VEHICLES****27F**

- 27F.1 Without prejudice to the requirements set out in the Infrastructure Works Information, InfraCo its Subcontractors and suppliers shall comply with the requirements given in the contract for the routing of their vehicles (the Authority does not in specifying requirements warrant in any way that the route(s) will be available in full or in part for the whole or any part of the duration of the Works). InfraCo shall erect and maintain in good condition signs of a type approved by the Authority's Project Manager giving effect to these routing requirements.

**SPECIAL REQUIREMENTS OF STATUTORY UNDERTAKERS****27G**

- 27G.1 InfraCo:
- (a) shall comply with all special requirements of Statutory Undertakers,
  - (b) shall take these special requirements into account in order to Provide the AKI Infrastructure Works,

- (c) acknowledges that the Authority does not warrant the accuracy or completeness of the Site Information or any other data or information provided to InfraCo by the Authority or the Authority's Project Manager relating to the location, size, nature or condition of services in, on, over or under the Site or in the vicinity of the Site, and
- (d) acknowledges that it neither has nor will have any claim of any kind against the Authority based upon the accuracy or completeness of the Site Information or any such data or information referred to in this clause 27G.1.

## **LICENCES, CONSENTS, NOTICES AND APPROVALS**

### **27H**

- 27H.1 InfraCo shall obtain from or give to Others all consents and other approvals necessary or appropriate to enable it to Provide the AKI Infrastructure Works other than those which the Infrastructure Works Information states will be obtained by the Authority. InfraCo shall ensure that the conditions of all such consents and other approvals and any licences provided by Others, the Authority's Project Manager or the Authority are met in all material respects and that the consents and approvals are renewed whenever necessary.

## **COMPLAINTS**

### **27I**

- 27I.1 InfraCo shall ensure that it has a complaints procedure in respect of complaints about the AKI Infrastructure Works, which shall be approved by the Authority from time to time.
- 27I.2 InfraCo shall ensure that it is stated in its complaints procedure that the AKI Infrastructure Works provided are being provided on behalf of the Authority, and that in the event that any member of the general public is dissatisfied with the manner in which or the standard to which the AKI Infrastructure Works are being undertaken, they may (but only after exhausting InfraCo's complaints procedure) make a formal complaint to the Authority's Project Manager.

## **3 TIME**

### **STARTING, COMPLETION AND MILESTONES**

#### **30**

- 30.1 InfraCo shall not start work on the Site until the first *access date* and does the work so that Completion is on or before the Completion Date.

- 30.1A InfraCo shall notify the Authority's Project Manager when in its opinion the AKI Infrastructure Works will have been completed in accordance with this contract and request an inspection. The Authority's Project Manager and InfraCo undertake such inspection in accordance with the requirements set out in the Infrastructure Works Information and the applicable law. The *Supervisor* may attend the inspection.
- 30.2 InfraCo shall provide all information and evidence listed or identified in the Infrastructure Works Information as being required and all other information and evidence which is necessary to demonstrate that the AKI Infrastructure Works have been so completed. If the Authority's Project Manager is satisfied that the AKI Infrastructure Works have been so completed, the Authority's Project Manager shall decide the date of Completion. The Authority's Project Manager shall certify Completion within one week of Completion. If the Authority's Project Manager is not so satisfied, it shall notify InfraCo of its reasons for not accepting that the AKI Infrastructure Works have been completed and InfraCo shall notify the Authority's Project Manager in accordance with clause 30.1A when the necessary corrective action has been taken.
- 30.3 InfraCo shall perform the AKI Infrastructure Works so as to Achieve each Milestone by the applicable Planned Milestone Delivery Date.
- 30.4 Subject to Clause 30.8 of these conditions of contract, a Milestone Achievement Certificate shall be issued by the Authority within the *period for reply* once all Milestone Deliverables within the Milestone have met the relevant Milestone Criteria.
- 30.5 Upon receipt of a Milestone Achievement Certificate InfraCo shall be entitled to the relevant Milestone Payment and such payment shall be processed in accordance with clause 5.
- 30.6 No Milestone Payments shall be made by the Authority to InfraCo in respect of any Milestone until the date such Milestone is Achieved.
- 30.7 The Authority's certification of any Milestones shall not indicate or imply that the Authority agrees or is satisfied that the requirements of InfraCo to deliver the AKI Infrastructure Works are fully complied with.
- 30.8 Where any Milestone is Achieved earlier than the Planned Milestone Delivery Date any decision to issue a Milestone Achievement Certificate in advance of the Planned Milestone Delivery Date shall be at the Authority's sole discretion. If the Authority chooses not to issue a Milestone Achievement Certificate in advance of the Planned Milestone Delivery Date it shall issue the Milestone Achievement Certificate on the Planned Milestone Delivery Date. The Authority shall upon request additionally provide confirmation of the achievement

of all of the Milestone Deliverables within a Milestone in advance of issue of such Milestone Achievement Certificate.

30.9 Subject to clause 60, all conditions affecting the Achievement of Milestones are at InfraCo's risk subject to any Exceptional Items or Authority Dependencies.

## THE PROGRAMME

### 31

31.1 If a programme is not identified in the Contract Data, InfraCo shall submit a first programme to the Authority's Project Manager for acceptance within the period stated in the Contract Data.

31.2 InfraCo shall show on each programme which it submits for acceptance:

- (a) the Starting Date, *access date*, Planned Milestone Delivery Dates and Completion Date,
- (b) planned Completion,
- (c) the order and timing of the operations which InfraCo plans to do in order to Provide the AKI Infrastructure Works,
- (d) the order and timing of the work of the Authority and Others as last agreed with them by InfraCo or, if not so agreed, as stated in the Infrastructure Works Information,
- (e) the dates when InfraCo plans to meet the Milestone Criteria stated for the Planned Milestone Delivery Dates and to complete other work needed to allow the Authority and Others to do their work,
- (f) provisions for:
  - (i) float,
  - (ii) time risk allowances,
  - (iii) environmental and health and safety requirements and
  - (iv) the procedures set out in this contract,
- (g) the dates when, in order to Provide the AKI Infrastructure Works in accordance with its programme, InfraCo will need
  - (i) access to a part of the Site if later than its *access date*,
  - (ii) acceptances,

- (iii) Plant and Materials and other things to be provided by the Authority and
    - (iv) information from Others,
  - (h) for each operation, a statement of how InfraCo plans to do the work identifying the principal Equipment and other resources which it plans to use,
  - (i) for each operation, a cost-loaded programme showing the forecast resources required for that operation,
  - (j) its access requirements in accordance with the Infrastructure Works Information, and
  - (k) other information which the Infrastructure Works Information requires InfraCo to show on a programme submitted for acceptance.
- 31.3 Within two weeks of InfraCo submitting a programme to it for acceptance, the Authority's Project Manager shall either accept the programme or notify InfraCo of its reasons for not accepting it. A reason for not accepting a programme is that
- (a) InfraCo's plans which it shows are not practicable,
  - (b) it does not show the information which this contract requires,
  - (c) it does not represent InfraCo's plans realistically, or
  - (d) it does not comply with the Infrastructure Works Information.
- 31.4 InfraCo shall provide information which shows how each activity on the Activity Schedule relates to the operations on each programme which it submits for acceptance.

## **REVISING THE 32 PROGRAMME**

- 32.1 InfraCo shall show on each revised programme:
- (a) the actual progress achieved on each operation and its effect upon the timing of the remaining work,
  - (b) the effects of implemented Compensation Events,
  - (c) the effects of decisions reached and approved by the Authority's Project Manager at risk reduction meetings,
  - (d) how InfraCo plans to deal with any delays and to correct notified Defects, and
  - (e) any other changes which InfraCo proposes to make to the Accepted Programme.

	32.2	<p>InfraCo shall submit a revised programme to the Authority's Project Manager for acceptance</p> <p>(a) within the <i>period for reply</i> after the Authority's Project Manager has instructed it to,</p> <p>(b) when InfraCo chooses to and, in any case,</p> <p>at no longer interval than the interval stated in the Contract Data from the Starting Date until Completion of the whole of the AKI Infrastructure Works.</p>
<b>ACCESS TO AND USE OF THE SITE</b>	<b>33</b>	
	33.1	<p>Subject to the provisions of the Infrastructure Works Information and this contract regarding access, the Authority shall allow access to and use of each part of the Site to InfraCo which is necessary for the work included in this contract. Access and use shall be allowed on or before the later of its <i>access date</i> and the date for access shown on the Accepted Programme.</p>
	33.2	<p>InfraCo acknowledges that the Authority does not guarantee uninterrupted or exclusive access to or use of the Site or any Working Area and that access is limited in accordance with this contract.</p>
<b>INSTRUCTIONS TO STOP OR NOT TO START WORK</b>	<b>34</b>	
	34.1	<p>The Authority's Project Manager may instruct InfraCo to stop or not to start any work and may later instruct it that it may re-start or start it.</p>
	34.2	<p>During any period of suspension, InfraCo shall protect, store and secure such part of the AKI Infrastructure Works against any deterioration, loss or damage; and shall take all reasonable steps to avoid and / or mitigate the costs arising from such suspension whilst nevertheless complying with its obligations under this contract.</p>
<b>TAKE OVER</b>	<b>35</b>	
	35.1	<p>The Authority need not take over the AKI Infrastructure Works before the Completion Date if it is stated in the Contract Data that it is not willing to do so. Otherwise the Authority shall take over the AKI Infrastructure Works not later than two weeks after Completion.</p>
	35.2	<p>The Authority may use or permit Others to use any part of the AKI Infrastructure Works before Completion has been certified. If the Authority does so, it does not take over, and is</p>

not treated as having taken over, the part of the AKI Infrastructure Works when the Authority (or Others) begins to use it and save where this contract expressly states in writing to the contrary InfraCo shall remain responsible for the care and protection of that part of the AKI Infrastructure Works and for its maintenance in accordance with the requirements of the Infrastructure Works Information whilst it is being used by the Authority and / or Others until Completion.

- 35.3 The Authority's Project Manager shall certify the date upon which the Authority takes over any part of the AKI Infrastructure Works and its extent within one week of the date.

#### **ACCELERATION 36**

- 36.1 The Authority's Project Manager may instruct InfraCo to submit a quotation for an acceleration to achieve Completion before the Completion Date. The Authority's Project Manager shall state changes to the Planned Milestone Delivery Dates to be included in the quotation. A quotation for an acceleration shall comprise proposed changes to the Prices and a revised programme showing the earlier Completion Date and the changed Planned Milestone Delivery Dates. InfraCo shall submit details of its assessment with each quotation.
- 36.2 InfraCo shall submit a quotation or give its reasons for not doing so within the *period for reply*.
- 36.3 When the Authority's Project Manager accepts a quotation for an acceleration, it changes the Prices, the Completion Date and the Planned Milestone Delivery Dates accordingly and accepts the revised programme. If the Authority's Project Manager does not accept a quotation for an acceleration, or does not accept InfraCo's reasons for not submitting a quotation, then the Authority's Project Manager may issue an instruction to InfraCo to accelerate and InfraCo proceeds to accelerate in accordance with that instruction.

### **4 TESTING AND DEFECTS**

#### **TESTS AND INSPECTIONS 40**

- 40.1 This clause only applies to tests and inspections required by the Infrastructure Works Information or the applicable law.



- 40.2 InfraCo and the Authority provide materials, facilities and samples for tests and inspections as stated in the Infrastructure Works Information.
- 40.3 InfraCo and the *Supervisor* shall each notify the other of each of its tests and inspections before it starts and afterwards notify the other of its results. InfraCo shall notify the *Supervisor* in time for a test or inspection to be arranged and done before doing work which would obstruct the test or inspection. The *Supervisor* may watch any test done by InfraCo.
- 40.4 If a test or inspection shows that any work has a Defect, InfraCo shall correct the Defect and the test or inspection shall be repeated.
- 40.5 The *Supervisor* shall perform its tests and inspections without causing unnecessary delay to the work or to a payment which is conditional upon a test or inspection being successful. A payment which is conditional upon a *Supervisor's* test or inspection being successful shall become due at the later of the *defects date* and the end of the last *defect correction period* if the *Supervisor* has not done the test or inspection and the delay to the test or inspection is not InfraCo's fault.
- 40.6 The Authority's Project Manager shall assess the cost incurred by the Authority in repeating a test or inspection after a Defect is found. InfraCo shall pay the amount assessed.
- 40.7 When the Authority's Project Manager assesses the cost incurred by the Authority in repeating a test or inspection after a Defect is found, the Authority's Project Manager shall not include InfraCo's cost of carrying out the repeat test or inspection.

#### **TESTING AND INSPECTION BEFORE DELIVERY**

- 41
- 41.1 InfraCo shall not bring to the Working Areas those Plant and Materials which the Infrastructure Works Information states are to be tested or inspected before delivery until the *Supervisor* has notified InfraCo that they have passed the test or inspection.

#### **SEARCHING AND NOTIFYING DEFECTS**

- 42
- 42.1 Until the *defects date*, the *Supervisor* may instruct InfraCo to search for a Defect. The *Supervisor* shall give its reason for the search with its instruction. Searching may include:
- (a) uncovering, dismantling, re-covering and re-erecting work,

		(b) providing facilities, materials and samples for tests and inspections done by the <i>Supervisor</i> , and
		(c) doing tests and inspections which the Infrastructure Works Information does not require.
	42.2	Subject to clause 46, until the <i>defects date</i> , the <i>Supervisor</i> shall notify InfraCo of each Defect as soon as it finds it and InfraCo shall notify the <i>Supervisor</i> of each Defect as soon as InfraCo finds it.
<b>CORRECTING DEFECTS</b>	<b>43</b>	
	43.1	InfraCo shall correct a Defect whether or not the <i>Supervisor</i> notifies InfraCo of it.
	43.2	Subject to clause 46, InfraCo shall correct a notified Defect before the end of the <i>defect correction period</i> . The <i>defect correction period</i> begins at Completion for Defects notified before Completion and when the Defect is notified for other Defects.
	43.3	The <i>Supervisor</i> shall issue the Defects Certificate at the later of the <i>defects date</i> and the end of the last <i>defect correction period</i> . The Authority's rights in respect of a Defect which the <i>Supervisor</i> has not found or notified are not affected by the issue of the Defects Certificate.
	43.4	The Authority's Project Manager shall arrange for the Authority to allow InfraCo access to and use of a part of the AKI Infrastructure Works which it has taken over if they are needed for correcting a Defect. In this case the <i>defect correction period</i> begins when the necessary access and use have been provided.
<b>ACCEPTING DEFECTS</b>	<b>44</b>	
	44.1	InfraCo and the Authority's Project Manager may each propose to the other that the Infrastructure Works Information should be changed so that a Defect does not have to be corrected.
	44.2	If InfraCo and the Authority's Project Manager are prepared to consider the change, InfraCo shall submit a quotation for reduced Prices or an earlier Completion Date or both to the Authority's Project Manager for acceptance. If the Authority's Project Manager accepts the quotation, it shall give an instruction to change the Infrastructure Works Information, the Prices and the Completion Date accordingly.
<b>UNCORRECTED DEFECTS</b>	<b>45</b>	
	45.1	If InfraCo is given access in order to correct a notified Defect but it has not corrected it within its <i>defect correction period</i> , the Authority's Project Manager shall assess the cost to the Authority of having the Defect corrected by other people and InfraCo shall

pay this amount. The Infrastructure Works Information shall be treated as having been changed to accept the Defect.

- 45.2 If InfraCo is not given access in order to correct a notified Defect before the *defects date*, the Authority's Project Manager shall assess the cost to InfraCo of correcting the Defect and InfraCo shall pay this amount. The Infrastructure Works Information shall be treated as having been changed to accept the Defect.

## **CRITICAL DEFECTS**

**46**

- 46.1 InfraCo acknowledges and agrees that the Authority's Project Manager may, either before or after Completion, notify InfraCo of an urgent timescale within which InfraCo is required to correct a notified Critical Defect (such timescale to be at the discretion of the Authority's Project Manager, acting reasonably). If InfraCo does not carry out and complete the correction of the Critical Defect within the timescale specified, the Authority may immediately and without further notice to InfraCo arrange for the Critical Defect to be corrected by Others at the cost of InfraCo. Without prejudice to any other right or remedy of the Authority, InfraCo shall pay to the Authority all costs reimbursed by the Authority to Others for correcting the Critical Defect. The Authority's Project Manager shall notify InfraCo of a Critical Defect as soon as reasonably practicable.

## **5 PAYMENT**

### **ASSESSING THE AMOUNT DUE**

**50**

- 50.1 Subject to InfraCo complying with its obligations under clause 50.1A, the Authority's Project Manager shall assess the amount due at each assessment date. The first assessment date shall be the last Friday of the month in which the Starting Date of the first Package Order occurs and then every last Thursday of the month thereafter. Later assessment dates shall occur:
- (a) at the end of each *assessment interval* until four weeks after the *Supervisor* issues the Defects Certificate and
  - (b) at Completion of the whole of the AKI Infrastructure Works.
- 50.1A InfraCo shall submit an application for payment to the Authority's Project Manager in a form prescribed by the Infrastructure Works Information not more than ten days after each assessment date. The application shall state the sum that InfraCo considers to be due to it at the assessment date and the basis on which that sum is calculated including the supporting information specified in the Infrastructure Works Information. This is a condition

precedent to InfraCo's entitlement to be paid an amount following an assessment date.

It is a condition precedent to the validity of an application for payment (and to InfraCo's entitlement to payment in respect thereof) that insofar as the application for payment includes any payment that is the subject of any Planned Milestone Delivery Date:

- (a) InfraCo has fully Achieved any Milestone Criteria for that Milestone; and
- (b) a Milestone Achievement Certificate has been issued by the Authority in accordance with Clause 30 of these conditions of contract.

50.2 The amount due is:

- (a) the Price for Work Done to Date,
- (b) plus other amounts to be paid to InfraCo,
- (c) less amounts to be paid by or retained from InfraCo.

Any tax which the law requires the Authority to pay to InfraCo is included in the amount due.

50.3 If no programme is identified in the Contract Data, one quarter of the Price for Work Done to Date shall be retained in assessments of the amount due until InfraCo has submitted a first programme to the Authority's Project Manager for acceptance showing the information which this contract requires.

50.4 If any revised programme is not submitted by InfraCo to the Authority's Project Manager for acceptance showing the information which this contract requires within the timescales required by clause 32.2, one quarter of the Price for Work Done to Date shall be retained in assessments of the amount due and shall not be payable to InfraCo until such revised programme has been submitted to the Authority's Project Manager for acceptance.

50.5 In assessing the amount due, the Authority's Project Manager shall consider any application for payment InfraCo has submitted in accordance with clause 50.1A. The Authority's Project Manager shall give InfraCo details of how the amount due has been assessed.

50.6 The Authority's Project Manager shall correct any wrongly assessed amount due in a later Payment Notice.

50.7 Payments of Defined Cost made by InfraCo in a currency other than the *currency of this contract* are included in the amount due as payments to be made to it in the same currency. Such payments shall be converted to the *currency of this contract* in order to calculate the Fee and any InfraCo's share using the *exchange rates*.

- 50.8 Not used
- 50.9 If any performance bond required by this contract is not procured by InfraCo and delivered to the Authority in accordance with Schedule 3B.12, one quarter of the Price for Work Done to Date shall be retained in assessments of the amount due and shall not be payable to InfraCo until such documents have been delivered.
- 50.10 Not used
- 50.11 If any of the warranties required under clauses 100 and / or 101 are not delivered to the Authority in accordance with the provisions of clauses 100 or 101 as applicable, the total of the Price for Work Done to Date (or in the case of warranties required under clause 101, the total of the Price for Work Done to Date relative to the work carried out and / or goods supplied by the relevant Subcontractor and / or consultant) shall be retained in assessments of the amount due and shall not be payable to InfraCo until such warranties have been delivered.
- 50.12 Not used
- 50.13 If InfraCo's employment is terminated under clause 91.1 because InfraCo has become insolvent within the meaning referred to in clause 91.1, the Authority need not pay any sum due to InfraCo other than any amount due to it under clause 90.4 either:
- (a) where InfraCo becomes insolvent prior to the prescribed period before the final date for payment, provided that the Authority or Authority's Project Manager issues a Pay Less Notice notifying the Authority's intention not to pay such sum, or
  - (b) in any event, if InfraCo becomes insolvent after the prescribed period before the final date for payment.

## PAYMENT

### 51

- 51.1 The Authority's Project Manager shall, not later than the Due Date issue a notice (the "**Payment Notice**") to InfraCo. The first payment shall be the amount due. Other payments shall be the change in the amount due since the last payment certificate. A payment shall be made by InfraCo to the Authority if the change reduces the amount due. Other payments are made by the Authority to InfraCo. If the amount to be paid to InfraCo is less than the amount to be paid by or retained from InfraCo, the difference shall be recoverable from InfraCo as a debt due on demand. Payments shall be in the *currency of this contract* unless otherwise stated in this contract.
- 51.2 The date on which payment becomes due (the "**Due Date**") is fourteen days after the date of receipt by the Authority's Project Manager of InfraCo's application for payment in accordance with clause 50.1A.

The final date for payment is 7 days after the Due Date.

- 51.3 The Payment Notice is the Authority's notice of payment specifying the amount due at the payment due date (the notified sum) and stating the basis on which that sum is calculated.
- 51.4 Not later than two days after the Due Date the payee shall deliver to the paying party (copied to the Authority's Project Manager if the paying party is the Authority) a VAT invoice in the amount of the notified sum with a copy of the Payment Notice attached (if the notified sum is established by the Authority's Project Manager's Payment Notice). The payee shall issue a corrected VAT invoice, where required, immediately upon receipt of a Pay Less Notice.
- 51.5 Subject to clause 51.7, if either Party fails to pay a sum or any part of it due to the other Party by the final date for its payment, interest shall be paid on the late payment. Interest shall be assessed from the final date by which the late payment should have been made until the date when the late payment is made, and shall be included in the first assessment after the late payment is made.
- 51.6 If a Payment Notice is not issued by the Authority's Project Manager in accordance with clause 51.1, the notified sum to be paid by the Authority shall be, subject to clause 51.7, the sum stated as due in InfraCo's application in accordance with clause 50.1A.
- 51.7 If either Party intends to pay less than the notified sum, it shall notify the other Party not later than one day (the prescribed period) before the final date for payment by stating the amount considered to be due and the basis on which that sum is calculated (the **"Pay Less Notice"**)  
A Party shall not withhold payment of an amount due under this contract unless it has issued a Pay Less Notice. In the case of the Authority, the Pay Less Notice may be given on its behalf by the Authority's Project Manager. If the Authority or the Authority's Project Manager issues such a Pay Less Notice, InfraCo shall raise a credit note for the difference between the amount certified and the amount notified by the Authority or the Authority's Project Manager as due together with the difference in the amount of VAT due and issue that credit note to the Authority the day after receipt of the Pay Less Notice.
- 51.8 If an amount due is corrected in a later Payment Notice either:
- (a) by the Authority's Project Manager in relation to a mistake or a Compensation Event or
  - (b) following a decision of the Adjudicator or the courts,
- interest on the correcting amount shall be paid. Interest shall be assessed from the date when the incorrect amount was notified pursuant to the relevant Payment Notice until the date when the correcting amount is notified pursuant to the relevant Payment Notice and shall be

included in the assessment which includes the correcting amount.

51.9 Interest shall be calculated on a daily basis at the *interest rate* and is simple interest.

## **DEFINED COST**

### **52**

52.1 All InfraCo's costs which are not included in the Defined Cost are treated as included in the Fee. Defined Cost includes only amounts calculated using rates and percentages stated in the Contract Data and other amounts at open market or competitively tendered prices with deductions for all discounts, rebates and taxes which can be recovered.

52.2 InfraCo shall keep these records:

- (a) full accounts of all costs relating to the AKI Infrastructure Works,
- (b) accounts of payments of Defined Cost,
- (c) proof that the payments have been made,
- (d) copies of enquiry or instructions to tender documentation and tender clarification documents in respect of subcontracts,
- (e) copies of tenders received from Subcontractors,
- (f) tender assessment documents,
- (g) post-tender clarifications,
- (h) communications about and assessments in respect of AKI Infrastructure Works and Compensation Events, including those undertaken by Subcontractors,
- (i) other records as stated in the Infrastructure Works Information, and
- (j) information used to compile forecasts of Defined Cost.

All such records shall be kept in accordance with good accountancy practice and shall include all details and levels of breakdown specified in the Infrastructure Works Information.

52.3 InfraCo shall allow the Authority's Project Manager to inspect at any time within working hours the accounts and records which it is required to keep and provide such access and verification as the Authority's Project Manager requests.

52.4 InfraCo shall provide to the Authority's Project Manager reports each month summarising the costs relating to the AKI Infrastructure Works in the preceding month and in respect of the AKI Infrastructure Works to date in the form set out in the Infrastructure Works Information. Such

reports shall also contain InfraCo's estimate of the costs to be incurred in respect of the Works to Completion.

- 52.5 The Authority's Project Manager shall be entitled to receive further information and explanations from InfraCo as the Authority's Project Manager reasonably considers necessary to enable the Authority's Project Manager to form an opinion on these records and accounting methods.
- 52.6 InfraCo shall ensure that the terms of all subcontracts include provisions materially similar to this clause 52 so that InfraCo is able to obtain the records and information required to enable InfraCo to comply with its obligations under this clause 52.

### **INFRACO'S SHARE 53**

- 53.1 The Authority's Project Manager shall assess InfraCo's share of the difference between the total of the Prices and the Price for Work Done to Date. The difference is divided into increments falling within each of the *share ranges*. The limits of a *share range* are the Price for Work Done to Date divided by the total of the Prices, expressed as a percentage. InfraCo's share shall equal the sum of the products of the increment within each *share range* and the corresponding InfraCo's share percentage.
- 53.2 If the Price for Work Done to Date is less than the total of the Prices, InfraCo shall be paid its share of the saving. If the Price for Work Done to Date is greater than the total of the Prices, InfraCo shall pay its share of the excess.
- 53.3 The Authority's Project Manager shall make a preliminary assessment of InfraCo's share at Completion of the whole of the AKI Infrastructure Works using its forecasts of the final Price for Work Done to Date and the final total of the Prices. This share is included in the amount due following Completion of the whole of the AKI Infrastructure Works.
- 53.4 The Authority's Project Manager shall make a final assessment of InfraCo's share using the final Price for Work Done to Date and the final total of the Prices. This share is included in the final amount due.
- 53.5 Without limiting sub-clauses 53.1 to 53.4 and 93, if at any time prior to Completion:
- (a) the Price for Work Done to Date exceeds the total of the Prices (excluding, for the avoidance of doubt, any adjustment to the Prices arising from Compensation Events which have not yet been implemented), and
  - (b) the Authority's Project Manager assesses that the final Price for Work Done to Date is likely to exceed the final total of the Prices,

then the Authority's Project Manager may deduct from sums otherwise due to InfraCo a sum equivalent to the Authority's Project Manager's reasonable assessment of



the likely InfraCo's share of the excess. Any sum so deducted shall be taken into account in assessing the amount due under clauses 53.3 and 53.4, or if applicable, clause 93.

## **THE ACTIVITY SCHEDULE**

**54**

54.1

Information in the Activity Schedule is not Infrastructure Works Information or Site Information.

54.2

If InfraCo changes a planned method of working at its discretion so that the activities on the Activity Schedule do not relate to the operations on the Accepted Programme, it shall submit a revision of the Activity Schedule to the Authority's Project Manager for acceptance.

54.3

A reason for not accepting a revision of the Activity Schedule is that:

- (a) it does not comply with the Accepted Programme,
- (b) any changed Prices are not reasonably distributed between the activities, or
- (c) the total of the Prices is changed.

## **SET-OFF**

**55**

55.1

In addition to any other rights of the Authority whether at law or equity under this contract, whenever:

- (a) under this contract or any other contract between the Authority and InfraCo any sum of money is recoverable from or payable by InfraCo, or
- (b) any Losses are reasonably and properly owed to, or incurred by, the Authority under or arising out of this contract or any other contract between the Authority and InfraCo,

then the same may be set-off and / or deducted from any sum then due or which at any time thereafter may become due to InfraCo under this contract.

## **CIS**

**56**

56.1

If the Authority is or at any time up to the making of the final payment under this contract becomes a 'contractor' for the purposes of the Construction Industry Scheme, its obligation to make any payment under this contract shall be subject to the provisions and requirements of the Construction Industry Scheme and InfraCo shall comply with the provisions of the Infrastructure Works Information regarding the Construction Industry Scheme.

## **NATIONAL MINIMUM WAGE**

**57**

	57.1	<p>InfraCo shall pay, and shall procure that its sub-contractors shall pay, the Living Wage to their respective employees provided that this requirement does not apply to Apprentices.</p> <p>For the purposes of this clause, Living Wage and Apprentices shall be as defined in the Infrastructure Agreement.</p>
	57.2	<p>In relation to Associated Projects, InfraCo is entitled to recover staff <i>expenses</i> for those staff living outside the South Wales Metro Area, who are travelling to / living in the South Wales Metro Area.</p>
<b>NOT USED</b>	<b>58</b>	
<b>NOT USED</b>	<b>59</b>	
<b>COMPENSATION EVENTS</b>	<b>60</b>	
	60.1	<p>The following are Compensation Events, but only to the extent that they are not due to any fault of InfraCo and provided that InfraCo has taken all reasonable steps to mitigate the actual or potential effect of the event:</p> <ol style="list-style-type: none"> <li>(1) The Authority's Project Manager gives an instruction changing the Infrastructure Works Information except: <ol style="list-style-type: none"> <li>(a) an instruction changing the Infrastructure Works Information made in order to accept a Defect,</li> <li>(b) a change to the Infrastructure Works Information provided by InfraCo in relation to InfraCo's design which is made either at InfraCo's request or to comply with other works information provided by the Authority, or</li> <li>(c) an instruction which is stated in this contract not to give rise to a Compensation Event,</li> </ol> </li> <li>(2) Subject to the requirements of the Infrastructure Agreement and the Infrastructure Works Information regarding access and to the giving of proper and timely notice and proper coordination by InfraCo, the Authority does not allow access to and use of a part of the Site in accordance with the provisions of this contract by the later of its <i>access date</i> and the date shown on the Accepted Programme,</li> <li>(3) The Authority does not provide something which it is to provide by the date for providing it shown on the Accepted Programme,</li> <li>(4) The Authority's Project Manager gives an instruction to accelerate or to stop or not to start</li> </ol>

any work or to change a Planned Milestone Delivery Date,

- (5) The Authority or Others (not being Statutory Undertakers or a member of InfraCo's consortium appointed as an IDP to provide Infrastructure Works):
  - (a) do not work within the times shown on the Accepted Programme, or
  - (b) do not work within the conditions stated in the Infrastructure Works Information,
- (6) The Authority's Project Manager or the *Supervisor* does not reply to a communication from InfraCo within the period required by this contract,
- (7) The Authority's Project Manager gives an instruction for dealing with an object of value or of historical or other interest found within the Site,
- (8) The Authority's Project Manager or the *Supervisor* changes a decision which it has previously communicated to InfraCo,
- (9) The Authority's Project Manager withholds an acceptance (other than acceptance of a quotation for acceleration or for not correcting a Defect) for a reason not stated in this contract,
- (10) The *Supervisor* instructs InfraCo to search for a Defect and no Defect is found unless the search is needed only because InfraCo gave insufficient notice of doing work obstructing a required test or inspection,
- (11) A test or inspection done by the *Supervisor* causes unnecessary delay,
- (12) Not used
- (13) Not used
- (14) An event which is an Authority's risk stated in this contract,
- (15) The Authority's Project Manager certifies takeover of a part of the AKI Infrastructure Works before both Completion and the Completion Date,
- (16) The Authority does not provide materials, facilities and samples for tests and inspections as stated in the Infrastructure Works Information,
- (17) The Authority's Project Manager notifies a correction to an assumption which It has stated about a Compensation Event,
- (18) A breach of contract or act of prevention on the part of the Authority or Others (except to the extent

caused or contributed to by InfraCo or any Subcontractor or any member of InfraCo's consortium appointed as an IDP to provide Infrastructure Works or any person for whom those parties are responsible) which is not one of the other Compensation Events in this contract,

- (19) Notification by the Authority to InfraCo of a Third Party Agreement after the Effective Date in accordance with clause 23A.3 save for any Third Party Agreement of which InfraCo is already aware of (as referred to in clause 23A.1(c),
- (20) Notification by the Authority to InfraCo of a change in law in accordance with clause 135.1, or
- (21) Associated costs incurred by InfraCo in complying with any Third Party Agreements notified after the Grant Agreement Date.

60.2 Not used.

60.3 Subject to clause 17, if there is an ambiguity or inconsistency within the Site Information (including the information referred to in it), InfraCo is assumed to have taken into account the physical conditions less favourable to doing the work.

60.4 In respect of any Compensation Event which arises from the Exceptional Item listed in paragraph 1.1(b) of Appendix 2 of Schedule 18.2 of the Infrastructure Agreement, InfraCo shall only be entitled to claim for an extension of time to the Completion Date and a Planned Milestone Delivery Date and shall not be entitled to claim for any cost arising from such Compensation Event, including any change to the Defined Cost or the Prices.

60.5 InfraCo shall not be entitled to relief under this clause 60 where the relevant delay, disruption or costs arise from an act, default or omission of InfraCo or its Subcontractors in carrying out any Infrastructure Services.

## NOTIFYING COMPENSATION EVENTS

61

61.1 For Compensation Events which arise from the Authority's Project Manager or the *Supervisor* giving an instruction or changing an earlier decision, the Authority's Project Manager shall notify InfraCo of the Compensation Event at the time of giving the instruction or changing the earlier decision. It shall also instruct InfraCo to submit quotations, unless the event arises from a fault of InfraCo or quotations have already been submitted. InfraCo shall put the instruction or changed decision into effect.

61.2 The Authority's Project Manager may instruct InfraCo to submit quotations for a proposed instruction or a proposed changed decision. InfraCo shall not put a proposed instruction or a proposed changed decision into effect.

61.3 Subject to clause 61.8, InfraCo shall notify the Authority's Project Manager of an event which has happened or which it expects to happen as a Compensation Event if:

- (a) InfraCo believes that the event is a Compensation Event, and
- (b) the Authority's Project Manager has not notified the event to InfraCo.

If InfraCo does not notify a Compensation Event within four weeks of when it becomes aware, or ought reasonably to have become aware of the event, it is not entitled to a change in the Prices, the Completion Date or a Planned Milestone Delivery Date unless the Authority's Project Manager should have notified the event to InfraCo but did not. The Authority's Project Manager may notify InfraCo of a change to the Completion Date or a Planned Milestone Delivery Date (but not a change to the Prices) notwithstanding that InfraCo has failed to notify a Compensation Event in accordance with this clause.

61.4 If the Authority's Project Manager decides that an event notified by InfraCo:

- (a) arises from a fault of InfraCo,
- (b) has not happened and is not expected to happen,
- (c) has no effect upon Defined Cost, Completion or meeting the Completion Date or a Planned Milestone Delivery Date, or
- (d) is not one of the Compensation Events stated in this contract,

it shall notify InfraCo of its decision that the Prices, the Completion Date and the Planned Milestone Delivery Dates are not to be changed.

If the Authority's Project Manager decides otherwise, it shall notify InfraCo accordingly and instructs InfraCo to submit quotations.

If the Authority's Project Manager does not notify its decision to InfraCo within either:

- (a) one week of InfraCo's notification, or
- (b) a longer period to which InfraCo has agreed,

InfraCo may notify the Authority's Project Manager to this effect. A failure by the Authority's Project Manager to reply within two weeks of this notification shall be treated as acceptance by the Authority's Project Manager that the event is a Compensation Event and an instruction to submit quotations.

61.5 If the Authority's Project Manager decides that InfraCo did not give an early warning of the event which an experienced contractor could have given, it may notify this

decision to InfraCo when it instructs InfraCo to submit quotations.

61.6 If the Authority's Project Manager decides that the effects of a Compensation Event are too uncertain to be forecast reasonably, it shall state assumptions about the event in its instruction to InfraCo to submit quotations. Assessment of the event shall be based on these assumptions. If any of them is later found to have been wrong, the Authority's Project Manager shall notify a correction.

61.7 A Compensation Event shall not be notified after the *defects date*.

61.8 InfraCo and the Authority agree to implement a procedure for bundling together and submitting every 4 weeks notifications of and for assessing and implementing Compensation Events. Such procedure will not apply in respect of any Compensation Events of such value or nature which require that they should be brought to the attention of the other Party before the next notification date.

## **QUOTATIONS FOR COMPENSATION EVENTS**

**62**

62.1 After discussing with InfraCo different ways of dealing with the Compensation Event which are practicable, the Authority's Project Manager may instruct InfraCo to submit alternative quotations. InfraCo shall submit the required quotations to the Authority's Project Manager and may submit quotations for other methods of dealing with the Compensation Event which it considers practicable.

62.2 Quotations for Compensation Events shall comprise proposed changes to the Prices and any delay to the Completion Date and Planned Milestone Delivery Dates assessed by InfraCo. InfraCo shall submit details of its assessment with each quotation. If the programme for remaining work is altered by the Compensation Event, InfraCo shall include the alterations to the Accepted Programme in its quotation.

62.3 InfraCo shall submit quotations within three weeks of being instructed to do so by the Authority's Project Manager. The Authority's Project Manager shall reply within two weeks of the submission. Its reply shall be:

- (a) an instruction to submit a revised quotation,
- (b) an acceptance of a quotation,
- (c) a notification that a proposed instruction will not be given or a proposed changed decision will not be made, or
- (d) a notification that it will be making its own assessment.

62.4 The Authority's Project Manager shall instruct InfraCo to submit a revised quotation only after explaining its reasons for doing so to InfraCo. InfraCo shall submit the revised quotation within three weeks of being instructed to do so.

62.5 The Authority's Project Manager shall extend the time allowed for:

- (a) InfraCo to submit quotations for a Compensation Event, and
- (b) the Authority's Project Manager to reply to a quotation,

if the Authority's Project Manager and InfraCo agree to the extension before the submission or reply is due. The Authority's Project Manager shall notify the extension that has been agreed to InfraCo.

62.6 If the Authority's Project Manager does not reply to a quotation within the time allowed, InfraCo may notify the Authority's Project Manager to this effect. If InfraCo submitted more than one quotation for the Compensation Event, it shall state in its notification which quotation it proposes is to be accepted. If the Authority's Project Manager does not reply to the notification within two weeks, and unless the quotation is for a proposed instruction or a proposed changed decision, InfraCo's notification shall be treated as acceptance of the quotation by the Authority's Project Manager.

## **ASSESSING COMPENSATION EVENTS**

### **63**

63.1 The changes to the Prices are assessed as the effect of the Compensation Event upon:

- (a) the actual Defined Cost of the work already done,
- (b) the forecast Defined Cost of the work not yet done, and
- (c) the resulting Fee.

The date when the Authority's Project Manager instructed or should have instructed InfraCo to submit quotations divides the work already done from the work not yet done.

63.2 If the effect of a Compensation Event is to reduce the total Defined Cost, the Prices shall not be reduced except as stated in this contract.

63.3 A delay to the Completion Date shall be assessed as the length of time that, due to the Compensation Event, planned Completion is later than planned Completion as shown on the Accepted Programme. A delay to a Planned Milestone Delivery Date is assessed as the length of time that, due to the Compensation Event, the planned date when the Milestone Criteria stated for a Planned

Milestone Delivery Date will be met is later than the date shown on the Accepted Programme provided always that the delay shall only be assessed as giving rise to a change in the Completion Date or a Planned Milestone Delivery Date if and to the extent:

- (a) that the Compensation Event is the principal cause of the delay, and
- (b) InfraCo demonstrates that the Compensation Event has caused or (in the case of future delay) will cause delay to the Completion Date or a Planned Milestone Delivery Date.

The Authority's Project Manager may assess and fix an earlier Completion Date or Planned Milestone Delivery Date if the effect of the Compensation Event is to reduce the time required for Completion or meeting a Planned Milestone Delivery Date.

Any delay will only be treated as being due to a Compensation Event if the Compensation Event is the sole or principal cause of the delay and if InfraCo has taken all reasonable steps to avoid and / or mitigate delay and disruption.

63.4 The rights of the Authority and InfraCo to changes to the Prices, the Completion Date and the Planned Milestone Delivery Dates are their only rights in respect of a Compensation Event and the Authority has no financial liability to InfraCo other than amounts to which InfraCo is entitled under this contract.

63.5 If the Authority has notified InfraCo of its decision that InfraCo:

- (a) did not give an early warning of a Compensation Event which an experienced contractor could have given, or
- (b) did not give an early warning at the time it became aware or ought reasonably to have become aware of the matter requiring an early warning,

the event shall be assessed as if InfraCo had given early warning, thereby enabling the Authority to have taken action to minimise or avoid the effects of such Compensation Event.

63.6 Assessment of the effect of a Compensation Event shall include reasonable and proportionate risk allowances for cost and time for matters which have a significant chance of occurring and are at InfraCo's risk under this contract.

63.7 Assessments shall be based upon the assumptions that InfraCo reacts competently and promptly to the Compensation Event, that any Defined Cost and time due



to the event are reasonably incurred and that the Accepted Programme can be changed.

- 63.8 A Compensation Event which is an instruction to change the Infrastructure Works Information in order to resolve an ambiguity or inconsistency (which is not stated to be InfraCo's own risk or responsibility) shall be assessed as if the Prices, the Completion Date and the Planned Milestone Delivery Dates were for the interpretation most favourable to the Party which did not provide the Infrastructure Works Information.
- 63.9 If a change to the Infrastructure Works Information makes the description of the Milestone Criteria for a Milestone incorrect, the Authority's Project Manager shall correct the description. This correction shall be taken into account in assessing the Compensation Event for the change to the Infrastructure Works Information.
- 63.10 Not used.
- 63.11 If the effect of a Compensation Event is to reduce the total Defined Cost and the event is:
- (a) a change to works information, other than a change to the Infrastructure Works Information provided by the Authority which InfraCo proposed and the Authority's Project Manager has accepted, or
  - (b) a correction of an assumption stated by the Authority's Project Manager for assessing an earlier Compensation Event,
- the Prices shall be reduced.
- 63.12 Assessments for changed Prices for Compensation Events shall be in the form of changes to the Activity Schedule.
- 63.13 Not used.
- 63.14 Not used.
- 63.15 If the Authority's Project Manager and InfraCo agree, InfraCo shall assess a Compensation Event using the Shorter Schedule of Cost Components. The Authority's Project Manager may make its own assessments using the Shorter Schedule of Cost Components.

#### **THE AUTHORITY'S PROJECT MANAGERS ASSESSMENTS**

- 64.1 The Authority's Project Manager assesses a Compensation Event:
- (a) if InfraCo has not submitted a quotation and details of its assessment within the time allowed,

- (b) if the Authority's Project Manager decides that InfraCo has not assessed the Compensation Event correctly in a quotation and it does not instruct the InfraCo to submit a revised quotation,
- (c) if, when InfraCo submits quotations for a Compensation Event, it has not submitted a programme or alterations to a programme which this contract requires InfraCo to submit, or
- (d) if, when InfraCo submits quotations for a Compensation Event, the Authority's Project Manager has not accepted InfraCo's latest programme for one of the reasons stated in this contract.

64.2 The Authority's Project Manager shall assess a Compensation Event using its own assessment of the programme for the remaining work if:

- (a) there is no Accepted Programme, or
- (b) InfraCo has not submitted a programme or alterations to a programme for acceptance as required by this contract.

64.3 The Authority's Project Manager shall notify InfraCo of its assessment of a Compensation Event and give InfraCo details of it within the period allowed for InfraCo's submission of its quotation for the same event. This period starts when the need for the Authority's Project Manager's assessment becomes apparent.

64.4 If the Authority's Project Manager does not assess a Compensation Event within the time allowed, InfraCo may notify the Authority's Project Manager to this effect. If InfraCo submitted more than one quotation for the Compensation Event, it shall state in its notification which quotation it proposes is to be accepted. If the Authority's Project Manager does not reply within four weeks of this notification the notification shall be treated as acceptance of InfraCo's quotation by the Authority's Project Manager.

64.5 The Authority's Project Manager may extend the time allowed for the following actions:

- (a) notification of a decision and / or instruction (clause 61),
- (b) reply to a quotation (clause 62.3), or
- (c) assessment of a Compensation Event (clause 64.3 and clause 64.4),

provided that this discretion will only be exercised where it is reasonable to do so having regard to all the circumstances including the complexity of the issues connected with the event, the level of detail included in the quotation, the time required to make an assessment and the value of the Compensation Event either on its own or when combined with other outstanding Compensation

Events. The Authority's Project Manager shall notify the extension to InfraCo before the date that such notification, reply or assessment would become due under the contract.

## **IMPLEMENTING COMPENSATION EVENTS**

**65**

65.1

A Compensation Event shall be implemented when:

- (a) the Authority's Project Manager notifies its acceptance of InfraCo's quotation,
- (b) the Authority's Project Manager notifies InfraCo of its own assessment, or
- (c) InfraCo's quotation is treated as having been accepted by the Authority's Project Manager.

65.2

The assessment of a Compensation Event shall not be revised if a forecast upon which it is based is shown by later recorded information to have been wrong.

65.3

Not used.

65.4

The changes to the Prices, the Completion Date and the Planned Milestone Delivery Dates shall be included in the notification implementing a Compensation Event.

## **TITLE**

**7**

## **THE AUTHORITY'S TITLE TO PLANT AND MATERIALS**

**70**

70.1

Whatever title InfraCo has to Plant and Materials which is outside the Working Areas shall pass to the Authority as soon as InfraCo or *Supervisor* has marked them as for this contract or the Authority makes payment (partial or otherwise) for them, whichever is the earlier. InfraCo shall ensure that such Plant and Materials are clearly identified as belonging to the Authority and are set aside for the Authority.

70.2

Whatever title InfraCo has to Plant and Materials shall pass to the Authority if it has been brought within the Working Areas. Subject to clause 70.1, title to Plant and Materials shall pass back to InfraCo if it is removed from the Working Areas with the Authority's Project Manager's permission.

70.3

If requested by the Authority's Project Manager, InfraCo shall provide proof of its title to Plant and Materials prior to their value being included in the assessment of any amount due under this contract.

## **MARKING EQUIPMENT, PLANT AND MATERIALS**

**71**

## **OUTSIDE THE WORKING AREAS**

- 71.1 The *Supervisor* shall mark Equipment, Plant and Materials which are outside the Working Areas if:
- (a) this contract identifies them for payment, and
  - (b) InfraCo has prepared them for marking as the Infrastructure Works Information requires.

## **REMOVING EQUIPMENT**

**72**

- 72.1 InfraCo shall remove Equipment from the Site when it is no longer needed unless the Authority's Project Manager allows it to be left in the AKI Infrastructure Works.

## **OBJECTS AND MATERIALS WITHIN THE SITE**

**73**

- 73.1 InfraCo has no title to an object of value or of historical or other interest within the Site. InfraCo shall notify the Authority's Project Manager when such an object is found and the Authority's Project Manager shall instruct InfraCo how to deal with it. InfraCo shall not move the object without instructions.
- 73.2 InfraCo has title to materials from excavation and demolition only as stated in the Infrastructure Works Information.

## **PUBLICITY**

**74**

Except as provided under deeds of warranty required by the Authority under clause 100 and subject to clause 112, InfraCo does not (and procures that the Connected Persons do not) without the prior written approval of the Authority at any time for any reason disclose to any person or publish or make any statement concerning this contract or the AKI Infrastructure Works and / or the Authority's Works and / or the CVL Transformation and / or Associated Projects.

## **RISKS AND INSURANCE**

**8**

## **AUTHORITY'S RISKS**

**80**

- 80.1 The following are Authority's risks:
- (a) the Exceptional Items, save in respect of any Force Majeure Event which is an event stated in the definition of Disallowed Cost, and
  - (b) Authority Dependencies.

## **INFRACO'S RISKS**

**81**

- 81.1 Subject to clause 81.2, from the Starting Date or the Effective Date, whichever is the earlier, until the Defects Certificate has been issued, the risks which are not carried by the Authority are carried by InfraCo.
- 81.2 Subject to clause 60.1(5) and clause 60.1(18), notwithstanding any other provision of this contract, InfraCo shall not be entitled to, and waives any entitlement to, any claim against the Authority for compensation, cost, time or any other relief in respect of any act, omission or default of the IDPs. This provision shall not apply to any Compensation Event claim which InfraCo may have against the Authority under clause 60.1(5) and 60.1(18) of this contract.

## **REPAIRS**

### **82**

- 82.1 Until the Defects Certificate has been issued and unless otherwise instructed by the Authority's Project Manager, InfraCo promptly replaces loss of and repairs damage to the AKI Infrastructure Works, Plant and Materials.

## **INDEMNITY**

### **83**

- 83.1 InfraCo is responsible for and indemnifies the Authority against all Losses, which are legally enforceable and properly mitigated, in respect of events or matters which are at its risk including:

- (a) personal injury to or death of any person,
- (b) loss of or damage to property real or personal of the Authority other than to the AKI Infrastructure Works, and
- (c) any other Losses arising under any Third Party Agreements.

Without prejudice to the foregoing, InfraCo provides this indemnity against:

- (d) all Losses arising from any infringement of any intellectual property right of any third party (including a Subcontractor) arising out of the design, construction or use of the Works or the CVL Transformation and / or Associated Projects,
- (e) all Losses arising from any nuisance or interference referred to in clause 108.2 and which could have been avoided by InfraCo using all reasonable and practical means, and
- (f) all Losses arising from any failure by InfraCo to use the Required Standard.

- 83.2 InfraCo's liability to indemnify the Authority and its employees and agents shall be reduced if events at the Authority's risk contributed to the Losses. The reduction shall be in proportion to the extent that events which were at the Authority's risk contributed, taking into account each Party's responsibilities under this contract. InfraCo's indemnity under clause 83.1 remains in force for the

duration of this contract and continues to survive expiry or termination of the contract along with any other clauses or schedules of the contract necessary to give effect to it, to expire after 12 years after Completion.

**DISRUPTION TO  
NETWORK RAIL'S  
NETWORK 84**

**Indemnity for  
Disruption to  
Network Rail (to  
Network Rail's  
Network)**

- 84.1 InfraCo will indemnify the Authority against any claims, proceedings, compensation and costs and shall hold harmless the Authority in respect of any amount that Network Rail may be entitled to claim from the Authority in respect of any interference with, disruption to, or closure of Network Rail's Network or any part thereof which is caused by a failure by InfraCo to Provide the AKI Infrastructure Works in accordance with the terms of this contract or a breach of its obligations under this contract.

**INSURANCE COVER 85**

- 85.1 InfraCo and Authority shall provide the insurances stated in the Insurance Table at clause 85.2. InfraCo shall provide additional insurances as stated in the Contract Data.
- 85.2

**Insurance Table**

<b>Insurance Against</b>	<b>Party responsible for ensuring insurance is in place</b>	<b>Minimum amount of cover or minimum limit of indemnity</b>
<b>Construction All Risks insurance</b>  All risks of loss of or damage to (not excluded by the terms and conditions of the policy) the <i>works</i> and Plant and Materials, temporary works (i.e. works erected or constructed for the purpose of making possible the erection or installation of the <i>works</i> ), constructional plant and equipment, temporary buildings and property owned by or supplied by the Authority, InfraCo	InfraCo	The full reinstatement value of the <i>works</i> and constructional plant and equipment

and any subcontractors or suppliers of the Authority or InfraCo (provided that InfraCo shall only be required to provide cover for constructional plant and equipment where it is required by Construction Plant-Hire Association conditions).

**Environmental Impairment Liability insurance**

Liability for loss and damage as a result of gradual and sudden and accidental pollution condition arising out of the *works*.

InfraCo  
(but only to the extent that InfraCo remains covered by policy number [REDACTED] or future renewals of that [REDACTED] without charge. Where there is no such cover for InfraCo, at the Authority's cost)

GBP [REDACTED] in the aggregate

**Terrorism**

Loss of or damage to the *works*, Plant and Materials, constructional plant and equipment and temporary works related to the *works* caused by an act of terrorism or sabotage.

InfraCo

The full reinstatement value of the *works* and constructional plant and equipment

**Public liability insurance**

All sums for which the insured shall become legally liable to pay as damages in respect of death of or injury or illness or disease to third parties and / or loss of or damage to third party property, obstruction, loss of amenities, trespass, nuisance or any like cause happening during the period of insurance and arising out of or in connection with this contract (unless excluded by the terms and conditions of the policy).

InfraCo in respect of [REDACTED] and Authority in respect of top-up cover

Not less than GBP [REDACTED] per occurrence and in the aggregate with respect to pollution and products.

The Authority will in the joint names of InfraCo and the Authority provide cover in addition to the initial GBP [REDACTED] for Public Liability insurance for not less than GBP [REDACTED]

per occurrence.

**Non-negligence insurance**

Any expense, liability, loss, claim or proceedings which the Authority incurs or sustains by reason of injury, loss of or damage to any property other than the *works*, Site materials or existing property of the Authority caused by collapse, subsidence, heave, vibration, weakening or removal of support or lowering of ground water arising out of or in the course of carrying out the *works* (unless excluded by the terms and conditions of the policy)

InfraCo in respect of [REDACTED] and Authority in respect of top-up cover

Not less than GBP [REDACTED] per occurrence

The Authority will in the joint names of InfraCo and the Authority provide cover in addition to the initial GBP [REDACTED] for Non-negligence insurance for not less than GBP [REDACTED] per occurrence.

**Employer's liability insurance**

Liability for death of or bodily injury or illness sustained by employees of InfraCo arising out of or in the course of their employment in connection with this contract or the CVL Transformation and / or Associated Projects

InfraCo

Not less than GBP [REDACTED] per occurrence or as otherwise stated in the Contract Data, whichever is the greater

**Professional Indemnity Insurance**

Fault in respect of design of the *works* or other professional services for which InfraCo or its Subcontractors is responsible

InfraCo (notwithstanding that the Authority may provide project specific Professional Indemnity insurance at its sole discretion)

GBP [REDACTED] (or such other limit as may be agreed) for each and every claim and in the annual aggregate with one reinstatement of limit

85.3

In respect of the insurances provided by InfraCo:

- (a) the insurances provide cover from the Starting Date until the Defects Date save in relation to the Professional Indemnity Policy which shall be maintained until 12 years after the Defects Date for the relevant Infrastructure Services,
- (b) InfraCo shall bear the cost of all premiums, and



- (c) if such professional indemnity insurance ceases to be available at commercially reasonable rates and on reasonable terms, the Parties meet and InfraCo outlines the steps it intends to take to manage such risks. If the steps proposed by InfraCo are not acceptable to the Authority (acting reasonably), the Parties agree an alternative method of managing such risk.

85.4 InfraCo shall not by any act or fault prejudice, lose or forego the Parties' right or the right of either of them to make or proceed with a claim against any insurer.

85.5 InfraCo shall procure that its Subcontractors (and sub-subcontractors of any tier) maintain:

- (a) employer's liability and (where appropriate) motor liability insurances as required by law, and
- (b) professional indemnity insurance covering their liabilities under subcontracts in respect of their design in accordance with clause 26.2(f) save that this clause 85.5(b) shall not apply if and to the extent that the Authority procures project professional indemnity insurance for all contracting entities.

85.6 The insurances provided pursuant to this contract do not relieve InfraCo from any of its obligations and liabilities under this contract.

85.7 If and to the extent that the insurances specified in this clause 85 or in the Contract Data are already provided in accordance with the provisions of the Infrastructure Agreement or any Package Orders, the Authority or InfraCo (as applicable) is under no obligation to provide further insurances under this contract.

## **INSURANCE POLICIES**

### **86**

86.1 Before the Starting Date and on each renewal of the insurance policy until the defects date, InfraCo shall submit to the Authority's Project Manager for acceptance certificates which state that the insurance required by this contract which is to be taken out by InfraCo is in force. The certificates shall be signed by InfraCo's insurer or insurance broker. Reasons for not accepting the certificates include:

- (a) that they do not comply with this contract,
- (b) the proposed insurer is not a reputable insurer authorised to underwrite the insurances in the United Kingdom,
- (c) the proposed insurer is not, having regard, without limitation, to the size, nature and complexity of the AKI Infrastructure Works, of sufficient financial strength.

	86.2	Not used
	86.3	The Parties shall comply with the terms and conditions of the insurance policies.
	86.4	Any amount not recovered from an insurer (including, excesses or deductibles) shall be borne by the Authority for events which are at its risk and by InfraCo for events which are at its risk.
	86.5	In the event of the insolvency of an insurer of either Party, the insuring Party shall inform the other Party forthwith on becoming aware thereof and submit documentary evidence of alternative insurance to the other Party for acceptance.
<b>IF INFRACO DOES NOT INSURE</b>	<b>87</b>	
	87.1	The Authority may insure a risk which this contract requires InfraCo to insure if InfraCo does not submit a required certificate. The cost of this insurance (including all reasonable expenses incurred by the Authority in respect of taking out such insurance) to the Authority shall be paid by InfraCo. If the Authority insures a risk which this contract requires InfraCo to insure, this is without prejudice to any of the Authority's other rights, powers or remedies under this contract.
<b>INSURANCE BY THE AUTHORITY</b>	<b>88</b>	
	88.1	The Authority's Project Manager shall submit policies and certificates for insurances provided by the Authority to InfraCo for acceptance before the Starting Date and afterwards as InfraCo instructs. InfraCo shall accept the policies and certificates if they comply with this contract.
	88.2	InfraCo's acceptance of an insurance policy or certificate provided by the Authority does not change the responsibility of the Authority to provide the insurances stated in the Contract Data.
	88.3	InfraCo may insure a risk which this contract requires the Authority to insure if the Authority does not submit a required policy or certificate. The reasonable cost of this insurance to InfraCo is paid by the Authority.
	88.4	InfraCo shall co-operate with the Authority regarding the handling and settlement of claims under the Authority's insurances and comply with the requirements of the Authority's insurers in connection with the handling and settlement of claims, including where appropriate the provision of such information, documents and records as the Authority, its claims handler and its insurers require.
	88.5	InfraCo shall comply, and shall ensure that its subcontractors comply, with the requirements of the Authority's claims handling procedures, such procedures to be provided to InfraCo by the Authority.

- 88.6 InfraCo shall not compromise, settle or waive any claim which InfraCo may have under the Authority's insurances without the prior written consent of the Authority.
- 88.7 Neither failure to comply nor full compliance with the insurance provisions of the Infrastructure Agreement shall limit or relieve InfraCo of its liabilities and obligations under the Infrastructure Agreement.
- 88.8 Without prejudice to clause 85.4, InfraCo shall not take any action or fail to take any reasonable action, or (insofar as it is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any insurance policy in which that party is an insured, a co-insured or additional insured person.

## **TERMINATION 9**

This section 9 (Termination) is without prejudice to clause 5 and Schedule 10 of the Infrastructure Agreement.

## **TERMINATION AND SUSPENSION 90**

- 90.1 If either Party wishes to terminate InfraCo's obligation to Provide the whole of the AKI Infrastructure Works or any particular Package Order entered into in relation to the AKI Infrastructure Works it shall notify the Authority's Project Manager and the other Party giving details of its reason for terminating. The Authority's Project Manager shall issue a termination certificate to both Parties promptly if the reason complies with this contract.
- 90.2 InfraCo may terminate only for a reason identified in the Termination Table. The Authority may terminate for any reason. The procedures followed and the amounts due on termination are in accordance with the Termination Table.

### **TERMINATION TABLE**

<b>Terminating Party</b>	<b>Reason</b>	<b>Procedure</b>	<b>Amount due</b>
The Authority	A reason other than the reasons listed in this Termination Table	P1 and P2	A1, and A2
	R10, R11-R15, R13, R18, R25A and R25B	P1, P2 and P3	A1 and A3
	R17, R20 or R26	P1 and P3	A1 and A2
	R21	P1 and P4	A1 and A2
	R22 - R24	P1, P2 and P3	A1 and A3
	R25	P1 and P4	A1 and A2
	R26A	P1, P2 and P3	A1 and A3

InfraCo	R16 or R19	P1 and P4	A1, A2 and A4
	R17	P1 and P4	A1 and A2
N/A	R26B	P1, P2 and P3	A1 and A3 where the Infrastructure Agreement is terminated due to an Event of Default (as defined in the Infrastructure Agreement)
	90.3	The procedures for termination are implemented immediately after the Authority's Project Manager has issued a termination certificate.	
	90.4	Within thirteen (13) weeks of termination, the Authority's Project Manager shall certify a final payment to or from InfraCo which is the Authority's Project Manager's assessment of the amount due on termination less the total of previous payments. Payment shall be made within three (3) weeks of the Authority's Project Manager's certificate or (where payment is due to InfraCo) within three (3) weeks of receipt of the VAT invoice. Within one (1) week of issue of the payment certificate InfraCo shall deliver to the Authority a VAT invoice in the amount of the certificate.	
	90.5	After a termination certificate has been issued, in respect of the whole of the AKI Infrastructure Works or any particular Package Order entered into in relation to the AKI Infrastructure Works, InfraCo shall not do any further work necessary to Provide the AKI Infrastructure Works or the relevant Package Order (as applicable).	
	90.6	A notice of termination under this clause 90 in relation to a particular Package Order shall not take effect as a notice to terminate InfraCo's obligation to provide the Infrastructure Services or works being carried out pursuant to any other Package Order unless the notice of termination expressly states to the contrary.	
<b>REASONS FOR TERMINATION</b>	<b>91</b>		
	91.1	The Authority may terminate InfraCo's obligation to Provide the whole of the AKI Infrastructure Works or any particular Package Order entered into in relation to the AKI Infrastructure Works by notifying InfraCo if InfraCo is subject to an Event of Default within the meaning set out in limbs (a) to (g) of paragraph 1.1 of Schedule 10.2 of the Infrastructure Agreement (R10).	
	91.2	The Authority may terminate if the Authority's Project Manager has notified that InfraCo has defaulted in one of the following ways and not put the default right within four weeks of the notification:	

- (a) Substantially failed to comply with its obligations (R11),
  - (b) Not provided a bond or guarantee which this contract or Schedule 3B requires (R12),
  - (c) Appointed a Subcontractor for substantial work before the Authority's Project Manager has accepted the Subcontractor pursuant to clause 26.2 or the subcontract conditions pursuant to clause 26.3 or clause 26.4 (R13).
- 91.3 The Authority may terminate if the Authority's Project Manager has notified that InfraCo has defaulted in one of the following ways and not stopped defaulting within four weeks of the notification:
- (a) Substantially hindered the Authority or Others (R14),
  - (b) Substantially broken a health or safety regulation or requirement of this contract (R15).
- 91.4 Save where the Authority has complied with clause 51.7, InfraCo may terminate its obligation to Provide the whole of the AKI Infrastructure Works or any particular Package Order entered into in relation to the AKI Infrastructure Works by notifying the Authority if the Authority has not paid an amount due by the final date for payment in excess of [REDACTED] due to InfraCo under this contract within eleven weeks of the issue of a notice by InfraCo to the Authority that payment is overdue provided that the Authority has not paid the amount due within that period (R16).
- 91.5 Either Party may terminate if the Parties have been released under the law from further performance of the whole of this contract (R17).
- 91.6 If the Authority's Project Manager has instructed InfraCo to stop or not to start any substantial work or all work and an instruction allowing the work to re-start or start has not been given within thirteen weeks:
- (a) the Authority may terminate if the instruction was due to a default by InfraCo (R18),
  - (b) the Authority may terminate if the instruction was due to any other reason (R20).
- 91.6A If the Authority's Project Manager has instructed InfraCo to stop or not to start any substantial work or all work and an instruction allowing the work to re-start or start has not been given within 18 months InfraCo may give notice to the Authority requiring the Authority to state in writing within 14 days whether it intends to resume the Works or to terminate InfraCo's obligation to Provide the AKI Infrastructure Works or any particular Package Order entered into in relation to the AKI Infrastructure Works. If the Authority does not provide a written statement of its intention within 14 days of InfraCo's first notice InfraCo may serve a second notice

of termination and InfraCo's obligation to Provide the AKI Infrastructure Works or the particular Package Order entered into in relation to the AKI Infrastructure Works (as applicable) will terminate after InfraCo's second notice (R19).

For the avoidance of doubt, InfraCo's right to terminate under this clause 91.6A (R19) shall not apply to any Deferral Notice or CVL Asset Notice issued by the Authority pursuant to clauses 5.4 to 5.6 of the Infrastructure Agreement.

91.7

The Authority may terminate the AKI Infrastructure Works or any particular Package Order entered into in relation to the AKI Infrastructure Works if an event occurs which:

- (a) stops InfraCo completing the AKI Infrastructure Works or the relevant Package Order, or
- (b) stops InfraCo completing the AKI Infrastructure Works or the relevant Package Order by the date shown on the Accepted Programme and is forecast to delay Completion by more than 13 weeks,

and which

- (c) neither Party could prevent, and
- (d) an experienced and prudent contractor familiar with works similar to the AKI Infrastructure Works and exercising the foresight appropriate to such a contractor would have judged at the Effective Date to have such a small chance of occurring that it would have been unreasonable for it to have allowed for it (R21).

91.8

The Authority may terminate InfraCo's appointment in the event of:

- (a) a Safety Breach or a Prohibited Act or in the event InfraCo has persistently failed to comply with its obligations under clause 110 (R22),
- (b) a conflict of interest which has not been resolved to the Authority's satisfaction in accordance with the provisions of clause 109 (R23),
- (c) any cap on InfraCo's liability under this contract has been or is reasonably likely to be exceeded (R24),
- (d) the Authority not obtaining any necessary funding for the CVL Transformation and / or Associated Projects and / or the necessary funding is curtailed (R25),
- (e) a Change of Control (R25A) other than in accordance with the prior consent of the

Authority pursuant to clause 8 (Change of Control) of the Infrastructure Agreement.

91.8A The Authority may terminate InfraCo's obligation to Provide the whole of the AKI Infrastructure Works or any particular Package Order entered into in relation to the AKI Infrastructure Works at any time by giving twenty eight (28) days' notice in writing to InfraCo to that effect if the Authority no longer requires InfraCo to Provide the whole of the AKI Infrastructure Works or any particular Package Order entered into in relation to the AKI Infrastructure Works or otherwise wishes to terminate InfraCo's obligation to Provide the whole of the AKI Infrastructure Works or any particular Package Order entered into in relation to the AKI Infrastructure Works for any reason (R25B).

91.9 In the event that any court or other competent authority declares or orders that this contract is ineffective or shortened pursuant to the *law of the contract* from time to time including any applicable law, directive or requirement of the European Union:

- (a) the Authority shall notify the Authority's Project Manager and InfraCo in writing as soon as reasonably practicable of the declaration or order,
- (b) the Authority's Project Manager shall issue a termination certificate to both Parties certifying the date the contract became or is to become ineffective or shortened, and
- (c) the contract is deemed for all purposes to have been terminated by the Authority on the date named in the termination certificate (R26).

Notwithstanding the declaration or order, the provisions of clauses 90-93 shall continue in full force and effect along with any other provisions of this contract necessary to give effect to them. In addition, any provisions of the contract which by their nature or implication are required to regulate, determine or limit the Parties' rights and liabilities that have accrued at the date the contract became ineffective or shortened shall survive the declaration or order as aforesaid.

91.10 Without limiting sub-clauses 53.1 to 53.5 and 93, the Authority may terminate the whole of the AKI Infrastructure Works or any particular Package Order entered into in relation to the AKI Infrastructure Works if the Authority's Project Manager assesses at any time that (having regard to the Price for Works Done to Date and the total of the Prices at the relevant time):

- (a) the final Price for Work Done to Date is likely to exceed the final total of the Prices, and

		(b) the resulting forecast of InfraCo's share of the excess is likely to exceed the <i>share termination threshold</i> (R26A).
	91.11	This contract may be terminated in accordance with paragraphs 7.10 and 7.11 of Schedule 3B of the Infrastructure Agreement (R26B).
<b>PROCEDURES ON TERMINATION</b>	<b>92</b>	
	92.1	On termination of the whole of the AKI Infrastructure Works or any Package Order entered into in relation to the AKI Infrastructure Works, the Authority may complete the relevant AKI Infrastructure Works and may use any Plant and Materials to which it has title (P1).
	92.2	The procedure on termination also includes one or more of the following as set out in the Termination Table. In each case, the Site is left in a safe, clean and workmanlike condition to the reasonable satisfaction of the Authority's Project Manager.
	P2	The Authority may instruct InfraCo to leave the Site, remove any Equipment, Plant and Materials from the Site and assign the benefit of and / or enter into a novation of any subcontract or other contract related to performance of this contract to the Authority.
	P3	The Authority may use any Equipment to which InfraCo has title to complete the Works. InfraCo promptly removes the Equipment from Site when the Authority's Project Manager notifies InfraCo that the Authority no longer requires it to complete the whole of the AKI Infrastructure Works or any Package Order entered into in relation to the AKI Infrastructure Works (as applicable).
	P4	InfraCo leaves the Site and removes the Equipment from the Working Areas unless otherwise instructed by the Authority's Project Manager.
<b>PAYMENT ON TERMINATION</b>	<b>93</b>	
	93.1	The amount due on termination includes (A1):
	(a)	an amount due assessed as for normal payments,
	(b)	the Defined Cost for Plant and Materials:
	(i)	within the Working Areas, or



- (ii) to which the Authority has title and of which InfraCo has to accept delivery,
  - (c) other Defined Cost reasonably incurred in expectation of completing the whole of the AKI Infrastructure Works,
  - (d) any amounts retained by the Authority in accordance with the provisions of this contract, and
  - (e) a deduction of any un-repaid balance of an advanced payment.
- 93.2 The amount due on termination shall also include one or more of the following as set out in the Termination Table:
- A2 The forecast Defined Cost of removing the Equipment.
  - A3 A deduction of the forecast of the additional cost to the Authority of completing the whole of the AKI Infrastructure Works.
  - A4 The *direct fee percentage* applied to any excess of the total of the Prices at the Effective Date over the Price for Work Done to Date.
- 93.3 Not used.
- 93.4 If there is a termination, the Authority's Project Manager shall assess InfraCo's share after it has certified termination. Its assessment shall use, as the Price for Work Done to Date, the total of the Defined Cost which InfraCo has paid and which InfraCo is committed to pay for work done before termination and the resulting Fee. The assessment uses as the total of the Prices:
- (a) the lump sum price for each activity which has been completed, and
  - (b) a proportion of the lump sum price for each incomplete activity which is the proportion of the work in the activity which has been completed.
- 93.5 Not used.
- 93.6 The Authority's Project Manager's assessment of InfraCo's share shall be added to the amount due to InfraCo on termination if there has been a saving or deducted if there has been an excess.
- 93.7 Except as set out in this clause 93, the Authority shall not be liable to InfraCo for:
- (a) any costs, *expenses*, disbursements or losses,
  - (b) any loss of profits, loss of fees, loss of chance or other similar losses, or

- (c) any indirect losses or consequential losses arising out of termination of InfraCo's engagement under this contract.

**NOT USED 94**

**NOT USED 95**

**ADDITIONAL  
CONDITIONS OF  
CONTRACT 10**

**INFRACO'S  
WARRANTIES 100**

100.1 InfraCo shall, within 14 days of the Authority's request made no later than the Completion Date, duly execute and deliver to the Authority deeds of warranty in substantially the form set out at Appendix 9 of Schedule 3B of the Infrastructure Agreement in favour of:

- (a) Network Rail,
- (b) persons providing finance in connection with the AKI Infrastructure Works or the CVL Transformation and / or Associated Projects (including any security agent or trustee),
- (c) any Beneficiary,
- (d) any other party referred to in Appendix 9 of Schedule 3B or referred to in the Contract Data.

100.2 The liabilities set out in deeds of warranty in Appendix 9 of Schedule 3B of the Infrastructure Agreement pursuant to clause 100.1 are included within the single liability cap specified at clause 142 of this contract.

**SUBCONTRACTORS'  
WARRANTIES 101**

101.1 InfraCo shall procure on the date the sub-contract is entered into (in the case of the Authority) and within 14 days of request (in the case of all other parties) that the Subcontractors named or identified by discipline in the Authority's request duly execute and deliver to the Authority, deeds of warranty in substantially the form set out in Appendix 9 of this Schedule 3B in favour of:

- (a) the Authority,
- (b) Network Rail,
- (c) persons providing finance in connection with the AKI Infrastructure Works or the CVL Transformation and / or Associated Projects (including any security agent or trustee),
- (d) any Beneficiary, and

- (e) any other party named in Appendix 9 of Schedule 3B or referred to in the Contract Data.

If InfraCo is unable to procure and deliver to the Authority, any requisite deed of warranty in the appropriate form on the date the sub-contract is entered into or within 14 days of the Authority's request (as required), InfraCo without prejudice to the Authority's rights and remedies consults with the Authority, as to what steps can reasonably be taken to procure the outstanding warranty and safeguard the Authority's interests.

## **MANUFACTURER'S WARRANTIES 102**

- 102.1 InfraCo shall ensure that materials and equipment suppliers agree to provide their warranties for no less than 24 months from the *defects date* and that the suppliers assign the warranties to either the Authority or Network Rail at no cost to the Authority or Network Rail.
- 102.2 InfraCo shall supply to the Authority manufacturers' warranties in favour of the Authority for all plant equipment machinery and apparatus comprised in the AKI Infrastructure Works, in each case on terms which are satisfactory to the Authority (acting reasonably). Without prejudice to the rights of the Authority and Network Rail, during the *defect correction period*, InfraCo shall be entitled to rely and claim upon such manufacturers' warranties as assigned and / or supplied to the Authority or Network Rail by InfraCo.

## **STATUTORY UNDERTAKERS 103**

- 103.1 InfraCo shall comply with the special requirements of relevant suppliers of utilities acting as Statutory Undertakers which shall include the following:
  - (a) electricity,
  - (b) gas,
  - (c) water,
  - (d) telecommunications, and
  - (e) Others
- 103.2 InfraCo is responsible for determining the requirements of Statutory Undertakers and for complying with the same.

## **DATA AND INFORMATION 104**

- 104.1 Any data or information received at any time by InfraCo from the Authority or Others shall not relieve InfraCo

from its responsibility for the AKI Infrastructure Works it undertakes under this contract.

**WARRANTIES AND UNDERTAKINGS**      **105**

105.1      InfraCo warrants and undertakes to the Authority as a condition of this contract that:

- (a)      it has all the resources including financial, technical and human resources as are required to carry out and complete the AKI Infrastructure Works in accordance with this contract,
- (b)      all design, workmanship, manufacture and fabrication will be in accordance with the Infrastructure Works Information and applicable law,
- (c)      the AKI Infrastructure Works will be carried out using only materials and goods which are of sound and good quality and that it will only specify substances and materials for incorporation in the AKI Infrastructure Works and the CVL Transformation and / or Associated Projects which are in accordance with clause 20 of these conditions of contract and the requirements of the Infrastructure Works Information, and InfraCo further warrants that it shall not specify or approve any products or materials which are not in compliance with clause 20.3 of these conditions of contract. This clause does not create any additional duty for InfraCo to inspect or check the work of Others which is not otherwise required by this contract,
- (d)      the Plant and Materials will on Completion be capable of being used, operated and maintained in a safe, economic and efficient manner, free from any unreasonable risk to the health and well-being of persons using it and free from any unreasonable or avoidable risk of pollution, nuisance, interference or hazard,
- (e)      Plant and Materials will not deteriorate at a greater rate than that reasonably to be expected of high quality, reliable, well-designed plant and materials of a similar nature and manufacture,
- (f)      neither the functionality nor the performance of the AKI Infrastructure Works, or any computer product, application or system forming part of the AKI Infrastructure Works, or any Plant, Materials or Equipment, or any part of the railways on which works are undertaken, is affected, made inoperable, difficult or suffers any abnormality by reason of any software defect,

- (g) the Plant and Materials will on Completion operate safely and efficiently in combination with any plant, equipment or system to which it is to be connected,
- (h) it will maintain a sufficient supply of the spare parts (including software) necessary for the operation and maintenance of the AKI Infrastructure Works as specified in the Infrastructure Works Information,
- (i) the proceeds of insurance taken out by InfraCo pursuant to clause 85 will be used solely for the purposes of the AKI Infrastructure Works and for no other purpose,
- (j) InfraCo will exercise the Required Standard, and
- (k) InfraCo places no reliance on any information received by it from the Authority, the *Supervisor*, the Authority's Project Manager and / or Others and that InfraCo will verify the accuracy of all information before using it in connection with the AKI Infrastructure Works and the CVL Transformation and / or Associated Projects.

## ACCOUNTS AND RECORDS

106

106.1

In this section:

**Minimum Records** means:

- (a) all necessary information for the evaluation of claims or Compensation Events, whether or not relating to InfraCo or to any Subcontractors (or sub-subcontractors of any tier),
- (b) management accounts, information from management information systems and any other management records,
- (c) accounting records (in hard copy as well as computer readable data),
- (d) contract and subcontract files (including proposals of successful and unsuccessful bidders, bids, rebids, etc.),
- (e) original estimates,
- (f) estimating worksheets,
- (g) correspondence,
- (h) Compensation documentation covering Event files (including negotiated settlements),

- (i) schedules including capital works costs, timetable and progress towards Completion,
- (j) general ledger entries detailing cash and trade discounts including companywide discounts and rebates,
- (k) commitments (agreements and leases) greater than [REDACTED]
- (l) detailed inspection records,
- (m) such materials prepared in relation to the invitation to tender and subsequent tendering process relating to cost breakdowns, in each case which have not already been provided to the Authority,
- (n) accounts and records of the Price for Work Done to Date and all other amounts to be paid to InfraCo under this contract, and
- (o) test and commissioning results.

106.2 InfraCo shall maintain and procure in each subcontract that each of its Subcontractors (and sub-subcontractors of any tier) maintains and retains the Minimum Records for a minimum of twelve (12) years from Completion with respect to all matters for which InfraCo and its Subcontractors are responsible under this contract. InfraCo shall procure that each subcontract contains open-book audit rights in favour of the Authority and its authorised representatives (including the Authority's external auditors).

106.3 InfraCo undertakes and shall procure that its Subcontractors (and sub-subcontractors of any tier) undertake their obligations and exercise any rights which relate to the performance of this contract on an open-book basis. The Authority and its authorised representatives may, from time to time during the performance of this contract and for 12 years following Completion, audit on an open-book basis and check any and all information regarding any matter relating to the performance of or compliance with this contract, including any aspect of InfraCo's or any Subcontractor's operations, method statements, costs and *expenses*, subcontracts, claims relating to Compensation Events, and financial arrangements or any document referred to therein or relating thereto and the arrangements made by InfraCo or any Subcontractor to comply with its obligations under this clause 106. The Authority's rights pursuant to this sub clause 106.3 include the right to audit and check and to take copies of and extracts from any document or record of InfraCo or its Subcontractors including Minimum Records.

106.4 InfraCo shall promptly provide (and shall procure that its Subcontractors and sub- subcontractors of any tier promptly provide) all reasonable co-operation in relation

to any audit or check including, to the extent reasonably possible in each particular circumstance by:

- (a) granting or procuring the grant of access to any premises used in InfraCo's performance of this contract, whether InfraCo's or Subcontractor's own premises or otherwise,
- (b) granting or procuring the grant of access to any equipment or system (including all computer hardware and software and databases) used (whether exclusively or non-exclusively) in the performance of this contract, wherever situated and whether InfraCo's own equipment or otherwise,
- (c) making any contracts and other documents and records required to be maintained under this contract (including Minimum Records) (whether exclusively or non-exclusively) available for audit and inspection,
- (d) providing a reasonable number of copies of any subcontracts and other documents or records reasonably required by the Authority's auditor and / or granting copying facilities to the Authority's auditor for the purposes of making such copies, and
- (e) complying with the Authority's reasonable requests for access to staff and senior personnel engaged by InfraCo in the performance of this contract or the CVL Transformation and / or Associated Projects.

106.5 Access may be at any time without notice provided there is good cause for immediate access without notice and provided that the Authority's authorised representatives shall comply with all reasonable requirements of InfraCo for the purposes of protecting the confidentiality of the information of third parties and no information will be divulged to any third party save in pursuance of statutory obligations.

106.6 For the avoidance of doubt this clause 106 is in addition to any legislative requirement or applicable law and does not negate the need for any such retention of records.

## **DATA PROTECTION AND FREEDOM OF INFORMATION**

**107**

107.1 InfraCo at all times shall comply with the Data Protection Act 1998 (the DPA) (including any subordinate legislation made under the DPA from time to time) and any policies issued by the Authority from time to time in relation to the processing of data and shall not by any act or fault cause the Authority to be in breach of these requirements.

- 107.2            InfraCo:
- (a)    shall take appropriate technical and organisational security measures satisfactory to the Authority against unauthorised or unlawful Processing of Authority Personal Data (as those terms are defined in the DPA) and against accidental loss, destruction of, or damage to such Personal Data,
  - (b)    provide the Authority and Authority's Project Manager with such information as they may reasonably require to satisfy themselves of compliance by InfraCo with the requirements of this clause 107.2, and
  - (c)    cooperate with the Authority and Authority's Project Manager in complying with requests or enquiries made pursuant to the DPA.
- 107.3            InfraCo acknowledges that the Authority:
- (a)    is subject to requirements under the Freedom of Information Act 2000 ("the FOIA") and the Environment Information Regulations 2004 (the "Regulations") (together, "FOI Legislation") and agrees to assist and cooperate with the Authority to enable the Authority to comply with its obligations under the FOI Legislation, and
  - (b)    may be obliged under the FOI Legislation to disclose Information without consulting and / or obtaining consent from InfraCo.
- 107.4            Without prejudice to the generality of clause 107.3, InfraCo agrees and shall procure that its Subcontractors will agree to:
- (a)    transfer to the Authority or such other persons as may be notified by the Authority to InfraCo each Information Request relevant to this contract, the Works that InfraCo or its Subcontractor (as the case may be) receive as soon as practicable and in any event within 2 days of receiving such Information Request, and
  - (b)    in relation to Information held by InfraCo on behalf of the Authority, provide the Authority with details about and / or copies of all such Information that the Authority requests and such details and / or copies are provided within 5 days of a request from the Authority (or such other period as the Authority may reasonably specify), and in such forms as the Authority may reasonably specify.
- 107.5            The Authority is responsible for determining whether Information is exempt or excepted information under the FOI Legislation and for determining what Information (if any) will be disclosed in response to an Information



		Request in accordance with the FOI Legislation. InfraCo shall not itself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so in writing by the Authority.
	107.6	InfraCo acknowledges that the Authority may be obliged under FOI Legislation to disclose Information without consulting or obtaining consent from InfraCo.
	107.7	The provisions of this clause 107 are without prejudice to Schedule 17 of the Infrastructure Agreement, as applicable.
<b>NUISANCE</b>	<b>108</b>	
	108.1	InfraCo shall prevent any public or private nuisance including nuisance caused by noxious fumes, noisy working operations or the deposit of materials or debris or other interference with the rights of adjoining or neighbouring landowners, tenants or occupiers or Statutory Undertakers arising out of the AKI Infrastructure Works and, if the Authority (acting reasonably) considers that the claim should be defended, defends or, if the Authority so elects, shall assist the Authority in defending any action or proceedings which may be instituted in relation thereto.
	108.2	Without prejudice to InfraCo's obligations under clause 108.1 if the carrying out of the AKI Infrastructure Works is likely to necessitate any interference (including the oversailing of tower crane jibs) with the rights of adjoining or neighbouring landowners, tenants or occupiers, InfraCo shall obtain the prior written agreement of such landowners, tenants or occupiers subject to the approval of the Authority (such approval not to be unreasonably withheld or delayed). InfraCo shall comply in every respect with the conditions contained in such agreements.
<b>CONFLICTS OF INTEREST</b>	<b>109</b>	
	109.1	InfraCo acknowledges and agrees that it does not have and will not have any interest in any matter where there is or is reasonably likely to be a conflict of interest with the Provision of the AKI Infrastructure Works or any member of the Authority, save to the extent fully disclosed to and approved in writing by the Authority.
	109.2	InfraCo shall undertake ongoing and regular conflict of interest checks throughout the duration of this contract and in any event not less than once in every six months and notifies the Authority in writing immediately on becoming aware of any actual or potential conflict of interest with the Provision of the AKI Infrastructure Works under this contract or the Authority and works with the Authority to do whatever is necessary (including the separation of staff working on, and data relating to, the AKI Infrastructure Works from the matter in question) to manage such conflict to the Authority's

satisfaction, provided that, where the Authority is not so satisfied (in its absolute discretion) it shall be entitled to terminate the contract.

**INTELLECTUAL  
PROPERTY RIGHTS**

**110**

110.1

The Parties agree that the Foreground IPR in all Documentation and works that is created wholly or mainly in connection with the performance of this contract (including IPR created by a Subcontractor or subcontractor of any tier) vests in the Authority. InfraCo shall procure that each Subcontractor (or subsubcontractor of any tier) assigns such Foreground IPR prepared or developed by or on behalf of the Subcontractor in the performance of the subcontract to the Authority.

110.2

- (a) The Authority grants InfraCo a non-exclusive, non-transferable, royalty free licence to InfraCo to use, and allow its Subcontractors to use, the Foreground IPR and the (so far as it is permitted to) Authority's Background IPR (collectively referred to in this Clause as "**the Authority's IPR**") for the duration of this contract for the sole purpose of enabling InfraCo to Provide the AKI Infrastructure Works and to comply with its obligations under this contract,
- (b) InfraCo shall use, and shall procure that its Subcontractors use, the Authority's IPR in compliance with any relevant Standards and applicable law,
- (c) InfraCo shall not use, and shall procure that its Subcontractors do not use, the Authority's IPR in combination with any other trademarks without the Authority's prior written consent,
- (d) On written request by the Authority's Project Manager, InfraCo shall supply to the Authority's Project Manager copies or details of items on or in relation to which it uses the Authority's IPR or details of the manner in which they are used. If the Authority's Project Manager reasonably determines that any use of the Authority's IPRs is non-compliant with the Standards, the contract and applicable law the Authority's Project Manager shall give InfraCo written notice of that fact and InfraCo shall correct the use so as to comply with the Standards, the contract and applicable law taking into account the Authority's Project Manager's instructions,
- (e) InfraCo is not entitled to bring any action against any third party for infringement relating to the Authority's IPR and the Authority is not obliged to bring or extend any proceedings

relating to the Authority's IPR if it decides in its sole discretion not to do so,

- (f) As soon as reasonably practicable after expiry or termination of this contract for any reason, InfraCo and its Subcontractors shall cease all use of the Authority's IPR and remove the Authority's IPR or (where removal is not reasonably practical) destroy or, if the Authority's Project Manager so elects, deliver to the Authority's Project Manager or any other UK company or person designated by the Authority's Project Manager, and
- (g) InfraCo shall have no right (save where expressly permitted under this contract or with the Authority's prior written consent) to use any trademarks, trade names, logos or other intellectual property rights of the Authority.

110.3

In respect of InfraCo's Background IPR, InfraCo grants and in respect of Third Party Background IPR, InfraCo procures the grant of a non-exclusive, world-wide, perpetual, irrevocable, royalty free licence (including the right to assign, novate and otherwise transfer and / or grant sub-licences) to the Authority and Others carrying out works in relation to the CVL Transformation and / or Associated Projects to use InfraCo's Background IPR and Third Party Background IPR for the following purposes:

- (a) understanding the AKI Infrastructure Works, the Authority's Works, the CVL Transformation and / or Associated Projects,
- (b) operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting, upgrading and replacing the AKI Infrastructure Works, the Authority's Works, any Equipment or Plant and Materials,
- (c) extending, interfacing with, integrating with, connection into and adjusting the AKI Infrastructure Works and / or the Authority's Works and / or the CVL Transformation and / or Associated Projects,
- (d) enabling the Authority or Others to carry out the operation, maintenance, repair, modification, alteration enhancement, re-figuration, correction, upgrading and replacement of the CVL Asset or Network Rail's Network,
- (e) enabling the Authority and Network Rail to perform their function and duties as Infrastructure Manager and Operator of the CVL Asset and Network Rail's Network,
- (f) executing and completing the AKI Infrastructure Works, the Authority's Works,

		and the CVL Transformation and / or Associated Projects, and
	(g)	designing, testing and commissioning the AKI Infrastructure Works, the Authority's Works, and the CVL Transformation and / or Associated Projects.
110.4		InfraCo agrees to provide to the Authority or any person nominated by the Authority's Project Manager immediate access to all Documentation in whatever form requested by the Authority's Project Manager at any time but at the latest on termination or expiry of this contract.
110.5		InfraCo acknowledges that it is the author of all Documentation and waives any moral rights which it might be deemed to possess under Chapter IV of the Copyright, Design & Patents Act 1988 in respect thereof and of the AKI Infrastructure Works.
110.6		InfraCo warrants and undertakes that it has the right to grant the Authority a licence to use InfraCo's Background IPR and Others carrying out works in relation to the CVL Transformation and / or Associated Projects a licence to use InfraCo's Background IPR for all purposes, including (without limitation) for the purposes listed in clause 110.3.
110.7		InfraCo indemnifies the Authority against all Losses arising out of any use by the Authority of InfraCo's Background IPR, including, without limitation, any claim that the exploitation of the licence granted by InfraCo under clause 110.3 infringes the intellectual property rights or other rights of any third party.
<b>Computer Generated Data</b>	110.8	
		InfraCo shall supply to the Authority all Documentation needed to enable the Authority to exercise its IPRs.
<b>IPR Claims</b>	110.9	
	(a)	InfraCo shall promptly notify the Authority upon becoming aware of an infringement, alleged infringement or potential infringement of any IPR (including any claims, demands or actions (collectively "Claims") relating to the same) which affects or may affect the provision of the AKI Infrastructure Works, the Authority's Works, or the CVL Transformation and / or Associated Projects.
	(b)	Subject to the Authority's proper observance of its obligations under this contract, InfraCo indemnifies the Authority against all Claims and Losses that arise from or are incurred by reason of any infringement or alleged infringement of any IPR.

- (c) The Authority, at the request of InfraCo, shall give InfraCo all reasonable assistance for the purpose of contesting any such Claim. InfraCo shall reimburse the Authority for all Losses incurred in doing so and / or InfraCo shall conduct any litigation and all negotiations at its own expense arising from such Claim. InfraCo shall consult with the Authority in respect of the conduct of any Claim and keep the Authority regularly and fully informed as to the progress of such Claim.

#### 110.10 **Use of Authority's Logo**

InfraCo shall not use the Authority's roundel either on its own or in combination with InfraCo's crest or logo nor cause or permit it to be used.

### **ASSIGNMENT**

#### **111**

111.1 InfraCo shall not assign, transfer, charge or otherwise deal with this contract (or any of its rights or obligations under it) nor grant, declare a trust of, create or dispose of any right or interest in it without the prior written consent of the Authority.

111.2 The Authority may assign or transfer all of its rights under or arising out of this contract at any time without the prior consent of InfraCo to a third party in which the Welsh Government shall have a controlling interest, except that the Authority shall not be permitted to assign such rights to the Joint Venture Party, TfWR or any successor provider of railway passenger services and the Parties shall do all things necessary to give effect to this clause 111.2. The Authority shall use all reasonable endeavours to provide prior written notice to InfraCo of any proposed assignment no less than 14 days prior to such assignment but for the avoidance of doubt, any failure to give such notice shall not affect the validity of such assignment.

### **CONFIDENTIALITY**

#### **112**

112.1 In this clause "**Confidential Information**" has the meaning given to it in paragraph 1 of Schedule 17 of the Infrastructure Agreement.

112.2 InfraCo acknowledges that during the course of this contract it may receive, obtain, prepare or create Confidential Information.

112.3 InfraCo agrees to:

- (a) keep (and ensure that all of its employees and Subcontractors keep) the Confidential Information in strictest confidence and acknowledges that such information is of a proprietary and confidential nature, and
- (b) not use (and ensure that all its employees and Subcontractors do not use) the Confidential

Information for any purposes whatsoever (and in particular to the detriment of the Authority) other than for the purpose of performing the AKI Infrastructure Works under this contract.

- 112.4      InfraCo shall not (and shall ensure that its Subcontractors do not) disclose the Confidential Information to any third party without the prior written consent of the Authority except where InfraCo is entitled to the extent strictly necessary to disclose the Confidential Information:
- (a)      to any Connected Persons provided that such a recipient agrees in writing to be bound by the terms of this confidentiality provision and provided that InfraCo is responsible for any breach of its obligations occasioned by any act or omission of any such Connected Persons, or
  - (b)      to any other person or body having a legal right or duty to know the Confidential Information in connection with InfraCo's business or performance of the AKI Infrastructure Works provided that prior to such disclosure InfraCo consults with the Authority as to the proposed form of such disclosure.
- 112.5      InfraCo agrees that, pursuant to clause 112.4 above, it shall inform each of the persons to whom Confidential Information is disclosed of the restrictions as to the use and disclosure of the Confidential Information and use its best endeavours to ensure that each of them observe such restrictions.
- 112.6      At the Authority's request, and in any event upon the termination or expiry of the contract, InfraCo shall deliver promptly to the Authority, or destroy as the Authority directs, all documents and other materials in its possession, custody or control (or the relevant parts of such materials) that bear or incorporate the whole or any part of the Confidential Information and, if instructed by the Authority in writing, remove all electronically held Confidential Information, including (without limitation) the purging of all disk-based Confidential Information and the reformatting of all disks.
- 112.7      InfraCo shall not, except where provided for in clause 112.4 or otherwise only with the prior written consent of the Authority, disclose to any third party the nature or content of any discussions or negotiations between any of the Parties to this contract relating to the Confidential Information.
- 112.8      The obligations set out in clauses 112.4 and 112.7 do not apply to any Confidential Information which:
- (a)      InfraCo shows by documentary evidence was already in its lawful possession and at its free

disposal before the disclosure to InfraCo by the Authority, or

- (b) is lawfully disclosed to InfraCo without any obligations of confidence, by a third party who has not derived it directly or indirectly from the Authority, or
- (c) is or has come into the public domain through no fault of InfraCo or its personnel; or
- (d) is required by law or by order of a court of competent jurisdiction to be disclosed.

- 112.9 InfraCo acknowledges that damages would not be an adequate remedy for any breach of this clause 112 and that (without prejudice to all other remedies which the Authority may be entitled to as a matter of law) the Authority is entitled to the remedies of injunction, specific performance and other equitable relief to enforce the provisions of this clause and no proof of special damages is necessary for the enforcement of the provisions of this clause.
- 112.10 InfraCo agrees that it shall not advertise or announce this contract (or that it is to perform the AKI Infrastructure Works) without the prior written consent of the Authority and the Authority has the right to approve the content and form of any advertisement or announcement before it is made.
- 112.11 Neither InfraCo nor anyone employed by it or acting on its behalf shall give information concerning the AKI Infrastructure Works for publication in the press or on radio, television, screen or any other media without the prior written consent of the Authority and, if such consent is given, InfraCo shall provide to the Authority a full copy of the information to be released and shall not release any such information until InfraCo has received the Authority's prior written consent as to the content of the information to be released. InfraCo shall not, without the prior written approval of the Authority, take or permit to be taken any photographs of the AKI Infrastructure Works for use in any publicity or advertising.
- 112.12 For the avoidance of doubt, InfraCo shall procure that any Connected Persons comply with the provisions of this clause 112 and are responsible to the Authority for any act or omission of any Connected Persons in breach of such obligation.
- 112.13 InfraCo shall notify the Authority promptly if InfraCo becomes aware of any breach of confidence by any Connected Persons and shall give the Authority all assistance the Authority may reasonably require in connection with any proceedings the Authority may bring or other steps the Authority may take against the Connected Persons or any other person for such breach of confidence.

	112.14	The provisions of this clause 112 continue to apply after termination or expiry of this contract.
	112.15	The provisions of this clause 112 are without prejudice to Schedule 17 of the Infrastructure Agreement, as applicable.
<b>NOT USED</b>	<b>113</b>	
<b>NOT USED</b>	<b>114</b>	
<b>NOT USED</b>	<b>115</b>	
<b>QUALITY ASSURANCE AND BEST VALUE</b>	<b>116</b>	<p>InfraCo shall maintain an effective and economical quality control programme in accordance with the requirements set out in clause 40 and the Infrastructure Works Information. InfraCo acknowledges that the Authority is a best value authority for the purposes of the Local Government Act 1999 and as such the Authority is required to make arrangements to secure continuous improvement in the way it exercises its functions, having regard to a combination of economy, efficiency and effectiveness. InfraCo shall assist the Authority to discharge the Authority's duty where possible, and in doing so, inter alia carry out any reviews of the AKI Infrastructure Works reasonably requested by the Authority from time to time.</p>
<b>IT REQUIREMENTS</b>	<b>117</b>	<p>InfraCo warrants to the Authority that:</p> <p>(a) neither the functionality nor the performance of:</p> <ul style="list-style-type: none"> <li>(i) its work,</li> <li>(ii) any software, electronic or magnetic media, hardware, computer system, application or system forming part of its work,</li> <li>(iii) any part of the railways on which its work is undertaken, or</li> <li>(iv) any part of Network Rail's Network,</li> </ul> <p>is affected, made inoperable, difficult or suffers any abnormality by reason of any data-related input or data related processing in or on any part of such software, electronic or magnetic media, hardware or computer system,</p>



- (b) any software, electronic or magnetic media, hardware or computer system used or supplied by InfraCo in connection with this contract:
- (c) is Euro compliant, and
- (d) is compliant with the Authority's selected Open Document Format which promotes collaboration and the sharing of documents,
- (e) does not cause any damage, loss or erosion to or interfere adversely or in any way with the compilation, content or structure of any data, database, software or other electronic or magnetic media, hardware or computer system used by, for or on behalf of the Authority and / or Others on which it is used or with which it interfaces or comes into contact, and
- (f) any variations, enhancements or actions undertaken by InfraCo in respect of such software, electronic or magnetic media, hardware or computer system does not affect InfraCo's compliance with this warranty.

#### **RESPONSIBLE PROCUREMENT**

**118**

InfraCo has regard to the responsible procurement principles and complies at all times with the obligations with regard to the responsible procurement principles set out in the Infrastructure Works Information and / or instructed by the Authority's Project Manager from time to time and / or the responsible procurement rules and requirements set out in Schedule 13 of the Infrastructure Agreement. Compliance with such obligations and instructions does not constitute a Compensation Event unless the Authority's Project Manager issues an instruction and states in its instruction that it constitutes a Compensation Event.

#### **SEVERABILITY**

**119**

If any clause or part of this contract is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision is, to the extent required, severed from this contract and is ineffective without, as far as is possible, modifying any other clause or part of this contract and this does not affect any other provisions of this contract which remain in full force and effect. In the event that in the Authority's reasonable opinion such a provision is so fundamental as to prevent the accomplishment of the purpose of this contract, the Authority and InfraCo immediately commence good faith negotiations to remedy such invalidity.

#### **AUTHORITY'S BUSINESS**

**120**

120.1

InfraCo acknowledges that it:

- (a) has sufficient information about the Authority and the AKI Infrastructure Works, the

Authority's Works, and the CVL Transformation and / or Associated Projects,

- (b) is aware of the Authority's processes and businesses,
- (c) has made all appropriate and necessary enquiries to enable it to Provide the AKI Infrastructure Works in accordance with this contract,
- (d) is aware of the purposes for which the AKI Infrastructure Works are required and acknowledges that the Authority is reliant upon InfraCo's expertise and knowledge in Providing the AKI Infrastructure Works, and
- (e) shall neither be entitled to any additional payment nor excused from any obligation or liability under this contract due to any misinterpretation or misunderstanding by it of any fact relating to the AKI Infrastructure Works and / or the Authority's Works and / or the CVL Transformation and / or Associated Projects.

## **ACCESS TO PREMISES**

### **121**

#### **121.1**

Any Premises made available to InfraCo in connection with this contract shall be at no cost to InfraCo and shall be used by InfraCo solely for the purpose of Providing the AKI Infrastructure Works provided, for the avoidance of doubt, that InfraCo is responsible for its own costs of travel including any congestion charging. InfraCo shall:

- (a) have the use of such Premises as licensee and shall not have or purport to claim any sole or exclusive right to possession or to possession of any particular part of such Premises,
- (b) vacate such Premises upon the termination or expiry of the contract or at such earlier date as the Authority may determine,
- (c) not exercise or purport to exercise any rights in respect of any Premises in excess of those granted under this clause 121, and
- (d) ensure that InfraCo's personnel carry any identity passes issued to them by the Authority at all relevant times and comply with the Authority's security procedures as may be notified by the Authority from time to time; and not damage the Premises or any assets on the Premises.

#### **121.2**

Nothing in this clause 121 shall create or be deemed to create the relationship of landlord and tenant in respect of any Premises between InfraCo and the Authority.

- 121.3 The Authority shall be under no obligation to provide office or other accommodation facilities or services (including telephony and IT services) to InfraCo except as may be specified in the Infrastructure Works Information.
- 121.4 InfraCo shall comply with all of the Authority's security requirements while on Premises, and shall ensure that all of its personnel comply with such requirements.
- 121.5 The Authority reserves the right to refuse to admit to any Premises any of InfraCo's personnel who fail to comply with any of the Authority's Policies and standards referred to in this contract.
- 121.6 The Authority reserves the right to instruct any of InfraCo's personnel to leave any Premises at any time for any reason and such personnel shall comply with such instructions immediately.

## COMPLIANCE WITH POLICIES

### 122

- 122.1 InfraCo shall notify its personnel and the Authority of any health and safety hazards that exist or that may arise in connection with providing the AKI Infrastructure Works of which InfraCo is aware or ought reasonably to be aware.
- 122.2 InfraCo undertakes that all its personnel and those of its Subcontractors shall comply with all of the Authority's policies and standards that are relevant to Providing the AKI Infrastructure Works, including those relating to occupational health and safety, security, business ethics, work place harassment, drugs and alcohol and illegal substances and any other on site regulations specified by the Authority for personnel working at Premises or accessing the Authority's computer systems. The Authority shall provide InfraCo with copies of such policies on request (the "**Authority's Policies**").
- 122.3 In Providing the AKI Infrastructure Works, InfraCo shall (taking into account best available techniques not entailing excessive cost and the best practicable means of preventing, or counteracting the effects of any noise or vibration) have appropriate regard (insofar as InfraCo's activities may impact on the environment) to the need to:
- (a) preserve and protect the environment and to the need to avoid, remedy and mitigate any adverse effects on the environment,
  - (b) enhance the environment and have regard to the desirability of achieving sustainable development,
  - (c) conserve and safeguard flora, fauna and geological or physiological features of special interest, and

- (d) sustain the potential of natural and physical resources and the need to safeguard the life-supporting capacity of air, water, soil and ecosystems.

**RISK MANAGEMENT PLAN 123**

- 123.1 Notwithstanding clause 15, the Risk Register, any revision to the Risk Register or any matter agreed or discussed at a risk reduction meeting, InfraCo shall comply with the Risk Management Plan set out in the Infrastructure Works Information unless the Authority gives InfraCo an instruction stating how the arrangements to be made and / or taken by InfraCo in accordance with the Risk Management Plan are to modified.

**ASSURANCE 124**

- 124.1 InfraCo shall comply with the Assurance Regime.
- 124.2 The Assurance Regime may be amended at any time by agreement between InfraCo and the Authority.
- 124.3 In relation to the initiation, development, design, construction, delivery, testing, commissioning and handover of new, refurbished or altered systems and assets, InfraCo prepares Assurance Plans.
- 124.4 Before the start of specific delivery activities or at defined Milestones, as appropriate, InfraCo submits an Assurance Plan to the Authority and any other regulatory body.
- 124.5 The Parties consult and confer together in relation to the Assurance Plans after their delivery to the Authority. Within thirty (30) days thereafter, the Authority may give notice to InfraCo requiring InfraCo to make changes to the Assurance Plans or any elements thereof. InfraCo makes the changes within seven (7) days of receiving the notice.
- 124.6 The Assurance Plan does not become final until approved by the Authority.
- 124.7 The Parties may agree to update the Assurance Plan as appropriate to take account of any changes to or development of the AKI Infrastructure Works.
- 124.8 InfraCo complies with the approved Assurance Plan as amended from time to time.

**RECOVERY OF SUMS DUE FROM INFRACO 125**

Subject to clause 51, when under this contract any sum of money is recoverable from or payable by InfraCo such sum may be deducted from or reduced by the amount of any sum or sums then due or which at any time thereafter may become due to InfraCo under this

contract or any other contract with the Authority. Any sum due from InfraCo, whether under this contract or any other contract with the Authority, shall be payable as a debt to the Authority.

**NOT USED** 126

**NOT USED** 127

**NOT USED** 128

**NOT USEDE** 129

**PROHIBITED ACTS  
AND SAFETY  
BREACHES** 130

130.1 InfraCo shall not and shall use its reasonable endeavours to procure that its Subcontractors (and sub-subcontractors of any tier), agents or employees do not commit any Prohibited Act and / or Safety Breach.

130.2 The Authority may audit and check any and all such records as are necessary in order to monitor compliance with this clause at any time during performance of this contract and during the 12 years thereafter.

130.3A If any Prohibited Act and / or Safety Breach comes to the attention of InfraCo in relation to this contract InfraCo notifies the Authority by the most expeditious means available. InfraCo shall cooperate with the Authority in the investigation of any Prohibited Act and / or Safety Breach and implement any changes in the procedures or working practices employed under the contract as may be necessary to ensure that the likelihood or opportunity for a recurrence of such Prohibited Act and / or Safety Breach is minimised.

130.3 If InfraCo, any of its shareholders or any Subcontractor or anyone employed by or acting on behalf of InfraCo or any of its agents commits any Prohibited Act and / or Safety Breach, this constitutes a material breach of this contract and entitles the Authority to terminate the contract in whole or in part with immediate effect in accordance with clause 90 and clause 91.8.

130.4 If a Prohibited Act and / or Safety Breach is committed by an employee of InfraCo or by any Subcontractor (or employee or agent of such Subcontractor) then the Authority may (at its sole discretion) choose to serve a warning notice upon InfraCo instead of exercising its right to terminate with immediate effect and unless, within thirty (30) days of receipt of such warning notice, InfraCo removes or procures the removal of the relevant employee or Subcontractor (as the case may be) from the Site and (if necessary) procures the provision of the affected works and / or services by another person or Subcontractor this constitutes a material breach of this contract and entitles the Authority to terminate the

		contract in whole or in part with immediate effect in accordance with clause 90 and clause 91.8.
	130.5	In the event of any breach of this clause 130 by InfraCo the Authority shall recover from InfraCo any loss liability or damage incurred or suffered as a result of the breach of this clause by InfraCo.
<b>NOT USED</b>	<b>131</b>	
<b>NOT USED</b>	<b>132</b>	
<b>GRATUITIES AND GIFTS</b>	<b>133</b>	
	133.1	InfraCo and its staff in the provision of the AKI Infrastructure Works shall not solicit or accept any gratuity tip or any other form of money taking or reward collection or charge for any part of the AKI Infrastructure Works other than charges properly approved by the Authority in accordance with the provisions of this contract. Failure to comply with this clause 133.1 shall invoke the provisions of clause 90 (Termination) of this contract.
<b>MERGER OR CHANGE OF CONTROL</b>	<b>134</b>	
	134.1	Not used.
	134.2	Not used.
	134.3	Not used.
<b>CHANGES IN THE LAW</b>	<b>135</b>	
	135.1	A change in the law of the country in which the Site is located (and which is not a change in law which a competent and experienced contractor familiar with works similar to the AKI Infrastructure Works and exercising the Required Standard ought reasonably to have anticipated at the Effective Date) is a Compensation Event if it occurs after the Effective Date. The Authority's Project Manager may notify InfraCo of a Compensation Event for such a change in the law and instruct it to submit quotations. If the effect of a Compensation Event which is a change in the law is to reduce the total Defined Cost, the Prices are reduced.
<b>NOT USED</b>	<b>136</b>	
<b>ERDF REQUIREMENTS</b>	<b>137</b>	
	137.1	InfraCo shall comply with the ERDF Requirements.
<b>SECTIONAL COMPLETION</b>	<b>138</b>	

- 138.1 In these conditions of contract, unless stated as the whole of the AKI Infrastructure Works, each reference and clause relevant to:
- (a) the AKI Infrastructure Works,
  - (b) Completion, and
  - (c) Completion Date,
- applies, as the case may be, to either the whole of the AKI Infrastructure Works or any *section* of the AKI Infrastructure Works.

**DELAY DAMAGES 139**

- 139.1 InfraCo shall pay and / or the Authority may deduct from any amount due to InfraCo delay damages or Milestone Delay Payments (as applicable) at the rate stated in the Contract Data or the Milestone Table (as applicable) from the Completion Date or Planned Milestone Delivery Date (as applicable) for each day until the earlier of:
- (a) Completion or Achievement of the relevant Milestone (as applicable), and
  - (b) the date on which the Authority takes over the AKI Infrastructure Works or in relation to Milestones until the specified Remedy Period expires and / or the Delay Payment Cap (if applicable) is reached in accordance with the process set out in this contract.
- 139.2 If the Completion Date or Planned Milestone Delivery Date (as applicable) is changed to a later date after delay damages or Milestone Delay Payments (as applicable) have been paid, the Authority shall repay the overpayment of damages with interest. Interest shall be assessed from the date of payment to the date of repayment and the date of repayment is an assessment date.
- 139.3 If the Authority takes over a part of the AKI Infrastructure Works before Completion, the delay damages shall be reduced from the date on which the part is taken over. The Authority's Project Manager shall assess the benefit to the Authority of taking over the part of the AKI Infrastructure Works as a proportion of the benefit to the Authority of taking over the whole of the AKI Infrastructure Works not previously taken over. The delay damages shall be reduced in this proportion.
- 139.4 Provided that the Delay Payment Cap (if applicable) has not been exceeded, and subject to any express rights or remedies of the Authority pursuant to this contract or the Infrastructure Agreement, the delay damages or Milestone Delay Payments which may be payable in accordance with clause 139.1 shall be the Authority's sole and exclusive remedy in respect of any loss of revenue, loss of profits or loss of use in relation to any

failure by InfraCo to achieve Completion by the Completion Date and failure by InfraCo to Achieve the Milestone by the applicable Planned Milestone Delivery Date.

## RETENTION

140

140.1

After the Price for Work Done to Date has reached the *retention free amount*, an amount shall be retained in each amount due until the earlier of:

- (a) Completion of the whole of the AKI Infrastructure Works for the relevant Package Order, and
- (b) the date on which the Authority takes over the whole of the AKI Infrastructure Works for the relevant Package Order.

The amount retained shall be the *retention percentage* applied to the excess of the Price for Work Done to Date above the *retention free amount*.

140.2

The amount retained shall be halved:

- (a) in the assessment made at Completion of the whole of the AKI Infrastructure Works for the relevant Package Order, or
- (b) in the next assessment after the Authority has taken over the whole of the AKI Infrastructure Works for the relevant Package Order if this is before Completion of the whole of the AKI Infrastructure Works for the relevant Package Order.

The amount retained shall remain at this amount until the Defects Certificate is issued. No amount shall be retained in the assessments made after the Defects Certificate has been issued.

140.3

Where under this contract the Authority is entitled to withhold money from InfraCo as a retention, the retention monies shall be retained by the Authority without obligation to invest and without creating any fiduciary obligation or duty on the part of the Authority to InfraCo or any other person with whom InfraCo has contracted.

## NOT USED

141

Not used.

## LIMITATION OF LIABILITY

142

142.1

Save in respect of any excluded matters, the maximum aggregate liability of InfraCo to the Authority, shall, in respect of the AKI Infrastructure Works only, not exceed the higher of (a) [REDACTED]; or (b) the aggregate of any sums payable by the Authority to InfraCo in connection with the AKI Infrastructure Works as at the date of the formal



demand issued by the Authority (the “**Aggregate Liability Cap**”). For the avoidance of doubt, this Aggregate Liability Cap shall not act to restrict or limit any liability of InfraCo pursuant to the remainder of the Infrastructure Agreement.

The excluded matters for the purposes of the Aggregate Liability Cap are liabilities of InfraCo in respect of:

- (a) any failure by InfraCo to comply with any applicable law and / or Statutory Requirements,
- (b) the use by the Authority and Others of any IPR provided by or on behalf of InfraCo (including any IPR provided by any Subcontractor), including any infringement of any third party’s intellectual property rights,
- (c) any failure by InfraCo to comply with the Third Party Agreements,
- (d) any damage to or loss of any third party property, real or personal, and
- (e) any bodily injury, sickness, disease or death, of any person whatsoever.

142.2 Nothing in this contract shall exclude or limit any liability of InfraCo in respect of gross negligence, death or personal injury, fraud, illegal acts, deliberate default, reckless misconduct or abandonment of the AKI Infrastructure Works by InfraCo.

142.3 If and to the extent that a liability of InfraCo is covered by an insurance policy which the Authority is required to take out or maintain under the Infrastructure Agreement (including Schedule 3B) or any Package Order instructed pursuant to Schedule 3B or under this contract, and InfraCo receives proceeds (or would have done so, but for any act or omission on the part of InfraCo) the payment of such sums equivalent to the proceeds shall not count towards or act to reduce the unexpended amount of any limitation on such liability of InfraCo.

142.5 InfraCo acknowledges and agrees that it may be engaged by the Authority to perform the Principal Infrastructure Services and (under other Package Orders) to perform Additional Infrastructure Services and AKI Infrastructure Works. Accordingly, InfraCo shall not be entitled to, and hereby waives, any claim against the Authority, for any relief from its obligations, additional fees, costs, compensation or expenses, extensions of time or a variation under or in connection with the Infrastructure Agreement, Schedule 3B, this contract, each Package Order or any IDP Works Package (where InfraCo is engaged as the IDP under such IDP Works Package) arising out of or in connection with any neglect, default or other act or omission of InfraCo under this contract, any other Package Order, the Infrastructure Agreement,

		Schedule 3B or any IDP Works Package (where InfraCo is engaged as the IDP under such IDP Works Package) (as applicable).
	142.6	Neither Party shall be entitled to recover compensation or make a claim under the Infrastructure Agreement, Schedule 3B, any Package Order or this contract in respect of any loss that it has incurred to the extent that it has been compensated in respect of that loss pursuant to Schedule 3B, this contract, any Package Order or the Infrastructure Agreement.
<b>SINGLE POINT DESIGN RESPONSIBILITY</b>	<b>143</b>	
	143.1	In this clause 143, " <b>Authority's Design Information</b> " means any drawings, proposals, specifications, method statements, designs, plans, schemes or other documents, or concepts prepared or developed by the Authority and included in the Infrastructure Works Information.
	143.2	InfraCo is deemed to have scrutinized and is fully responsible in all respects for the design of the AKI Infrastructure Works including, without limitation, any Authority's Design Information (which, for all purposes of this contract is deemed to be part of InfraCo's design).
	143.3	Where there is a mistake, inaccuracy or discrepancy in the Authority's Design Information, InfraCo shall inform the Authority in writing of its proposed amendment to remove the mistake, inaccuracy or discrepancy. The Authority may consent to InfraCo's proposed amendment or comment in writing on such an amendment. InfraCo shall take account of such comments and resubmit its proposed amendment to the Authority. Such process shall be repeated until the Authority accepts InfraCo's proposed amendment.
	143.4	InfraCo is not entitled to any changes to the Prices, the Completion Date or Planned Milestone Delivery Dates by reason of anything in this clause 143. Further, InfraCo hereby agrees that any comment or failure to comment by the Authority under this clause 143 shall not be treated as an act of prevention or breach of contract by the Authority.
<b>SUSPENSION OF PERFORMANCE PAYMENT</b>	<b>144</b>	
	144.1	Without affecting InfraCo's other rights and remedies, if: <ul style="list-style-type: none"> <li>(a) payment to InfraCo by the Authority in respect of the AKI Infrastructure Works has not been paid in full by the final date for payment in accordance with this contract, and</li> </ul>

- (b) notification of intention to pay less than the notified sum has not been given in accordance with clause 51.7,

InfraCo may issue a written notice to the Authority of its intention to exercise its right to suspend performance under the Act setting out the grounds for suspension (the "**First Notice**"). If the failure continues for 28 days after receipt by the Authority of the First Notice, InfraCo may exercise its right to suspend performance under the Act with immediate effect by giving the Authority a further notice in writing. If InfraCo exercises its right under the Act to suspend its performance, it is a Compensation Event.

144.2 The right of InfraCo to suspend its performance shall end when the amount that should be paid to InfraCo is paid to it in full.

144.3 If InfraCo exercises its right under the Act in accordance with clause 144 to suspend performance, it is a Compensation Event.

**INFRASTRUCTURE  
ENHANCEMENT  
AND CHANGE**      **145**

145.1 Either InfraCo or the Authority may propose a Variation to the AKI Infrastructure Works in accordance with the process set out in Appendix 19 (Change Mechanism) of Schedule 3B of the Infrastructure Agreement. This contract shall be amended to reflect any Variation agree or determined under this procedure.

**PROJECT BANK  
ACCOUNT**      **146**

**Project Bank Account**      146.1      InfraCo shall establish the Project Bank Account with the *project bank* within three weeks of the Effective Date.

146.2 Unless stated otherwise in the Contract Data, InfraCo shall pay any charges made and shall be paid any interest paid by the *project bank*. The charges and interest by the *project bank* shall not be included in the assessment of the amount due.

146.3 InfraCo shall submit to the Authority for acceptance details of the banking arrangements for the Project Bank Account. A reason for not accepting the banking arrangements is that they do not provide for payments to be made in accordance with this contract. InfraCo shall provide to the Authority copies of communications with the *project bank* in connection with the Project Bank Account.

**Named Suppliers**      146.4      InfraCo shall include in its contracts with Named Suppliers the arrangements in this contract for the operation of the Project Bank Account and the Trust Deed. InfraCo shall notify the Named Suppliers of the details of the Project Bank Account and the

		arrangements for payment of amounts due under their contracts.
	146.5	InfraCo shall submit proposals for adding a Supplier to the Named Suppliers to the Authority for acceptance. A reason for not accepting is that the addition of the Supplier does not comply with the Infrastructure Works Information. The Authority, InfraCo and the Supplier shall sign the Joining Deed after acceptance.
<b>Payments</b>	146.6	InfraCo shall include with its invoice at each assessment date a statement of the amounts due to Named Suppliers in accordance with their contracts.
	146.7	<p>Within the time set out in the banking arrangements to allow the <i>project bank</i> to make payment to InfraCo and Named Suppliers in accordance with the contract:</p> <p>(a) the Authority shall make payment to the Project Bank Account of the amount which is due to be paid under the contract, and</p> <p>(b) InfraCo shall make payment to the Project Bank Account of any amount which the Authority has notified InfraCo it intends to withhold from InfraCo's invoice and which is required to make payment in full to Named Suppliers.</p>
	146.8	InfraCo shall prepare the Authorisation, setting out the sums due to Named Suppliers as assessed by InfraCo and to InfraCo for the balance of the payment due under the contract. After signing the Authorisation, InfraCo shall submit it to the Authority no later than four days before the final date for payment. The Authority shall sign the Authorisation and submit it to the <i>project bank</i> no later than one day before the final date for payment.
	146.9	InfraCo and Named Suppliers shall receive payment from the Project Bank Account of the sums set out in the Authorisation as soon as practicable after the Project Bank Account receives payment.
	146.10	A payment which is due from InfraCo to the Authority is not made through the Project Bank Account.
<b>Effect of payment</b>	146.11	Payments made from the Project Bank Account are treated as payments from the Authority to InfraCo in accordance with this contract or from InfraCo or Subcontractor to Named Suppliers in accordance with their contract as applicable. A delay in payment due to a failure of InfraCo to comply with the requirements of this clause is not treated as late payment under this contract.
<b>Trust Deed</b>	146.12	The Authority, InfraCo and Named Suppliers shall sign the Trust Deed before the first assessment date.
<b>Termination</b>	146.13	If either Party notifies the other of termination, no further payment shall be made into the Project Bank Account.

**COLLABORATIVE WORKING** **147**

- 147.1 In carrying out the AKI Infrastructure Works InfraCo shall work in a collaborative manner with the Authority, the IDPs, any other consultants engaged by the Authority, and stakeholders and Others to the extent and in the manner described within the Alliance Agreement and the Infrastructure Works Information.
- 147.2 InfraCo shall coordinate its activities with Others as required by the Infrastructure Works Information and in accordance with the instructions of the Authority.
- 147.3 InfraCo shall cooperate with the Authority and Others in obtaining and providing information which they require in connection with their works and the Infrastructure Works.
- 147.4 Where necessary to Provide the AKI Infrastructure Works, InfraCo shall hold or attend meetings with Others. InfraCo shall inform the Authority of these meetings beforehand and the Authority may attend them.
- 147.5 InfraCo shall use best endeavours to Provide the AKI Infrastructure Works and correct Defects in such a way as not to cause delay or disruption to the Authority and / or Others. In the event that Providing the AKI Infrastructure Works or correcting the Defects causes delay or disruption to the Authority and / or Others, InfraCo shall take all reasonable steps to mitigate and minimise such delay or disruption.
- 147.6 For the purposes of clause 147.5, the obligation to use 'best endeavours' shall be satisfied where InfraCo demonstrates to the Authority's satisfaction (acting reasonably) that InfraCo has complied with the Code of Construction Practice, and the CVL Engineering Requirements.

**SUPPLEMENTARY CONDITIONS OF CONTRACT (Z CLAUSES)** **148**

- 148.1 The *supplementary conditions of contract* stated in the Contract Data are part of this contract.

# Package Order

[]

(the **Authority**)

and

[]

(InfraCo)

AKI Infrastructure Works

Works Package: []

Contract No. []

20[XX]

THIS PACKAGE ORDER is made the

day of

202[●]

## BETWEEN

- (1) **TRANSPORT FOR WALES**, a company incorporated in England and Wales with registered number 09476013 and whose registered office is at 3 Llys Cadwyn, Pontypridd, Wales, CF37 4TH (the "**Authority**"); and
- (2) **AMEY KEOLIS INFRASTRUCTURE/SEILWAITH AMEY KEOLIS LIMITED** incorporated and registered in England and Wales with company 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 ("**InfraCo**").

## BACKGROUND

- 1 The Authority and InfraCo have entered into an Infrastructure Contract dated [●] in relation to the CVL Transformation and / or Associated Projects.
- 2 Pursuant to Schedule 3B of the Infrastructure Agreement ("**Schedule 3B**") InfraCo has issued a quotation to carry out a Package Order (as defined in Schedule 3B) that has been accepted by the Authority. The Parties are required to execute this Package Order before InfraCo begins to Provide the AKI Infrastructure Works.
- 3 The Authority will pay InfraCo the amount due and carry out its duties in accordance with this contract.
- 4 InfraCo will Provide the AKI Infrastructure Works in accordance with this contract.
- 5 The Package Order and the Conditions of Contract for AKI Infrastructure Works (as defined in Schedule 3B) together with the completed Contract Data Parts One and Two, the Infrastructure Works Information (Annex 1), the Commercial Information and Site Information (Annex 2), the Infrastructure Works Delivery Plan (Annex 3), the Package Budget (Annex 4), the Schedule of Cost Components (Annex 5) and the documents referred to in them form this contract. References in the Conditions of Contract for AKI Infrastructure Works to "the contract" are references to this contract. This Package Order and the Conditions of Contract for AKI Infrastructure Works shall take precedence over any other document forming part of this contract.
- 6 InfraCo shall also perform its obligations under this Package Order in accordance with the requirements of Schedule 3B.1 to Schedule 3B.12 and Appendix 1 (Definitions) of Schedule 3B. In the event of any inconsistency or conflict between the provisions of this Package Order and the provisions of Schedule 3B.1 to Schedule 3B.12 and Appendix 1 (Definitions) of Schedule 3B, then the provisions of Schedule 3B.1 to Schedule 3B.12 and Appendix 1 (Definitions) Schedule 3B shall prevail, save where Schedule 3B or this Package Order expressly state otherwise.
- 7 All defined terms in this contract shall have the same meaning given to them in Schedule 3B.

Executed as a deed and delivered on the date above by:

Executed as a deed by **TRANSPORT FOR WALES**, acting by a director, in the presence of:

.....  
[SIGNATURE OF DIRECTOR]  
Director

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

Executed as a deed by [NAME OF EXECUTING COMPANY] acting by [two directors] [a director and its secretary]

.....  
[SIGNATURE OF FIRST DIRECTOR]  
Director

.....  
[SIGNATURE OF SECOND DIRECTOR OR SECRETARY]  
[Director OR Secretary]



## Contract Data

### Part one – Data provided by the *Authority*

1 <b>General</b>	The <i>conditions of contract for the AKI Infrastructure Works</i> are set out in Schedule 3B of the Infrastructure Agreement.
	<b>[The <i>project</i> is</b> the CVL Transformation and / or Associated Projects, and in respect of which the AKI Infrastructure Works and the Authority's Works are being carried out.]
	<b>The <i>works</i> are:</b>  <i>[INSERT BRIEF DESCRIPTION OF SCOPE OF WORKS]</i>  in relation to the CVL Transformation and / or Associated Projects as more particularly described in the Infrastructure Works Information.
	<b>The <i>Authority</i> is:</b>  Name            Transport for Wales Address        3 Llys Cadwyn, Pontypridd, Wales, CF37 4TH
	<b>The <i>Authority's Project Manager</i> is:</b>  Name            Transport for Wales Address        []
	<b>The <i>Principal Designer</i> is:</b>  Name            [] Address        []
	<b>The <i>Supervisor</i> is:</b>  Name:            [] Address        []
	<b>The <i>Infrastructure Works Information</i> is:</b> set out in Annex 1.
	<b>The <i>site</i> is</b> <i>[to be completed for each Package Order]</i> .
	<b>The <i>Site Information</i> is:</b> [].
	<b>The <i>language of this contract</i> is</b> English
	<b>The <i>law of the contract</i> is</b> the Law of England and Wales
	<b>The <i>period for reply</i> is</b> 14 days except in relation to design submissions. In relation to design submissions, the <i>period for reply</i> shall be 28 days from the design submission provided that InfraCo shall provide not less than 14 days' advance notice in writing to the Authority of any design submission. Where InfraCo does not provide 14 days' advance notice of any design submission the <i>period for reply</i> shall be extended accordingly by no more than 14 days.

	<b>The <i>records retention</i></b> is 15 years following Completion or earlier termination								
	<b>The following matters will be included in the Risk Register:</b> <i>[to be completed for each Package Order]</i>								
	<b>The reference date is</b> []								
	<b>The Adjudicator is:</b>  Name: Not named. To be agreed in accordance with Appendix 7 of Schedule 3B of the Infrastructure Agreement or failing agreement as nominated by the Chairman for the time being of the Nominating Authority.								
<b>3 Time</b>	<ul style="list-style-type: none"> <li>• <b>The <i>starting date</i></b> is []</li> <li>• <b>The <i>access dates</i></b> are:   <table> <tr> <td>Part of the <i>site</i></td><td>Date</td></tr> <tr> <td>1. [ ]</td><td>[]</td></tr> <tr> <td>2. [ ]</td><td></td></tr> <tr> <td>3. [ ]</td><td></td></tr> </table> </li> <li>• InfraCo is to submit a first programme for acceptance on [].</li> <li>• InfraCo submits revised programmes at intervals no longer than [] <b>weeks</b>.</li> <li>• <b><i>Project Completion</i></b> is <i>[to be completed for each Package Order – application of this principle to be considered on a case by case basis]</i>.</li> </ul>	Part of the <i>site</i>	Date	1. [ ]	[]	2. [ ]		3. [ ]	
Part of the <i>site</i>	Date								
1. [ ]	[]								
2. [ ]									
3. [ ]									
<b>4 Testing and Defects</b>	The <i>defects date</i> is [] <b>weeks</b> after Completion of the whole of the [AKI Infrastructure Works] OR [the works].  The <i>defect correction period</i> is []								
<b>5 Payment</b>	<ul style="list-style-type: none"> <li>• The <i>currency of this contract</i> is Pounds Sterling (£)</li> <li>• The <i>assessment interval</i> is as specified in clause 50.1.</li> <li>• <b>Milestone Table</b>  The Milestone Table for the <i>works</i> is to appended to the Package Order.</li> <li>• <b>Milestone Delay Payments</b>  The Milestone Delay Payments are set out in the Milestone Table.</li> <li>• <b>[Delay Payment Cap</b></li> </ul>								

	<p>The Delay Payment Cap is set out in the Milestone Table.]</p> <ul style="list-style-type: none"> <li>The <i>interest rate</i> means a rate equivalent to two percent (2%) per annum above the base lending rate published by Royal Bank of Scotland plc (or such other bank as the Authority may, after consultation with InfraCo, determine from time to time) during any period in which an amount payable under Schedule 3B remains unpaid.</li> </ul>												
<b>6 Compensation Events</b>													
<b>8 Risks and Insurance</b>	<p>The amounts of insurance and the periods for which InfraCo maintains insurance are [as set out in clause 85 of this contract.]</p> <p>The amounts of insurance and the periods for which the Authority maintains insurance are [as set out in clause 85 of this contract.]</p>												
	<p><b><u>Optional Statements</u></b></p> <p>If the <i>works</i> are not divided into <i>sections</i>, the <i>completion date</i> for the whole of the <i>works</i> is [].</p> <p>[The Authority is not willing to take over the <i>works</i> before the Completion Date.]</p> <p><b>If no programme is identified in part two of the Contract Data</b></p> <p>InfraCo is to submit a first programme for acceptance on [].</p>												
	<p><b>If there are additional Authority's risks</b></p> <ul style="list-style-type: none"> <li>These are the additional Authority's risks: [TBC]</li> </ul>												
	<p>InfraCo's share percentages and <i>share ranges</i> are</p> <table border="1"> <thead> <tr> <th><b>Share range</b></th><th><b>InfraCo Share percentage</b></th></tr> </thead> <tbody> <tr> <td>Less than 90%</td><td>[]%</td></tr> <tr> <td>From 90% - 100%</td><td>[]%</td></tr> <tr> <td>From 100% - 105%</td><td>[]%</td></tr> <tr> <td>From 105% - 110%</td><td>[]%</td></tr> <tr> <td>Greater than 110%</td><td>[]%</td></tr> </tbody> </table>	<b>Share range</b>	<b>InfraCo Share percentage</b>	Less than 90%	[]%	From 90% - 100%	[]%	From 100% - 105%	[]%	From 105% - 110%	[]%	Greater than 110%	[]%
<b>Share range</b>	<b>InfraCo Share percentage</b>												
Less than 90%	[]%												
From 90% - 100%	[]%												
From 100% - 105%	[]%												
From 105% - 110%	[]%												
Greater than 110%	[]%												

	<ul style="list-style-type: none"> <li>The <i>share termination threshold</i> is []</li> <li>InfraCo prepares forecasts of Defined Cost for the <i>works</i> at intervals no longer than [] weeks.</li> <li>The <i>exchange rates</i> are those published in [ ] on [ ] (date)</li> </ul>																
	<p><b>If the <i>works</i> are divided into <i>sections</i>, the <i>completion date</i> for each section of the works:</b></p> <table border="1"> <tr> <td>The <i>completion date</i> for each section of the works is []<b>Section</b></td><td><b>Description</b></td><td><b>completion date</b></td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> </table>	The <i>completion date</i> for each section of the works is [] <b>Section</b>	<b>Description</b>	<b>completion date</b>													
The <i>completion date</i> for each section of the works is [] <b>Section</b>	<b>Description</b>	<b>completion date</b>															
	<p><b>If the works are not divided into <i>sections</i>, delay damages for Completion of the whole of the works are £[INSERT] per day.</b></p> <p><b>If the Authority has specified delay damages for each <i>section</i> of the works:</b></p> <p>Table 3 - Delay damages for each <i>section</i> of the works are</p> <table border="1"> <tr> <th>Section</th><th>Description</th><th>Planned Milestone Delivery Date</th><th>Amount per day</th></tr> <tr> <td> </td><td> </td><td>[Note: to be inserted once Package Order is placed]</td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> </table>	Section	Description	Planned Milestone Delivery Date	Amount per day			[Note: to be inserted once Package Order is placed]									
Section	Description	Planned Milestone Delivery Date	Amount per day														
		[Note: to be inserted once Package Order is placed]															
	<p><b>If a retention free amount is specified under clause 140.1 of Appendix 6 Part A to Schedule 3B (Retention):</b></p> <ul style="list-style-type: none"> <li>The <i>retention free amount</i> is []</li> <li>The <i>retention percentage</i> is []%</li> </ul>																
	<p><b>The <i>supplementary conditions of contract</i> are:</b></p> <ul style="list-style-type: none"> <li>[ ]</li> </ul>																

	<p>The parties agree that, in the event of any inconsistency or conflict between the <i>supplementary conditions of contract</i> and the provisions of Schedule 3B.1 to Schedule 3B.12 and Appendix 1 (Definitions of Schedule 3B), the <i>supplementary conditions of contract</i> shall prevail.</p>
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## Contract Data

### Part Two – Data provided by InfraCo

- InfraCo is  
  
Name: Amey Keolis Infrastructure/Seilwaith Amey Keolis Limited (Company Number: 11389544)  
  
Address: C/O Amey Rail Maindee Depot, Off Caerleon Road, Newport, United Kingdom, NP19 9DZ
- The *direct fee percentage* is []
- [The *subcontracted fee percentage* is []]
- **The *working areas* are** the Site and [the site compounds]. The working areas do not include InfraCo's head or satellite offices.
- InfraCo's *Representative* is []  
  
Name: [            ]  
  
Address: [            ]  
  
Telephone Number: [            ]
- **The *key persons* are** [set out in the Infrastructure Works Delivery Plan.]
- The following matters will be included in the Risk Register: [Those matters set out in the Infrastructure Works Delivery Plan.]

### Optional Statements

#### **If InfraCo is to provide Infrastructure Works information for its design**

- The Infrastructure Works Information for InfraCo's design is set out in the Infrastructure Works Information.

#### **If a programme is to be identified in the Contract Data**

- The Programme identified in the Contract Data is: [    ]
- The *activity schedule* is: [            ]
- The tendered total of the Prices is: [            ]  
  
The *bond provider* of InfraCo is: [            ]  
  
The *project bank* is.....

The *named suppliers* are.....

**Data for Schedule of Cost Components**

- The listed items of Equipment purchased to work on this contract, with an on cost charge, are

Equipment	time-related charge	per time period
[       ]	[       ]	per [       ]
[       ]	[       ]	per [       ]
[       ]	[       ]	per [       ]

- The rates for special Equipment are [Not applicable]

Equipment	size or capacity	rate
[               ]	[               ]	[               ]
[               ]	[               ]	[               ]
[               ]	[               ]	[               ]

- The percentage for Working Areas overheads is [       ] %
- The hourly rates for Defined Cost of manufacture and fabrication outside the Working Areas are  
category                      of    hourly rate  
employee  
[               ]               [               ]  
[               ]               [               ]  
[               ]               [               ]               ggg

- The percentage for manufacture and fabrication overheads is [       ] %

**Data for both schedules of cost components**

- The hourly rates for Defined Cost of design outside the Working Areas are

category employee	of    hourly rate
[               ]	[               ]
[               ]	[               ]

- The percentage for design overheads is [       ] %

The categories of design employees whose travelling expenses to and from the Working Areas are included as a cost of design of the AKI Infrastructure Works and Equipment done outside the Working Areas are [       ].

In relation to Associated Projects only, InfraCo is entitled to recover staff *expenses* for those staff living outside the South Wales Metro Area, who are travelling to / living in the South Wales Metro Area.

#### **Data for the Shorter Schedule of Costs Components**

- The percentage for people overheads is []%
- - The published list of Equipment is the last edition of the list published by the Civil Engineering Contractors Association
- The percentage for adjustment for Equipment in the published list is [] %
- The rates for other Equipment are

	<b>Equipment</b>	<b>size or capacity</b>	<b>rate</b>
1.	[      ]	[]	[   ]
2.	[      ]	[]	[   ]

#### **Appendix A - NAMED SUBCONTRACTORS**

Qualifications and experience of proposed Subcontractors:

Area of Work	Name of Subcontractor	Experience and Qualifications

#### **Appendix B - DETAILS OF INFRACO'S INSURANCE POLICIES**

The relevant insurance policy details are provided as follows: []



## Annex 1

### Infrastructure Works Information

*[Drafting Note: The particular scope for AKI Infrastructure Works is to be set out here for each individual Package Order for AKI Infrastructure Works. AKI Infrastructure Works may include any or all of the following as required by the Authority:*

- 1** AKI Infrastructure Works Package Orders may include any part of the following works:
  - (a) *all such works as the Authority may reasonably expect to be provided by a contractor providing works of the type being provided by InfraCo pursuant to Schedule 3B of the Infrastructure Agreement and any relevant Package Order in respect of a project such as the CVL Transformation and / or Associated Projects, including any other works as may be reasonably incidental to the carrying out of the AKI Infrastructure Works, provided that such AKI Infrastructure Works meet the criteria stated in paragraph 6.3 of Schedule 3B.*
  - (b) *Where in the opinion of the Authority an IDP has failed to perform an IDP Works Package in accordance with the terms and conditions of the IDP Works Package and the Authority wishes to terminate that IDP Works Package as a result of such default, the Authority may at its sole discretion instruct InfraCo to carry out the scope of the works set out in the IDP Works Package as part of the AKI Infrastructure Works and the Authority may retain InfraCo as may be required for the purposes of carrying out such works. In such event, the Authority and InfraCo shall follow the process referred to in paragraph 6 of Schedule 3B save that the condition stated in paragraph 6.3(a) shall not apply any such works referred to in this paragraph 1(b).*
- 2** **DESIGN**
  - 2.1 *When undertaking any design as part of the AKI Infrastructure Works InfraCo shall use the Required Standard to:*
    - (a) *ensure that the design is integrated and coordinated with the other designs prepared or being prepared for the Programme by other design consultants of the Authority or by IDPs or by Others.*
    - (b) *achieve the standard and detail of design and produce the design deliverables stated within the Infrastructure Works Information.*
  - 2.2 *For the avoidance of doubt, any design produced by InfraCo as part of the Principal Infrastructure Services shall form part of InfraCo's Infrastructure Works Information and the Authority shall have no responsibility for such design.*
- 3** **EXTERNAL STAKEHOLDERS**
  - 3.1 *When undertaking any Package Order InfraCo must produce all documentation, presentations samples or models necessary to support any submission to any external Stakeholders, Statutory Undertakers or approval Authorities to whom the Authority has an obligation to consult or seek approval.*
- 4** **PROJECT REQUIREMENTS**
  - 4.1 *In undertaking a Package Order InfraCo shall comply with the operational requirements, engineering requirements, environmental and planning requirements, and the health and safety requirements and standards ("**The Project Requirements**") included within the Infrastructure Works Information.*

## **5 AUTHORITY'S POLICIES**

- 5.1 *In undertaking a Package Order InfraCo shall comply with the Authority's Policies and the Authority's management processes and procedures included within the Infrastructure Works Information.*

## **6 SERVICE ACTIVITIES**

- 6.1 *In undertaking a Package Order InfraCo shall perform and / or take account of the service activities including but not limited to those indicated in this section to the extent described within the Infrastructure Works Information:*

- (a) *Quality Management*
- (b) *Environmental Management,*
- (c) *Planning, Environmental and Traffic & Highways Consents,*
- (d) *Health and Safety Management,*
- (e) *Technical Assurance,*
- (f) *Standards Management,*
- (g) *Value Engineering,*
- (h) *Architecture Design Process,*
- (i) *Systems Engineering,*
- (j) *Requirements Management,*
- (k) *Interface Management,*
- (l) *Issues Management,*
- (m) *Assumptions Management,*
- (n) *Engineering Safety Management,*
- (o) *Human Factors,*
- (p) *Reliability, Availability and Maintainability Management,*
- (q) *Electromagnetic Compatibility,*
- (r) *Configuration Management,*
- (s) *Verification and Validation,*
- (t) *Construction Programme Development,*
- (u) *Buildability and Construction Planning,*
- (v) *Procurement Support,*
- (w) *Cost Estimating and Cost Control,*
- (x) *Risk Management (Project Risks),*
- (y) *Contract Controls,*

- (z) *Information Management, and*
- (aa) *Document Management.]*

Annex 2

Site Information

Annex 3

Activity Schedule / Pricing Schedule

Annex 4

Package Budget

Annex 5

Schedule of Cost Components

*[Note: The Schedule of Cost Components shall be set out here for each Package Order.*

*The Schedule of Cost Components shall:*

- (a) be agreed between the Parties within the earlier of:
  - (i) 6 months of the Grant Agreement Date, and*
  - (ii) issue of any Package Order for AKI Infrastructure Works, and**
- (b) shall be based upon the standard NEC3 ECC Option C form of Schedule of Cost Components and Shorter Schedule of Cost Components, with such amendments as the Authority may reasonably request.]*

## **Appendix 7 of Schedule 3B**

### **Dispute Resolution**

Any dispute or difference between the Parties as to the construction of Schedule 3B and / or any Package Order or any matter or thing of whatsoever nature arising under Schedule 3B and / or any Package Order or in connection therewith concerning the Infrastructure Services or AKI Infrastructure Works (a "**Dispute**") shall be resolved pursuant to the dispute resolution procedure set out in this Appendix 7 (Dispute Resolution) of this Schedule 3B.

#### **1 MANAGERIAL DISCUSSIONS**

- 1.1 Without prejudice to the Parties' rights at any time to refer Disputes to adjudication in accordance with this Appendix 7, the Parties shall each use their reasonable endeavours to resolve any Dispute which may arise by means of prompt, bona fide discussion to Senior Representatives at a managerial level appropriate to the Dispute in question by a written notice identifying the Party's Senior Representative, giving brief written particulars of the Dispute, including the provisions of the Infrastructure Agreement that are relevant to the Dispute, the relief sought and the basis for claiming the relief sought.
- 1.2 Within fourteen days of receipt of the notice of referral to Senior Representatives, the responding party shall provide the referring party with a brief written response and identify the responding party's Senior Representative.
- 1.3 Within a further fourteen days the Senior Representatives shall meet and try to reach agreement to resolve the Dispute. Each Party shall bear its own costs and expenses in relation to any reference of a Dispute to the Senior Representatives. Any documents prepared or exchanged in relation to the reference of the Dispute to Senior Representatives and any discussions between the Senior Representatives are without prejudice and the Parties shall not make use of or rely upon any without prejudice statements in any subsequent Dispute proceedings.

#### **2 ADJUDICATION PROCEDURE**

- 2.1 A Party may refer a Dispute to the Adjudicator at any time by way of a Notice of Adjudication. The Adjudication shall be conducted under the TeCSA Adjudication Rules thereby incorporating the TeCSA Adjudication Rules into this Schedule 3B and any Package Order. Timescales stated in this Schedule 3B shall take precedence over TeCSA Adjudication Rules.
- 2.2 The Parties shall appoint the Adjudicator.
- 2.3 The Adjudicator shall act impartially and decide the Dispute as an independent adjudicator and not as an arbitrator.
- 2.4 The Parties may choose an adjudicator (or replacement adjudicator, as necessary) jointly or a Party may ask the Nominating Authority to choose an adjudicator. Such joint appointment or referral to the Nominating Authority shall take place immediately upon the serving of a Notice of Adjudication, or immediately following the position of Adjudicator falling vacant.
- 2.5 The Nominating Authority shall nominate an adjudicator within four days of the request. The chosen adjudicator shall become the Adjudicator.
- 2.6 A replacement Adjudicator shall have the power to decide a Dispute referred to its predecessor but not decided at the time when its predecessor resigned or became unable to act. A replacement Adjudicator shall deal with an undecided Dispute as if it had been referred to it on the date it was appointed.

- 2.7 The Adjudicator, its employees and agents will not be liable to the Parties for any action or failure to take action in an adjudication unless the action or failure to take action was in bad faith.
- 2.8 Before a Party refers a Dispute to the Adjudicator, it shall issue a Notice of Adjudication to the other Party with a brief description of the Dispute, including the provisions of the Infrastructure Agreement that are relevant to the Dispute, the relief sought, the basis for claiming the relief sought and the decision that it wishes the Adjudicator to make. Following the appointment of the Adjudicator, the Party shall immediately send a copy of the Notice of Adjudication to the Adjudicator. Within three days of the receipt of the Notice of Adjudication, the Adjudicator will notify the Parties
- (a) that it is able to decide the Dispute in accordance with the Infrastructure Agreement or
  - (b) that it is unable to decide the Dispute and has resigned.
- 2.9 If the Adjudicator does not so notify within three days of the issue of the Notice of Adjudication, either Party may act as if it has resigned.
- 2.10 Within seven days of a Party giving a Notice of Adjudication it shall
- (a) refer the Dispute to the Adjudicator,
  - (b) provide the Adjudicator with the information on which it relies, including the factual and contractual or other basis of the claim, the amount (if any) claimed and any supporting documents, and
  - (c) provide a copy of the information and supporting documents it has provided to the Adjudicator to the other Party.
- 2.11 Upon receipt of the Referral Notice, the Adjudicator must inform every Party to the Dispute of the date that it was received. Within fourteen days from the referral, any Party, who is not the Party giving a Notice of Adjudication, shall provide the Adjudicator with the information on which it will rely, including the factual and contractual or other basis of the claim, the amount (if any) claimed and any supporting documents.
- 2.12 These periods may be extended if the Adjudicator and Parties agree.
- 2.13 If a matter disputed by InfraCo under or in connection with a sub-contract is also a matter disputed under or in connection with the Infrastructure Agreement InfraCo may, with the consent of the Subcontractor and the Authority, refer the sub-contract dispute to the Adjudicator at the same time as the main Agreement referral. The Adjudicator will then decide the disputes together and references to the Parties for the purposes of the Dispute will be interpreted as including the Subcontractor. The Parties shall comply with any reasonable request by the Adjudicator for more time to decide the disputes referred to the Adjudicator.
- 2.14 The Adjudicator may
- (a) make directions for the conduct of the Dispute
  - (b) review and revise any action or inaction of the Authority related to the Dispute and alter a quotation which has been treated as having been accepted
  - (c) take the initiative in ascertaining the facts and the law related to the Dispute
  - (d) instruct a Party to provide further information related to the Dispute within a stated time and
  - (e) instruct a Party to take any other action which it considers necessary to reach its decision and to do so within a stated time.

- 2.15 If a Party does not comply with any instruction within the time stated by the Adjudicator, the Adjudicator may continue the adjudication and make its decision based upon the information and evidence it has received.
- 2.16 The Adjudicator shall consider any relevant information submitted to it by any of the Parties and shall make available to them any information to be taken into account in reaching a decision.
- 2.17 A communication between a Party and the Adjudicator must be communicated to the other Party at the same time.
- 2.18 Save as required by law, the Parties and the Adjudicator shall keep information relating to the Dispute confidential.
- 2.19 If the Adjudicator's decision includes assessment of additional cost or delay caused to InfraCo, it shall make its assessment in the same way as a Compensation Event is assessed. If the Adjudicator's decision changes an amount notified as due, payment of the sum decided by the Adjudicator will be due not later than seven days from the date of the decision or the final date for payment of the notified amount, whichever is the later.
- 2.20 The Adjudicator shall decide the Dispute and notify the Parties of its decision and its reasons within twenty-eight days of the Dispute being referred to it. This period may be extended by up to fourteen days with the consent of the Parties or by any other period agreed by the Parties. The Adjudicator may in its decision allocate its fees and expenses between the Parties.
- 2.21 After the giving of a Notice of Adjudication, the Parties may seek to agree how the Adjudicator allocates the costs and expenses of the adjudication, excluding its remuneration and expenses which are dealt with in the preceding paragraph, as between the Parties.
- 2.22 Unless and until the Adjudicator has notified the Parties of its decision the Parties shall proceed as if the matter disputed was not disputed.
- 2.23 If the Adjudicator does not make its decision and notify it to the Parties within the time provided by the Infrastructure Agreement the Parties and the Adjudicator may agree to extend the period for making its decision. If they do not agree to an extension, either Party may act as if the Adjudicator has resigned.
- 2.24 The Adjudicator's decision is binding on the Parties unless and until revised by the courts and is enforceable as a matter of contractual obligation between the Parties and not as an arbitral award. The Adjudicator's decision is final and binding if neither Party has notified the other within the times required by the Infrastructure Agreement that it is dissatisfied with a matter decided by the Adjudicator and intends to refer the matter to the courts.
- 2.25 The Adjudicator may on its own initiative or on the application of a Party correct its decision so as to remove a clerical or typographical error arising by accident or omission. Any correction of a decision must be made within five days of delivery of the decision to the Parties. As soon as possible after correcting a decision in accordance with this paragraph, the Adjudicator must deliver a copy of the corrected decision of the Parties to the Infrastructure Agreement. Any correction of a decision forms part of the decision.
- 2.26 Unless the Parties agree otherwise, a Party must not refer any Dispute under or in connection with the Infrastructure Agreement to the courts unless it has first been decided by the Adjudicator in accordance with the Infrastructure Agreement.
- 2.27 If, after the Adjudicator notifies its decision, a Party is dissatisfied, that Party may notify the other Party of the matter which it disputes and state that it intends to refer it to the courts. The Dispute may not be referred to the courts unless this notification is given within six weeks of the notification of the Adjudicator's decision.

2.28 The courts may settle the Dispute referred to it. The courts have the powers to reconsider any decision of the Adjudicator and to review and revise any action or inaction of the Authority related to the Dispute. A Party will not be limited in court proceedings to the information or evidence put to the Adjudicator.

2.29 A Party shall not call the Adjudicator as a witness in court proceedings.

### **3 JOINDER**

3.1 If a Dispute arising under the Infrastructure Agreement raises issues of fact or law which are the same as, or relate to issues raised in an unresolved dispute between the Authority and any Other (a "**Related Dispute**"):

- (a) the Authority may require a representative of the parties in the Related Dispute to meet with the parties under the Infrastructure Agreement and endeavour to resolve both the Related Dispute and the Dispute; and
- (b) the Authority may refer the Related Dispute to an adjudicator or court to which the Dispute has been referred under the Infrastructure Agreement or may refer the Dispute to an adjudicator or court to which the Related Dispute had been referred and the proceedings shall be consolidated, save where the adjudicator or court shall in its absolute discretion determine that it is not possible to consolidate the proceedings; and
- (c) any dispute as to whether the Dispute raises issues of fact or law which are the same as or related to issues of fact or law in the Related Dispute shall be resolved by the adjudicator or court to which the Dispute and the Related Dispute have been referred, provided that, if the adjudicator or court decides that such issues of fact or law do not arise in the Related Dispute this clause 3 shall cease to apply; and
- (d) the adjudicator to whom the Dispute and the Related Dispute have been referred shall have power to make such decisions, directions and all necessary orders and awards in respect of the Dispute and the Related Dispute in the same way as if the procedure of the High Court as to joining one or more defendants or joining co-defendants or third parties was available to the parties and to it.

3.2 The Parties may only refer a Related Dispute to the Adjudicator appointed in relation to a Dispute if the Adjudicator has received particulars of the Related Dispute within seven days of the referral of the Dispute to the adjudicator under the Infrastructure Agreement.

### **4 FINAL AND BINDING DECISION**

The Parties may agree that the adjudicator's decision shall be final and binding and shall finally determine any Dispute, or in the absence of such agreement may otherwise refer such Dispute to the courts of England and Wales for further determination.

### **5 LITIGATION**

5.1 Notwithstanding paragraphs 2 to 4 of this Appendix 7, 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 Schedule 3B and / or any Package Order or its or their subject matter or formation (including non-contractual disputes or claims).

5.2 Unless the Authority determines or suspends the operation of this Schedule 3B and / or any Package Order InfraCo shall be obliged to continue to perform its obligation under this Schedule 3B and any Package Order during the course of any Court proceedings.



**Appendix 8 of Schedule 3B**

Form of Novation Deed

## Form of Novation Deed

**THIS DEED** is dated [DATE]

### PARTIES

- (1) **TRANSPORT FOR WALES**, a company incorporated in England and Wales with registered number 09476013 and whose registered office is at 3 Llys Cadwyn, Pontypridd, Wales, CF37 4TH (the "**Authority**");<sup>1</sup>
- (2) **[INFRACO]** (Company Number [INSERT NUMBER]), whose registered office is at [INSERT REGISTERED ADDRESS] ("**InfraCo**"); and
- (3) **[INSERT NAME OF SUB-CONSULTANT]** (Company Number [INSERT NUMBER]), whose registered office is at [INSERT REGISTERED ADDRESS] (the "**Consultant**").

### BACKGROUND

- (A) The Authority appointed InfraCo pursuant to the Infrastructure Agreement to (amongst other things) carry out and complete the Infrastructure Services in connection with the CVL Asset Transformation or any Associated Projects.
- (B) InfraCo appointed the Consultant pursuant to the Appointment to perform [certain services] [some of] [the Infrastructure Services] in connection with the CVL Asset Transformation or any Associated Projects.
- (C) The Parties have agreed to novate the Appointment from InfraCo and the Consultant to the Authority and the Consultant on the terms of this Deed.

### AGREED TERMS

#### 1 DEFINITIONS

- 1.1 In this Deed the following words shall have the following meanings:

**"Appointment"** means an agreement in writing dated [DATE] between the Consultant and InfraCo as [varied by [] and] novated to the Authority under this Deed.

**"Deed"** means this deed of novation.

**"Infrastructure Services"** means the services referred to in the Infrastructure Agreement, performed by or on behalf of the Consultant pursuant to the Appointment.

**"Infrastructure Agreement"** means an agreement in writing dated [DATE] between InfraCo and the Authority, as amended from time to time.

**"Party"** means a party to this Deed.

**["Project"]** has the meaning given to it in the Infrastructure Agreement.

#### 2 NOVATION OF APPOINTMENT

This Deed novates the Appointment from InfraCo and the Consultant to the Authority and the Consultant.

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<sup>1</sup> DN: In the event that the Authority assigns or transfers its rights under this Schedule 3B in accordance with paragraph 13 of Schedule 3B of the Infrastructure Agreement (Assignment) to a third party in which the Welsh Government shall have a controlling interest (except that the Authority shall not be permitted to assign such rights to the Joint Venture Party, TfWR or any successor provider of railway passenger services), the definition of Authority in this Novation Deed shall be amended accordingly.

### **3 RELEASE OF CONSULTANT**

[Subject to clause 12,] the Consultant shall no longer owe any duty or obligation to InfraCo in respect of the Appointment.

### **4 RELEASE OF INFRACO**

InfraCo shall no longer owe any duty or obligation to the Consultant in respect of the Appointment.

### **5 BINDING OF CONSULTANT TO THE AUTHORITY**

5.1 The Consultant binds itself to the Authority under the Appointment as if the Authority was, and always had been, named in the Appointment in place of InfraCo.

5.2 The Consultant undertakes and warrants to the Authority that it has carried out, and will carry out, its duties and obligations under the Appointment. In performing its services under the Appointment, the Consultant has exercised, and will continue to exercise, the skill, care, diligence, experience, prudence and foresight of a professionally qualified and competent consultant, architect and engineer experienced, specialised and skilled in design and the selection of goods and materials for use in the construction of public transport infrastructure of a similar type, size, scope and complexity to the CVL Asset Transformation or any Associated Projects and engaged in the same or a similar type of project to the CVL Asset Transformation or any Associated Projects and under the same or similar circumstances and conditions as that in which the relevant matters arise. PROVIDED THAT if the Consultant has an obligation to carry out or complete the Infrastructure Services or any part thereof by an agreed time (including meeting any Planned Milestone Delivery Date or key date), time is of the essence in respect of such obligation.

5.3 The Authority shall not be prevented from recovering any losses incurred by the Authority that result from any breach of this clause 5 because:

- (a) the acts or omissions causing that breach occurred before this Deed took effect; or
- (b) InfraCo will not incur, has not or would not have incurred those losses or would not have incurred them to the same extent.

### **6 BINDING OF THE AUTHORITY TO CONSULTANT**

The Authority binds itself to the Consultant under the Appointment as if the Authority was, and always had been, named in the Appointment in place of InfraCo.

### **7 VESTING OF REMEDIES IN THE AUTHORITY**

7.1 All rights of action and remedies vested in InfraCo against the Consultant in respect of the Appointment shall vest in the Authority from the date of this Deed.

7.2 The Consultant confirms that at the date of this Deed, it is not aware of any differences or disputes between the Consultant and InfraCo.

### **8 VESTING OF REMEDIES AGAINST THE AUTHORITY**

All rights of action and remedies vested in the Consultant against InfraCo in respect of the Appointment shall lie against the Authority from the date of this Deed.

### **9 FEES AND DISBURSEMENTS**

[The Consultant acknowledges that all fees, disbursements and expenses due to the Consultant under the Appointment to the date of this Deed have been paid in full.]

**10 [AMENDMENT OF APPOINTMENT]**

The Consultant and the Authority agree that upon the Parties entering into this Deed the terms of the Appointment shall be deemed varied in accordance with Appendix 1.]

**11 AFFIRMATION OF APPOINTMENT**

Subject to the terms of this Deed, the Appointment shall remain in full force and effect.

**12 COLLATERAL WARRANTIES AND THIRD PARTY RIGHTS**

12.1 Nothing in this Deed shall affect any collateral warranty given, or to be given, by the Consultant to [InfraCo or to] any third party in respect of the CVL Transformation and / or Associated Projects. Nothing in this Deed shall affect any third party rights in favour of [InfraCo or in favour of] any third party under the Appointment.

12.2 [The Consultant shall execute a collateral warranty in the form annexed at Appendix [3] in favour of InfraCo, to be executed and delivered at the same time as this Deed or, if this Deed has already been executed and delivered, within [14] days of the Authority's request.]

**13 THIRD PARTY RIGHTS**

13.1 Subject to clause 13.2, a person who is not a Party to this Deed shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

13.2 A third party given a collateral warranty by the Consultant may enforce the benefit of clause 12. A third party benefiting from third party rights under the Appointment may enforce the benefit of clause 12.

**14 NOT USED**

**15 COOPERATION**

The Parties shall deliver such documents and perform such acts as may reasonably be necessary for the purpose of giving full effect to the novation.

**16 GOVERNING LAW AND INTERPRETATION**

16.1 This Deed, 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 laws of England and Wales.

16.2 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 Deed or its subject matter or formation (including non-contractual disputes or claims).

16.3 This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

**17 COUNTERPARTS**

This Deed may be entered into in the form of two or more counterparts each executed by one or more of the parties but, taken together, they shall constitute one and the same instrument.

Delivered as a deed on the date of this document.

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

..... Director

[SIGNATURE OF WITNESS]

[NAME OF WITNESS – BLOCK CAPITALS]

[ADDRESS OF WITNESS]

[OCCUPATION OF WITNESS]

**EXECUTED** as a **DEED** by [NAME OF SUB-CONSULTANT] acting by [NAME OF DIRECTOR], a director, in the presence of: .....  
[SIGNATURE OF DIRECTOR]

..... Director

[SIGNATURE OF WITNESS]

[NAME OF WITNESS – BLOCK CAPITALS]

[ADDRESS OF WITNESS]

[OCCUPATION OF WITNESS]

**EXECUTED** as a **DEED** by **TRANSPORT FOR WALES** acting by a director, in the presence of: .....  
[SIGNATURE OF DIRECTOR]

..... Director]

[SIGNATURE OF WITNESS]

[NAME OF WITNESS – BLOCK CAPITALS]

[ADDRESS OF WITNESS]

[OCCUPATION OF WITNESS]

## **Appendix 1**

### **Variations to the terms of the Appointment**

[The Appointment is amended as follows:

*[INSERT AMENDMENTS HERE]*]

## **Appendix 2**

### **Apportionment of Fees**

*[INSERT SCHEDULE SHOWING WHICH FEES HAVE BEEN PAID AND / OR WHICH REMAIN  
OUTSTANDING FOR PAYMENT]*

**Appendix 3**

**Collateral Warranty**

*[INSERT FORM OF COLLATERAL WARRANTY FROM SUBCONSULTANT [OR  
SUBCONTRACTOR] TO INFRACO IF REQUIRED – THE FORM OF COLLATERAL  
WARRANTY  
WILL MIRROR THAT SET OUT IN APPENDIX 9 OF SCHEDULE 3B.]*



**Appendix 9 of Schedule 3B**  
**Forms of Collateral Warranties**

**COLLATERAL WARRANTY: INFRACO TO  
[AUTHORITY]<sup>2</sup>/[FUNDER/TENANT/PURCHASER/  
OTHER BENEFICIARY]<sup>3</sup>**

**relating to the [CVL Transformation and / or Associated  
Projects]**

**[INFRACO]** (1)  
**("INFRACO")**

**[BENEFICIARY]** (2)  
**("Beneficiary")**

**[TRANSPORT FOR WALES]** (3)  
**("Authority")**

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<sup>2</sup> DN: A collateral warranty from InfraCo in favour of the Authority may be required in the event that an infraco is used to appoint InfraCo/Schedule 3B is assigned or transferred to an Infraco. Definitions in collateral warranty to be tailored accordingly if this is required.

<sup>3</sup> DN: Wording in square brackets to refer to any third parties with an interest in the CVL Transformation and / or Associated Projects who require rights from InfraCo.

THIS DEED is made on [DATE]

## BETWEEN

- (1) [INFRACO] incorporated and registered in England and Wales with company number [COMPANY NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] ("**InfraCo**"); and
- (2) [BENEFICIARY] incorporated and registered in England and Wales with company number [COMPANY NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] ("**Beneficiary**"). [and]
- [(3) [TRANSPORT FOR WALES] a company incorporated in England and Wales with registered number 09476013 and whose registered office is at 3 Llys Cadwyn, Pontypridd, Wales, CF37 4TH ("**Authority**").<sup>4</sup>]

## BACKGROUND

- (A) The Authority has engaged InfraCo to Provide the [Principal Infrastructure Services/Additional Infrastructure Services/Infrastructure Services/AKI Infrastructure Works] as described in Schedule 3B of the Infrastructure Agreement ("the **"Services"**")[the **Works**]).
- (B) The Beneficiary, as [insert interest], has an interest in the [Services][Works].
- (C) The Authority requires InfraCo to enter into a collateral warranty in favour of the Beneficiary.
- (D) InfraCo has agreed to enter into this Deed with the Beneficiary [and the Authority], for the benefit of the Beneficiary.

## AGREED TERMS

### 1 DEFINITIONS

- 1.1 In this Deed unless otherwise stated defined terms shall have the same meaning ascribed to them in Schedule 3B of the Infrastructure Agreement. The following terms shall have the following meanings:

**"Infrastructure Agreement"** means an agreement in writing dated [DATE] between InfraCo and the Authority.

**"Party"** means a party to this Deed.

**"Permitted Uses"** means:

- (a) understanding the Infrastructure Works, the CVL Transformation and Associated Projects,
- (b) operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting, upgrading and replacing the Infrastructure Works, any Equipment or Plant and Materials,
- (c) extending, interfacing with, integrating with, connection into and adjusting the Infrastructure Works and/or the CVL Transformation and/or Associated Projects,
- (d) enabling the Beneficiary, Network Rail or Others to carry out the operation, maintenance, repair, modification, alteration, enhancement, re-figuration,

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<sup>4</sup> DN: In the event that the Authority assigns or transfers the benefit of Schedule 3B in accordance with clause 13 of Schedule 3B of the Infrastructure Agreement (Assignment) to a third party in which the Welsh Government shall have a controlling interest, the definition of Authority in this agreement shall be amended accordingly. The Authority is only to be a party to this agreement where step in rights are required.

correction, upgrading and replacement of the CVL Asset and Network Rail's Network,

- (e) enabling the Beneficiary and InfraCo (or any successor operator) to perform their function and duties as Infrastructure Manager and operator of the CVL Asset and Network Rail's Network as relevant, and enabling Network Rail to perform its function and duties as Infrastructure Manager of the CVL Assets and Network Rail's Network as relevant,
- (f) executing and completion the Infrastructure Works, the CVL Transformation and Associated Projects, and
- (g) designing, testing and commissioning the Infrastructure Works, the CVL Transformation and Associated Projects.

**“Project”** means [the CVL Transformation and / or any Associated Projects].

**“Property”** means [TBC]

## **2 COMPLY WITH THE INFRASTRUCTURE AGREEMENT**

2.1 InfraCo warrants to the Beneficiary that:

- (a) it has complied, and shall continue to comply, with its obligations under Schedule 3B of the Infrastructure Agreement and any Package Order;
- (b) [it has executed, and shall continue to execute, the Works in a good and workmanlike manner;]<sup>5</sup>
- (c) it has exercised and shall continue to exercise the Required Standard when:
  - (i) carrying out design in respect of the CVL Transformation and / or Associated Projects; and
  - (ii) selecting goods, materials, plant and equipment for incorporation in the CVL Transformation and / or Associated Projects; and
- (d) has not and will not specify or use Deleterious Materials in the CVL Transformation and / or Associated Projects.

2.2 InfraCo recognises that the Beneficiary has relied on or will rely upon InfraCo's skill and care and on the full and proper performance of InfraCo's obligations under Schedule 3B of the Infrastructure Agreement.

2.3 In proceedings for breach of this clause 2, InfraCo may:

- (a) rely on any limit of liability or other term of Schedule 3B of the Infrastructure Agreement; and
- (b) raise equivalent rights of defence as it would have had if the Beneficiary had been named as a joint employer, with the Authority, under the Infrastructure Agreement (for this purpose not taking into account any set-off or counterclaim against the actual Authority under Schedule 3B of the Infrastructure Agreement).

2.4 InfraCo's duties or liabilities under this Deed shall not be negated or diminished by any:

- (a) approval or inspection of:
  - (i) the CVL Transformation and / or Associated Projects; or

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<sup>5</sup> DN: This clause to be included in collateral warranties provided by InfraCo in respect of the Infrastructure Services.

- (ii) any designs or specifications for the CVL Transformation and / or Associated Projects [or the Works]<sup>6</sup>; or
  - (b) testing of any work, goods, materials, plant or equipment; or
  - (c) omission to approve, inspect or test,
- by or on behalf of the Beneficiary or the Authority.
- 2.5 This Deed shall not negate or diminish any other liability or obligation otherwise owed to the Beneficiary by InfraCo.
- 2.6 InfraCo acknowledges that no amendment to or variation to Schedule 3B of the Infrastructure Agreement, nor any waiver, release, settlement or estoppels in respect of any of InfraCo's obligations under Schedule 3B of the Infrastructure Agreement shall in any way affect InfraCo's obligations to the Beneficiary pursuant to this Deed except in circumstances where the Beneficiary has given its prior written consent to such amendment, variation, waiver, release, settlement or estoppel.
- 3 [STEP-IN RIGHTS: INFRACO MAY NOT TERMINATE OR DISCONTINUE]**
- 3.1 InfraCo shall not exercise, or seek to exercise, any right to:
- (a) terminate its employment under Schedule 3B of the Infrastructure Agreement; or
  - (b) discontinue performance of the [Services][Works]
- for any reason (including any breach on the part of the Authority) without giving the Beneficiary at least twenty (20) Business Days' written notice of its intention to do so. Any notice from InfraCo shall specify the grounds for InfraCo's proposed termination or discontinuance.
- 3.2 If Schedule 3B of the Infrastructure Agreement allows InfraCo a shorter notice period for the exercise of a right referred to in clause 3.1, the notice period in Schedule 3B of the Infrastructure Agreement shall be extended to take account of the notice period required under clause 3.1.
- 3.3 InfraCo's right to terminate its employment under Schedule 3B of the Infrastructure Agreement, or to discontinue performance of the [Services][Works], shall cease if, within the period referred to in clause 3.1, the Beneficiary gives notice to InfraCo, copied to the Authority:
- (a) requiring InfraCo not to terminate its employment or not to discontinue performance of the [Services][Works] under Schedule 3B of the Infrastructure Agreement;
  - (b) acknowledging that the Beneficiary (or its nominee) will assume all the Authority's obligations under Schedule 3B of the Infrastructure Agreement; and
  - (c) undertaking that the Beneficiary or its nominee will pay to InfraCo:
    - (i) any sums due and payable to InfraCo under Schedule 3B of the Infrastructure Agreement in future; and
    - (ii) any sums then due and payable to InfraCo under Schedule 3B of the Infrastructure Agreement that are unpaid.
- 3.4 If the Beneficiary (or its nominee) serves notice on InfraCo under clause 3.3, then, from the date of service of the notice, Schedule 3B of the Infrastructure Agreement shall

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<sup>6</sup> DN: This clause to be included in collateral warranties provided by InfraCo in respect of the Infrastructure Services.

continue in full force and effect, as if it had been entered into between InfraCo and the Beneficiary (to the exclusion of the Authority).

3.5 In complying with this clause 3, InfraCo:

- (a) does not waive any breach of Schedule 3B of the Infrastructure Agreement or default under Schedule 3B of the Infrastructure Agreement by the Authority; and
- (b) may exercise its right to terminate its employment under Schedule 3B of the Infrastructure Agreement, or discontinue performance of the [Services][Works], after the expiry of the notice period referred to in clause 3.1, unless InfraCo's right to terminate or discontinue has ceased under clause 3.3.]

#### **4 [STEP-IN RIGHTS: BENEFICIARY MAY STEP-IN**

4.1 Without affecting clause 3.1, if the Beneficiary serves a notice on InfraCo, copied to the Authority, that:

- (a) confirms that the Beneficiary wishes to step-in to Schedule 3B of the Infrastructure Agreement; and
- (b) complies with the requirements for a Beneficiary's notice under clause 3.3,

then, from the date of service of the notice,

- (i) Schedule 3B of the Infrastructure Agreement shall continue in full force and effect, as if it had been entered into between InfraCo and the Beneficiary (or its nominee), to the exclusion of the Authority;
- (ii) Schedule 3B of the Infrastructure Agreement shall be deemed to include such of the terms and conditions of the Infrastructure Agreement as are strictly necessary to give effect to and continue the operation of Schedule 3B of the Infrastructure Agreement; and
- (iii) The Parties shall take all steps and do all things as necessary to give effect to this clause 4.1 including as may be necessary entering into an amended and re-stated Schedule 3B as a stand-alone document.

4.2 InfraCo shall assume that, between the Authority and the Beneficiary, the Beneficiary may give a notice under clause 4.1. InfraCo shall not enquire whether the Beneficiary may give that notice.

4.3 In complying with this clause 4 InfraCo does not waive any breach of Schedule 3B of the Infrastructure Agreement or default under Schedule 3B of the Infrastructure Agreement by the Authority.]

#### **5 [STEP-IN RIGHTS: INFRACO'S POSITION AND AUTHORITY'S CONSENT**

5.1 InfraCo shall not incur any liability to the Authority by acting in accordance with clause 3 or clause 4.

5.2 The Authority has entered into this Deed to confirm its consent to the agreement.]

#### **6 [STEP-IN RIGHTS: BENEFICIARY'S GUARANTEE**

If a Beneficiary's notice under clause 3 or clause 4 refers to the Beneficiary's nominee, the Beneficiary shall be liable to InfraCo, as guarantor, for the payment of any sums due and payable from time to time to InfraCo from the Beneficiary's nominee.]

#### **7 NO INSTRUCTIONS TO INFRACO BY BENEFICIARY**

[Unless the Beneficiary has stepped-in under clause 3 or clause 4,] the Beneficiary may not give instructions to InfraCo under this Deed.

## **8 [PRIORITY OF STEP-IN]**

Where InfraCo has given rights in relation to Schedule 3B of the Infrastructure Agreement similar to those contained in this Deed to any other person then if both the Beneficiary and any such other person serve notice under clause 3 or clause 4, the notice served by the Beneficiary shall prevail.]

## **9 INTELLECTUAL PROPERTY**

- 9.1 The Parties agree that the Foreground IPR in all Documentation and works that have been created wholly or mainly in connection with the performance of [Works][Services] (including IPR created by a subcontractor or sub-subcontractor of any tier) vests in the [Beneficiary][Authority]. InfraCo shall procure that each subcontractor (or sub-subcontractor of any tier) shall assign such Foreground IPR prepared or developed by or on behalf of the subcontractor (or sub-subcontractor) in the performance of the [Works][Services] to the [Beneficiary][Authority]. InfraCo shall not be liable for any use of the Foreground IPR other than that for which the same was originally prepared and provided.
- 9.2 In respect of InfraCo's Background IPR, InfraCo (as beneficial owner) hereby grants with immediate effect and in respect of Third Party Background IPR, InfraCo shall procure the grant of a non-exclusive, world-wide, perpetual, irrevocable, royalty-free licence (including the right to assign, novate and otherwise transfer and/or grant sub-licences) to the [Beneficiary][Authority] to use InfraCo's Background IPR and Third Party Background IPR for any of the Permitted Uses.
- 9.3 InfraCo shall not be liable for use of the Documentation for any purpose other than that for which it was prepared and / or provided.
- 9.4 InfraCo shall provide to the [Beneficiary][Authority] prompt access to all Documentation in whatever form reasonably requested at any time but at the latest on termination or expiry of the Infrastructure Agreement.
- 9.5 InfraCo indemnifies the [Beneficiary][Authority] against all Losses arising out of any use by the [Beneficiary][Authority] of InfraCo's Background IPR prepared by or on behalf of InfraCo (which is being used for the purpose for which it was provided), including, without limitation, any claim that the exploitation of the licence granted by InfraCo under clause 9.2 infringes the intellectual property rights or other rights of any third party.

## **10 [PROFESSIONAL INDEMNITY INSURANCE]**

- 10.1 InfraCo shall maintain professional indemnity insurance at InfraCo's cost for an amount of at least £[INSERT SUM]m for any one occurrence or series of occurrences arising out of any one event [(and in respect of pollution and contamination an amount of at least £[INSERT SUM] in the annual aggregate and in respect of asbestos an amount of at least £[INSERT SUM] in the annual aggregate)] for a period beginning on the date of this Deed and ending 12 years after Completion, provided that such insurance is available at commercially reasonable rates. InfraCo shall maintain that professional indemnity insurance:
- (a) with reputable insurers lawfully carrying on insurance business in the UK;
  - (b) on customary and usual terms and conditions prevailing for the time being in the insurance market; and
  - (c) on terms that:

- (i) do not require InfraCo to discharge any liability before being entitled to recover from the insurers; and
  - (ii) would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights Against Insurers) Act 2010.
- 10.2 Any increased or additional premium required by insurers because of InfraCo's claims record or other acts, omissions, matters or things particular to InfraCo shall be deemed to be within commercially reasonable rates.
- 10.3 InfraCo shall not, without the Beneficiary's written consent, by any act or omission lose or affect InfraCo's right to make, or proceed with, that claim against the insurers.
- 10.4 InfraCo shall immediately inform the Beneficiary if InfraCo's required professional indemnity insurance ceases to be available at commercially reasonable rates, so that InfraCo and the Beneficiary can discuss how best to protect the respective positions of the Beneficiary and InfraCo regarding the CVL Transformation and / or Associated Projects and the Property, without that insurance.
- 10.5 InfraCo shall fully co-operate with any measures reasonably required by the Beneficiary, including:
  - (a) completing any proposals for insurance and associated documents; or
  - (b) maintaining insurance at rates above commercially reasonable rates, if the Beneficiary reimburses InfraCo for the net cost of that insurance above commercially reasonable rates.
- 10.6 Whenever the Beneficiary reasonably requests, InfraCo shall send the Beneficiary evidence that InfraCo's professional indemnity insurance is in force, including, if required by the Beneficiary, an original letter from InfraCo's insurers or brokers confirming:
  - (a) InfraCo's then current professional indemnity insurance; and
  - (b) that the premiums for that insurance have been paid in full at the date of that letter.]

## **11 LIABILITY PERIOD**

The Beneficiary may not commence any legal action against InfraCo under this Deed after 12 years from the date of Completion.

## **12 ASSIGNMENT**

- 12.1 InfraCo may not assign or transfer any rights under this Deed without the prior written consent of the Beneficiary.
- 12.2 The Beneficiary may assign the benefit of this Deed:
  - (a) on two occasions to any person; and
  - (b) without counting as an assignment under clause 12.2(a):
    - (i) by way of security to a Funder (including any reassignment on redemption of security); or
    - (ii) to and from a subsidiary or other associated companies within the same group of companies as the Beneficiary so long as that assignee company remains within the same group of companies as the Beneficiary; or



- (iii) to and from any third party in which the Welsh Government shall have a controlling interest.

### 13 NOTICES

13.1 Each notice or other communication ("**Notice**") to be given under this Deed 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.

13.2 Any Notice to be given by one Party to another under this Deed shall (unless one Party has specified another address to the other Party, such address to take effect on 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) Beneficiary:

[ADDRESS]

Attention: [CONTACT]

(b) InfraCo:

[ADDRESS]

Attention: [CONTACT]

(c) [Authority:

[ADDRESS]

Attention: [CONTACT]]

13.3 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.

13.4 All notices provided to the Beneficiary should also be copied to Transport for Wales using the following details:

Name: Transport for Wales

Address: 3 Llys Cadwyn, Pontypridd, CF37 4TH

Attention: Operations Director

### 14 THIRD PARTY RIGHTS

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

## **15 GOVERNING LAW AND JURISDICTION**

- 15.1 This Deed, 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.
- 15.2 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 Deed and / or its subject matter or formation (including non-contractual disputes or claims).

This collateral warranty has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

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

..... Director

[SIGNATURE OF WITNESS]

[NAME OF WITNESS – BLOCK CAPITALS]

[ADDRESS OF WITNESS]

[OCCUPATION OF WITNESS]

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

..... Director

[SIGNATURE OF WITNESS]

[NAME OF WITNESS – BLOCK CAPITALS]

[ADDRESS OF WITNESS]

[OCCUPATION OF WITNESS]

**[EXECUTED as a DEED by TRANSPORT FOR WALES]** acting by a director, in the presence of: .....  
[SIGNATURE OF DIRECTOR]

..... Director]

[SIGNATURE OF WITNESS]

[NAME OF WITNESS – BLOCK CAPITALS]

[ADDRESS OF WITNESS]

[OCCUPATION OF WITNESS]]

Part B

Form of Sub-Consultant Collateral Warranty<sup>7</sup>

**COLLATERAL WARRANTY:  
SUBCONSULTANT TO  
AUTHORITY/FUNDER/TENANT/PURCHASER**

**relating to the [CVL Transformation and / or Associated  
Projects]**

**[SUBCONSULTANT]** (1)  
("Subconsultant")

**[BENEFICIARY]** (2)  
("Beneficiary")

**[INFRACO]** (3)  
("InfraCo")

**[TRANSPORT FOR WALES]** (4)  
("Authority")

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<sup>7</sup> DN: Beneficiaries of sub-consultant collateral warranties to include the Authority, Funder, Tenant, Purchaser and any other beneficiary with an interest in the CVL Transformation and / or Associated Projects who require rights.

THIS DEED is made on [DATE]

## BETWEEN

- (1) [SUBCONSULTANT] incorporated and registered in England and Wales with company number [COMPANY NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] ("**Subconsultant**"); and
- (2) [BENEFICIARY] incorporated and registered in England and Wales with company number [COMPANY NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] ("**Beneficiary**"). [and]
- [(3) [INFRACO] incorporated and registered in England and Wales with company number [COMPANY NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] ("**InfraCo**").] [and]
- [(4) [TRANSPORT FOR WALES], whose principal place of business is at 3 Llys Cadwyn, Pontypridd, Wales, CF37 4TH ("**Authority**").]

## BACKGROUND

- (A) The Authority has engaged InfraCo to Provide the [Principal Infrastructure Services/Additional Infrastructure Services/Infrastructure Services/AKI Infrastructure Works] as described in Schedule 3B of the Infrastructure Agreement ([**"the Services"**][**"the Works"**])
- (B) InfraCo has engaged the Subconsultant to Provide the Subconsultant Services.
- (C) The Beneficiary, as [authority][funder][tenant][purchaser], has an interest in the Subconsultant Services.
- (D) InfraCo requires the Subconsultant to enter into a collateral warranty in favour of the Beneficiary.
- (E) The Subconsultant has agreed to enter into this Deed with the Beneficiary [and InfraCo/Authority], for the benefit of the Beneficiary.<sup>8</sup>

## AGREED TERMS

### 1 DEFINITIONS

- 1.1 In this Deed unless otherwise stated defined terms shall have the same meaning ascribed to them in Schedule 3B of the Infrastructure Agreement. The following terms shall have the following meanings:

**"Infrastructure Agreement"** means an agreement in writing dated [DATE] between InfraCo and the Authority

**"Party"** means a party to this Deed.

**"Permitted Uses"** means:

- (a) understanding the Infrastructure Works, the CVL Transformation and Associated Projects,
- (b) operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting, upgrading and replacing the Infrastructure Works, any Equipment or Plant and Materials,

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<sup>8</sup> DN: If a collateral warranty in favour of the Authority is required, insert Authority as Beneficiary and delete recital (4).

- (c) extending, interfacing with, integrating with, connection into and adjusting the Infrastructure Works and/or the CVL Transformation and/or Associated Projects,
- (d) enabling the Beneficiary, Network Rail or Others to carry out the operation, maintenance, repair, modification, alteration, enhancement, re-figuration, correction, upgrading and replacement of the CVL Asset and Network Rail's Network,
- (e) enabling the Beneficiary and InfraCo (or any successor operator) to perform their function and duties as Infrastructure Manager and operator of the CVL Asset and Network Rail's Network as relevant, and enabling Network Rail to perform its function and duties as Infrastructure Manager of the CVL Assets and Network Rail's Network as relevant,
- (f) executing and completion the Infrastructure Works, the CVL Transformation and Associated Projects, and
- (g) designing, testing and commissioning the Infrastructure Works, the CVL Transformation and Associated Projects.

**"Project"** means [the CVL Transformation and / or Associated Projects].

**"Property"** means [TBC].

**"Subconsultant Appointment"** means an agreement in writing dated [DATE] between the Subconsultant and InfraCo.

**"Subconsultant Background IPR"** means all IPR other than Foreground IPR which is or becomes owned by the Subconsultant which is required for the full performance of the Subconsultant Services including that which the Authority needs to use in order for the Authority to enjoy the rights granted to it under or pursuant to Schedule 3B of the Infrastructure Agreement and / or to perform its obligations under or pursuant to Schedule 3B of the Infrastructure Agreement and / or in relation to the CVL Transformation and / or Associated Projects.

**"Subconsultant Services"** means the services referred to in the Subconsultant Appointment, performed by or on behalf of the Subconsultant under the Subconsultant Appointment.

## 2 COMPLY WITH THE SUBCONSULTANT APPOINTMENT

2.1 The Subconsultant warrants to the Beneficiary that:

- (a) it has complied, and shall continue to comply, with its obligations under the Subconsultant Appointment;
- (b) it has exercised and shall continue to exercise the Required Standard when carrying out design in respect of the Subconsultant Services;
- (c) has not and will not specify or use Deleterious Materials in the Subconsultant Services.

2.2 The Subconsultant recognises that the Beneficiary has relied on or will rely upon the Subconsultant's skill and care and on the full and proper performance of the Subconsultant's obligations under the Subconsultant Appointment.

2.3 In proceedings for breach of this clause 2, the Subconsultant may:

- (a) rely on any limit of liability or other term of the Subconsultant Appointment; and

- (b) raise equivalent rights of defence as it would have had if the Beneficiary had been named as a joint employer, with InfraCo, under the Subconsultant Appointment (for this purpose not taking into account any set-off or counterclaim against the actual employer under the Subconsultant Appointment).
- 2.4 The Subconsultant's duties or liabilities under this Deed shall not be negated or diminished by any:
  - (a) approval or inspection of:
    - (i) the Property; or
    - (ii) the Project; or
    - (iii) any designs or specifications for the Property or the Subconsultant Services; or
  - (b) testing of any work, goods, materials, plant or equipment; or
  - (c) omission to approve, inspect or test,
 by or on behalf of the Beneficiary or InfraCo.
- 2.5 [This Deed shall not negate or diminish any other liability or obligation otherwise owed to the Beneficiary by the Subconsultant.]
- 2.6 InfraCo acknowledges that no amendment to or variation to Schedule 3B of the Infrastructure Agreement, nor any waiver, release, settlement or estoppels in respect of any of InfraCo's obligations under Schedule 3B of the Infrastructure Agreement shall in any way affect the Subconsultant's obligations to the Beneficiary pursuant to this Deed except in circumstances where the Beneficiary has given its prior written consent to such amendment, variation, waiver, release, settlement or estoppel.

### **3 [STEP-IN RIGHTS: SUBCONSULTANT MAY NOT TERMINATE OR DISCONTINUE]**

- 3.1 The Subconsultant shall not exercise, or seek to exercise, any right to:
  - (a) terminate its employment under the Subconsultant Appointment; or
  - (b) discontinue performance of the Subconsultant Services,
 for any reason (including any breach on the part of InfraCo) without giving the Beneficiary at least twenty (20) Business Days' written notice of its intention to do so. Any notice from the Subconsultant shall specify the grounds for the Subconsultant's proposed termination or discontinuance.
- 3.2 If the Subconsultant Appointment allows the Subconsultant a shorter notice period for the exercise of a right referred to in clause 3.1, the notice period in the Subconsultant Appointment shall be extended to take account of the notice period required under clause 3.1.
- 3.3 The Subconsultant's right to terminate its employment under the Subconsultant Appointment, or to discontinue performance of the Subconsultant Services, shall cease if, within the period referred to in clause 3.1, the Beneficiary gives notice to the Subconsultant, copied to InfraCo:
  - (a) requiring the Subconsultant not to terminate its employment or not to discontinue performance of the Subconsultant Services under the Subconsultant Appointment;
  - (b) acknowledging that the Beneficiary (or its nominee) will assume all InfraCo's obligations under the Subconsultant Appointment; and

- (c) undertaking that the Beneficiary or its nominee will pay to the Subconsultant:
  - (i) any sums due and payable to the Subconsultant under the Subconsultant Appointment in future; and
  - (ii) any sums then due and payable to the Subconsultant under the Subconsultant Appointment that are unpaid.
- 3.4 If the Beneficiary (or its nominee) serves notice on the Subconsultant under clause 3.3, then, from the date of service of the notice, the Subconsultant Appointment shall continue in full force and effect, as if it had been entered into between the Subconsultant and the Beneficiary (to the exclusion of InfraCo).
- 3.5 In complying with this clause 3, the Subconsultant:
  - (a) does not waive any breach of the Subconsultant Appointment or default under the Subconsultant Appointment by InfraCo; and
  - (b) may exercise its right to terminate its employment under the Subconsultant Appointment, or discontinue performance of the Subconsultant Services, after the expiry of the notice period referred to in clause 3.1, unless the Subconsultant's right to terminate or discontinue has ceased under clause 3.3.

#### **4 STEP-IN RIGHTS: BENEFICIARY MAY STEP-IN**

- 4.1 Without affecting clause 3.1, if the Beneficiary serves a notice on the Subconsultant, copied to InfraCo, that:
  - (a) confirms that the Beneficiary wishes to step-in to the Subconsultant Appointment; and
  - (b) complies with the requirements for a Beneficiary's notice under clause 3.3,
 then, from the date of service of the notice,
  - (i) the Subconsultant Appointment shall continue in full force and effect, as if it had been entered into between the Subconsultant and the Beneficiary (or its nominee), to the exclusion of InfraCo;
  - (ii) The Subconsultant Appointment shall be deemed to include such of the terms and conditions of the Infrastructure Agreement as are strictly necessary to give effect to and continue the operation of the Subconsultant Appointment; and
  - (iii) The Parties shall take all steps and do all things as necessary to give effect to this clause 4.1 including as may be necessary entering into an amended and re-stated Subconsultant Appointment as a stand-alone document.
- 4.2 The Subconsultant shall assume that, between InfraCo and the Beneficiary, the Beneficiary may give a notice under clause 4.1. The Subconsultant shall not enquire whether the Beneficiary may give that notice.
- 4.3 In complying with this clause 4 the Subconsultant does not waive any breach of the Subconsultant Appointment or default under the Subconsultant Appointment by InfraCo.

#### **5 STEP-IN RIGHTS: SUBCONSULTANT'S POSITION AND INFRACO'S CONSENT**

- 5.1 The Subconsultant shall not incur any liability to InfraCo by acting in accordance with clause 3 or clause 4.
- 5.2 InfraCo has entered into this Deed to confirm its consent to the agreement.



## **6 STEP-IN RIGHTS: BENEFICIARY'S GUARANTEE**

If a Beneficiary's notice under clause 3 or clause 4 refers to the Beneficiary's nominee, the Beneficiary shall be liable to the Subconsultant, as guarantor, for the payment of any sums due and payable from time to time to the Subconsultant from the Beneficiary's nominee.

## **7 NO INSTRUCTIONS TO SUBCONSULTANT BY BENEFICIARY**

[Unless the Beneficiary has stepped-in under clause 3 or clause 4,] the Beneficiary may not give instructions to the Subconsultant under this Deed.

## **8 [PRIORITY OF STEP-IN**

Where the Subconsultant has given rights in relation to the Subconsultant Appointment similar to those contained in this Deed to any other person then if both the Beneficiary and any such other person serve notice under clause 3 or clause 4, the notice served by the Beneficiary shall prevail.]

## **9 INTELLECTUAL PROPERTY**

9.1 The Parties agree that the Foreground IPR in all Documentation and works that have been created wholly or mainly in connection with the performance of [Works][Services] (including IPR created by a subcontractor or sub-subcontractor of any tier) vests in the [Beneficiary][Authority]. The Subconsultant shall procure that each subcontractor (or sub-subcontractor of any tier) shall assign such Foreground IPR prepared or developed by or on behalf of the subcontractor (or sub-subcontractor) in the performance of the [Works][Services] to the [Beneficiary][Authority]. The Subconsultant shall not be liable for any use of the Foreground IPR other than that for which the same was originally prepared and provided.

9.2 In respect of the Subconsultant's Background IPR, the Subconsultant (as beneficial owner) hereby grants with immediate effect and in respect of Third Party Background IPR, the Subconsultant shall procure the grant of a non-exclusive, world-wide, perpetual, irrevocable, royalty-free licence (including the right to assign, novate and otherwise transfer and/or grant sub-licences) to the [Beneficiary][Authority] to use the Subconsultant's Background IPR and Third Party IPR for any of the Permitted Uses.

9.3 The Subconsultant shall not be liable for use of the Documentation for any purpose other than that for which it was prepared and / or provided.

9.4 The Subconsultant shall provide to the [Beneficiary][Authority] prompt access to all Documentation in whatever form reasonably requested at any time but at the latest on termination or expiry of the Infrastructure Agreement.

9.5 The Subconsultant indemnifies the [Beneficiary][Authority] against all Losses arising out of any use by the [Beneficiary][Authority] of the Subconsultant's Background IPR prepared by, or on behalf of, the Subconsultant (which is being used for the purpose for which it was provided) including, without limitation, any claim that the exploitation of the licence granted by the Subconsultant under clause 9.2 infringes the intellectual property rights or other rights of any third party.

## **10 [PROFESSIONAL INDEMNITY INSURANCE**

10.1 The Subconsultant shall maintain professional indemnity insurance at the Subconsultant's cost for an amount of at least £[INSERT SUM]m for any one occurrence or series of occurrences arising out of any one event [(and in respect of pollution and contamination an amount of at least £[INSERT SUM] in the annual aggregate and in respect of asbestos an amount of at least £[INSERT SUM] in the annual aggregate)] for a period beginning on the date of this Deed and ending 12 years after the date of practical completion of the Project under the Subconsultant Appointment, provided that such

insurance is available at commercially reasonable rates. The Subconsultant shall maintain that professional indemnity insurance:

- (a) with reputable insurers lawfully carrying on insurance business in the UK;
- (b) on customary and usual terms and conditions prevailing for the time being in the insurance market; and
- (c) on terms that:
  - (i) do not require the Subconsultant to discharge any liability before being entitled to recover from the insurers; and
  - (ii) would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights Against Insurers) Act 2010.

10.2 Any increased or additional premium required by insurers because of the Subconsultant's claims record or other acts, omissions, matters or things particular to the Subconsultant shall be deemed to be within commercially reasonable rates.

10.3 The Subconsultant shall not, without the Beneficiary's written consent, by any act or omission lose or affect the Subconsultant's right to make, or proceed with, that claim against the insurers.

10.4 The Subconsultant shall immediately inform the Beneficiary if the Subconsultant's required professional indemnity insurance ceases to be available at commercially reasonable rates, so that the Subconsultant and the Beneficiary can discuss how best to protect the respective positions of the Beneficiary and the Subconsultant regarding the Project and the Property, without that insurance.

10.5 The Subconsultant shall fully co-operate with any measures reasonably required by the Beneficiary, including:

- (a) completing any proposals for insurance and associated documents; or
- (b) maintaining insurance at rates above commercially reasonable rates, if the Beneficiary reimburses the Subconsultant for the net cost of that insurance above commercially reasonable rates.

10.6 Whenever the Beneficiary reasonably requests, the Subconsultant shall send the Beneficiary evidence that the Subconsultant's professional indemnity insurance is in force, including, if required by the Beneficiary, an original letter from the Subconsultant's insurers or brokers confirming:

- (a) the Subconsultant's then current professional indemnity insurance; and
- (b) that the premiums for that insurance have been paid in full at the date of that letter.]

## **11 LIABILITY PERIOD**

The Beneficiary may not commence any legal action against the Subconsultant under this Deed after 12 years from the date of practical completion of all of the Project.

## **12 ASSIGNMENT**

12.1 The Subconsultant may not assign or transfer any rights under this Deed without the prior written consent of the Beneficiary.

12.2 The Beneficiary may assign the benefit of this Deed:

- (a) on two occasions to any person; and

- (b) without counting as an assignment under clause 12.2(a):
  - (i) by way of security to a Funder (including any reassignment on redemption of security); or
  - (ii) to and from a subsidiary or other associated companies within the same group of companies as the Beneficiary so long as that assignee company remains within the same group of companies as the Beneficiary; or
  - (iii) to and from any third party in which the Welsh Government shall have a controlling interest.

### 13 NOTICES

13.1 Each notice or other communication ("**Notice**") to be given under this Deed 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.

13.2 Any Notice to be given by one Party to another under this Deed shall (unless one Party has specified another address to the other Party, such address to take effect on 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) Beneficiary:  
[ADDRESS]  
Attention: [CONTACT]
- (b) Subconsultant:  
[ADDRESS]  
Attention: [CONTACT]
- (c) [INFRACO:  
[ADDRESS]  
Attention: [CONTACT]]

13.3 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.

13.4 [All notices provided to the Beneficiary should also be copied to Transport for Wales using the following details:

Name: Transport for Wales

Address: 3 Llys Cadwyn, Pontypridd, CF37 4TH

Attention: Operations Director]

#### **14 THIRD PARTY RIGHTS**

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

#### **15 GOVERNING LAW AND JURISDICTION**

- 15.1 This Deed, 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.
- 15.2 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 Deed or its subject matter or formation (including non-contractual disputes or claims).

This collateral warranty has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

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

..... Director

[SIGNATURE OF WITNESS]

[NAME OF WITNESS – BLOCK CAPITALS]

[ADDRESS OF WITNESS]

[OCCUPATION OF WITNESS]

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

..... Director

[SIGNATURE OF WITNESS]

[NAME OF WITNESS – BLOCK CAPITALS]

[ADDRESS OF WITNESS]

[OCCUPATION OF WITNESS]

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

..... Director]

[SIGNATURE OF WITNESS]

[NAME OF WITNESS – BLOCK CAPITALS]

[ADDRESS OF WITNESS]

[OCCUPATION OF WITNESS]

**[EXECUTED]** as a **DEED** by [TRANSPORT .....  
FOR WALES] acting by a director, in the .....  
presence of: [SIGNATURE OF DIRECTOR]

..... Director]

[SIGNATURE OF WITNESS]

[NAME OF WITNESS – BLOCK CAPITALS]

[ADDRESS OF WITNESS]

[OCCUPATION OF WITNESS]]

Part C

Form of Subcontractor Collateral Warranty<sup>9</sup>

**COLLATERAL WARRANTY:  
SUBCONTRACTOR TO  
AUTHORITY/FUNDER/TENANT/PURCHASER**

**relating to the [CVL Transformation and / or Associated  
Projects]**

**[SUBCONTRACTOR]** (1)  
("Subcontractor")

**[BENEFICIARY]** (2)  
("Beneficiary")

**[INFRACO]** (3)  
("InfraCo")

**[TRANSPORT FOR WALES]** (4)  
("Authority")

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<sup>9</sup> DN: Beneficiaries of sub-contractor collateral warranties to include the Authority, Funder, Tenant, Purchaser and any other beneficiary with an interest in the CVL Transformation and / or Associated Projects who require rights.

THIS DEED is made on [DATE]

## BETWEEN

- (1) [SUBCONTRACTOR] incorporated and registered in England and Wales with company number [COMPANY NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] ("**Subcontractor**"); and
- (2) [BENEFICIARY] incorporated and registered in England and Wales with company number [COMPANY NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] ("**Beneficiary**"). [and]
- [(3) [INFRACO] incorporated and registered in England and Wales with company number [COMPANY NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] ("**InfraCo**").] [and]
- [(4) [[**TRANSPORT FOR WALES**], a company incorporated in England and Wales with registered number 09476013 whose principal place of business is at 3 Llys Cadwyn, Pontypridd, Wales, CF37 4TH ("**Authority**").]

## BACKGROUND

- (A) The Authority has engaged InfraCo to Provide the [Principal Infrastructure Services/Additional Infrastructure Services/Infrastructure Services/AKI Infrastructure Works] as described in Schedule 3B of the Infrastructure Agreement ([**"the Services"**][**"the Works"**])
- (B) InfraCo has engaged the Subcontractor to Provide the [design and] construction of the Subcontract Works.
- (C) The Beneficiary, as [authority][funder][tenant][purchaser], has an interest in the Subcontract Works.
- (D) InfraCo requires the Subcontractor to enter into a collateral warranty in favour of the Beneficiary.
- (E) The Subcontractor has agreed to enter into this Deed with the Beneficiary [and InfraCo/Authority], for the benefit of the Beneficiary.<sup>10</sup>

## AGREED TERMS

### 1 DEFINITIONS

- 1.1 In this Deed unless otherwise stated defined terms shall have the same meaning ascribed to them in Schedule 3B of the Infrastructure Agreement. The following terms shall have the following meanings:

**"Infrastructure Agreement"** means an agreement in writing dated [DATE] between InfraCo and the Authority

**"Party"** means a party to this Deed.

**"Permitted Uses"** means:

- (a) understanding the Infrastructure Works, the CVL Transformation and Associated Projects,
- (b) operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting, upgrading and replacing the Infrastructure Works, any Equipment or Plant and Materials,

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<sup>10</sup> DN: If a collateral warranty in favour of the Authority is required, insert Authority as Beneficiary and delete recital (E).

- (c) extending, interfacing with, integrating with, connection into and adjusting the Infrastructure Works and/or the CVL Transformation and/or Associated Projects,
- (d) enabling the Beneficiary, Network Rail or Others to carry out the operation, maintenance, repair, modification, alteration, enhancement, re-figuration, correction, upgrading and replacement of the CVL Asset and Network Rail's Network,
- (e) enabling the Beneficiary and InfraCo (or any successor operator) to perform their function and duties as Infrastructure Manager and operator of the CVL Asset and Network Rail's Network as relevant, and enabling Network Rail to perform its function and duties as Infrastructure Manager of the CVL Assets and Network Rail's Network as relevant,
- (f) executing and completion the Infrastructure Works, the CVL Transformation and Associated Projects, and
- (g) designing, testing and commissioning the Infrastructure Works, the CVL Transformation and Associated Projects.

**"Project"** means [the CVL Transformation and / or Associated Projects].

**"Property"** means [TBC].

**"Subcontract"** means an agreement in writing dated [DATE] between the Subcontractor and InfraCo.

**"Subcontract Works"** means the [design and] construction of the works referred to in the Subcontract, performed by or on behalf of the Subcontractor under the Subcontract.

**"Subcontractor Background IPR"** means all IPR other than Foreground IPR which is or becomes owned by the Subcontractor which is required for the full performance of the Subcontract Works including that which the Authority needs to use in order for the Authority to enjoy the rights granted to it under or pursuant to Schedule 3B of the Infrastructure Agreement and / or to perform its obligations under or pursuant to Schedule 3B of the Infrastructure Agreement and / or in relation to the CVL Transformation and / or Associated Projects.

## 2 COMPLY WITH THE SUBCONTRACT

2.1 The Subcontractor warrants to the Beneficiary that:

- (a) it has complied, and shall continue to comply, with its obligations under the Subcontract;
- (b) [it has executed, and shall continue to execute, the Subcontract Works in a good and workmanlike manner;]<sup>11</sup>
- (c) [it has exercised and shall continue to exercise the Required Standard when:
  - (i) carrying out design in respect of the Subcontract Works; and
  - (ii) selecting goods, materials, plant and equipment for incorporation in the Subcontract Works; and
- (d) has not and will not specify or use Deleterious Materials in the Subcontract Works.]

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<sup>11</sup> DN: To be included in collateral warranties provided by the contractor in respect of the Infrastructure Works.



- 2.2 The Subcontractor recognises that the Beneficiary has relied on or will rely upon the Subcontractor's skill and care and on the full and proper performance of the Subcontractor's obligations under the Subcontract.
- 2.3 In proceedings for breach of this clause 2, the Subcontractor may:
- (a) rely on any limit of liability or other term of the Subcontract; and
  - (b) raise equivalent rights of defence as it would have had if the Beneficiary had been named as a joint employer, with InfraCo, under the Subcontract (for this purpose not taking into account any set-off or counterclaim against the actual employer under the Subcontract).
- 2.4 The Subcontractor's duties or liabilities under this Deed shall not be negated or diminished by any:
- (a) approval or inspection of:
    - (i) the Property; or
    - (ii) the Project; or
    - (iii) any designs or specifications for the Property or the Subcontract Works; or
  - (b) testing of any work, goods, materials, plant or equipment; or
  - (c) omission to approve, inspect or test,
- by or on behalf of the Beneficiary or InfraCo.
- 2.5 [This Deed shall not negate or diminish any other liability or obligation otherwise owed to the Beneficiary by the Subcontractor.]
- 2.6 InfraCo acknowledges that no amendment to or variation to Schedule 3B of the Infrastructure Agreement, nor any waiver, release, settlement or estoppels in respect of any of InfraCo's obligations under Schedule 3B of the Infrastructure Agreement shall in any way affect the Subcontractor's obligations to the Beneficiary pursuant to this Deed except in circumstances where the Beneficiary has given its prior written consent to such amendment, variation, waiver, release, settlement or estoppel.
- 3 [STEP-IN RIGHTS: SUBCONTRACTOR MAY NOT TERMINATE OR DISCONTINUE]**
- 3.1 The Subcontractor shall not exercise, or seek to exercise, any right to:
- (a) terminate its employment under the Subcontract; or
  - (b) discontinue performance of the Subcontract Works,
- for any reason (including any breach on the part of InfraCo) without giving the Beneficiary at least twenty (20) Business Days' written notice of its intention to do so. Any notice from the Subcontractor shall specify the grounds for the Subcontractor's proposed termination or discontinuance.
- 3.2 If the Subcontract allows the Subcontractor a shorter notice period for the exercise of a right referred to in clause 3.1, the notice period in the Subcontract shall be extended to take account of the notice period required under clause 3.1.
- 3.3 The Subcontractor's right to terminate its employment under the Subcontract, or to discontinue performance of the Subcontract Works, shall cease if, within the period referred to in clause 3.1, the Beneficiary gives notice to the Subcontractor, copied to InfraCo:

- (a) requiring the Subcontractor not to terminate its employment or not to discontinue performance of the Subcontract Works under the Subcontract;
  - (b) acknowledging that the Beneficiary (or its nominee) will assume all InfraCo's obligations under the Subcontract; and
  - (c) undertaking that the Beneficiary or its nominee will pay to the Subcontractor:
    - (i) any sums due and payable to the Subcontractor under the Subcontract in future; and
    - (ii) any sums then due and payable to the Subcontractor under the Subcontract that are unpaid.
- 3.4 If the Beneficiary (or its nominee) serves notice on the Subcontractor under clause 3.3, then, from the date of service of the notice, the Subcontract shall continue in full force and effect, as if it had been entered into between the Subcontractor and the Beneficiary (to the exclusion of InfraCo).
- 3.5 In complying with this clause 3, the Subcontractor:
- (a) does not waive any breach of the Subcontract or default under the Subcontract by InfraCo; and
  - (b) may exercise its right to terminate its employment under the Subcontract, or discontinue performance of the Subcontract Works, after the expiry of the notice period referred to in clause 3.1, unless the Subcontractor's right to terminate or discontinue has ceased under clause 3.3.
- 4 STEP-IN RIGHTS: BENEFICIARY MAY STEP-IN**
- 4.1 Without affecting clause 3.1, if the Beneficiary serves a notice on the Subcontractor, copied to InfraCo, that:
- (a) confirms that the Beneficiary wishes to step-in to the Subcontract; and
  - (b) complies with the requirements for a Beneficiary's notice under clause 3.3,
- then, from the date of service of the notice,
- (i) the Subcontract shall continue in full force and effect, as if it had been entered into between the Subcontractor and the Beneficiary (or its nominee), to the exclusion of InfraCo;
  - (ii) The Subcontract shall be deemed to include such of the terms and conditions of the Infrastructure Agreement as are strictly necessary to give effect to and continue the operation of the Subcontract; and
  - (iii) The Parties shall take all steps and do all things as necessary to give effect to this clause 4.1 including as may be necessary entering into an amended and re-stated Subcontract as a stand-alone document.
- 4.2 The Subcontractor shall assume that, between InfraCo and the Beneficiary, the Beneficiary may give a notice under clause 4.1. The Subcontractor shall not enquire whether the Beneficiary may give that notice.
- 4.3 In complying with this clause 4 the Subcontractor does not waive any breach of the Subcontract or default under the Subcontract by InfraCo.

**5 STEP-IN RIGHTS: SUBCONTRACTOR'S POSITION AND INFRACO'S CONSENT**

5.1 The Subcontractor shall not incur any liability to InfraCo by acting in accordance with clause 3 or clause 4.

5.2 InfraCo has entered into this Deed to confirm its consent to the agreement.

**6 STEP-IN RIGHTS: BENEFICIARY'S GUARANTEE**

If a Beneficiary's notice under clause 3 or clause 4 refers to the Beneficiary's nominee, the Beneficiary shall be liable to the Subcontractor, as guarantor, for the payment of any sums due and payable from time to time to the Subcontractor from the Beneficiary's nominee.

**7 NO INSTRUCTIONS TO SUBCONTRACTOR BY BENEFICIARY**

[Unless the Beneficiary has stepped-in under clause 3 or clause 4,] the Beneficiary may not give instructions to the Subcontractor under this Deed.

**8 [PRIORITY OF STEP-IN**

Where the Subcontractor has given rights in relation to the Subcontract similar to those contained in this Deed to any other person then if both the Beneficiary and any such other person serve notice under clause 3 or clause 4, the notice served by the Beneficiary shall prevail.]

**9 INTELLECTUAL PROPERTY**

9.1 The Parties agree that the Foreground IPR in all Documentation and works that have been created wholly or mainly in connection with the performance of [Works][Services] (including IPR created by a subcontractor or sub-subcontractor of any tier) vests in the [Beneficiary][Authority]. The Subcontractor shall procure that each subcontractor (or sub-subcontractor of any tier) shall assign such Foreground IPR prepared or developed by or on behalf of the subcontractor (or sub-subcontractor) in the performance of the [Works][Services] to the [Beneficiary][Authority]. The Subcontractor shall not be liable for any use of the Foreground IPR other than that for which the same was originally prepared and provided.

9.2 In respect of the Subcontractor's Background IPR, the Subcontractor (as beneficial owner) hereby grants with immediate effect and in respect of Third Party Background IPR, the Subcontractor shall procure the grant of a non-exclusive, world-wide, perpetual, irrevocable, royalty-free licence (including the right to assign, novate and otherwise transfer and/or grant sub-licences) to the [Beneficiary][Authority] to use the Subcontractor's Background IPR and Third Party Background IPR for any of the Permitted Uses.

9.3 The Subcontractor shall not be liable for use of the Documentation for any purpose other than that for which it was prepared and / or provided.

9.4 The Subcontractor shall provide to the [Beneficiary][Authority] prompt access to all Documentation in whatever form reasonably requested at any time but at the latest on termination or expiry of the Infrastructure Agreement.

9.5 The Subcontractor indemnifies the [Beneficiary][Authority] against all Losses arising out of any use by the [Beneficiary][Authority] of the Subcontractor's Background IPR prepared by, or on behalf of, the Subcontractor (which is being used for the purpose for which it was provided) including, without limitation, any claim that the exploitation of the licence granted by the Subcontractor under clause 9.2 infringes the intellectual property rights or other rights of any third party.

## **10 [PROFESSIONAL INDEMNITY INSURANCE]**

- 10.1 The Subcontractor shall maintain professional indemnity insurance at the Subcontractor's cost for an amount of at least £[INSERT SUM]m for any one occurrence or series of occurrences arising out of any one event [(and in respect of pollution and contamination an amount of at least £[INSERT SUM] in the annual aggregate and in respect of asbestos an amount of at least £[INSERT SUM] in the annual aggregate)] for a period beginning on the date of this Deed and ending 12 years after the date of practical completion of the Project under the Subcontract, provided that such insurance is available at commercially reasonable rates. The Subcontractor shall maintain that professional indemnity insurance:
- (a) with reputable insurers lawfully carrying on insurance business in the UK;
  - (b) on customary and usual terms and conditions prevailing for the time being in the insurance market; and
  - (c) on terms that:
    - (i) do not require the Subcontractor to discharge any liability before being entitled to recover from the insurers; and
    - (ii) would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights Against Insurers) Act 2010.
- 10.2 Any increased or additional premium required by insurers because of the Subcontractor's claims record or other acts, omissions, matters or things particular to the Subcontractor shall be deemed to be within commercially reasonable rates.
- 10.3 The Subcontractor shall not, without the Beneficiary's written consent, by any act or omission lose or affect the Subcontractor's right to make, or proceed with, that claim against the insurers.
- 10.4 The Subcontractor shall immediately inform the Beneficiary if the Subcontractor's required professional indemnity insurance ceases to be available at commercially reasonable rates, so that the Subcontractor and the Beneficiary can discuss how best to protect the respective positions of the Beneficiary and the Subcontractor regarding the Project and the Property, without that insurance.
- 10.5 The Subcontractor shall fully co-operate with any measures reasonably required by the Beneficiary, including:
- (a) completing any proposals for insurance and associated documents; or
  - (b) maintaining insurance at rates above commercially reasonable rates, if the Beneficiary reimburses the Subcontractor for the net cost of that insurance above commercially reasonable rates.
- 10.6 Whenever the Beneficiary reasonably requests, the Subcontractor shall send the Beneficiary evidence that the Subcontractor's professional indemnity insurance is in force, including, if required by the Beneficiary, an original letter from the Subcontractor's insurers or brokers confirming:
- (a) the Subcontractor's then current professional indemnity insurance; and
  - (b) that the premiums for that insurance have been paid in full at the date of that letter.]

## **11 LIABILITY PERIOD**

The Beneficiary may not commence any legal action against the Subcontractor under this Deed after 12 years from the date of practical completion of all of the Project.

## **12 ASSIGNMENT**

12.1 The Subcontractor may not assign or transfer any rights under this Deed without the prior written consent of the Beneficiary.

12.2 The Beneficiary may assign the benefit of this Deed:

- (a) on two occasions to any person; and
- (b) without counting as an assignment under clause 12.2(a):
  - (i) by way of security to a Funder (including any reassignment on redemption of security); or
  - (ii) to and from a subsidiary or other associated companies within the same group of companies as the Beneficiary so long as that assignee company remains within the same group of companies as the Beneficiary; or
  - (iii) to and from any third party in which the Welsh Government shall have a controlling interest.

## **13 NOTICES**

13.1 Each notice or other communication ("**Notice**") to be given under this Deed 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.

13.2 Any Notice to be given by one Party to another under this Deed shall (unless one Party has specified another address to the other Party, such address to take effect on 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) Beneficiary:  
[ADDRESS]  
Attention: [CONTACT]
- (b) Subcontractor:  
[ADDRESS]  
Attention: [CONTACT]
- (c) [INFRACO]:  
[ADDRESS]  
Attention: [CONTACT]]

13.3 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.

- 13.4 [All notices provided to the Beneficiary should also be copied to Transport for Wales using the following details:

Name: Transport for Wales

Address: 3 Llys Cadwyn, Pontypridd, CF37 4TH

Attention: Operations Director]

#### **14 THIRD PARTY RIGHTS**

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

#### **15 GOVERNING LAW AND JURISDICTION**

- 15.1 This Deed, 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.
- 15.2 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 Deed or its subject matter or formation (including non-contractual disputes or claims).

This collateral warranty has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

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

..... Director

[SIGNATURE OF WITNESS]

[NAME OF WITNESS – BLOCK CAPITALS]

[ADDRESS OF WITNESS]

[OCCUPATION OF WITNESS]

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

..... Director

[SIGNATURE OF WITNESS]

[NAME OF WITNESS – BLOCK CAPITALS]

[ADDRESS OF WITNESS]

[OCCUPATION OF WITNESS]

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

..... Director]

[SIGNATURE OF WITNESS]

[NAME OF WITNESS – BLOCK CAPITALS]

[ADDRESS OF WITNESS]

[OCCUPATION OF WITNESS]

**[EXECUTED]** as a **DEED** by [TRANSPORT .....  
FOR WALES] acting by a director, in the  
presence of: [SIGNATURE OF DIRECTOR]

..... Director]

[SIGNATURE OF WITNESS]

[NAME OF WITNESS – BLOCK CAPITALS]

[ADDRESS OF WITNESS]

[OCCUPATION OF WITNESS]

Part D

Form of InfraCo Subconsultant Collateral Warranty

**COLLATERAL WARRANTY:  
SUBCONSULTANT TO AUTHORITY**

**relating to the CVL Transformation**

<b>[SUBCONSULTANT]</b> <b>("Subconsultant")</b>	<b>(1)</b>
<b>TRANSPORT FOR WALES</b> <b>("Beneficiary")</b>	<b>(2)</b>
<b>AMEY KEOLIS INFRASTRUCTURE/SEILWAITH AMEY KEOLIS LIMITED ("InfraCo")</b>	<b>(3)</b>



**BETWEEN**

- (1) **[SUBCONSULTANT]** incorporated and registered in England and Wales with company number [●] whose registered office is at [●] ("**Subconsultant**");
- (2) **AMEY KEOLIS INFRASTRUCTURE/SEILWAITH AMEY KEOLIS LIMITED** incorporated and registered in England and Wales with company 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 ("**InfraCo**")
- (3) **TRANSPORT FOR WALES**, a company incorporated in England and Wales with registered number 09476013 and whose registered office is at 3 Llys Cadwyn, Pontypridd, Wales, CF37 4TH ("**Beneficiary**").

**BACKGROUND**

- (A) The Beneficiary has engaged InfraCo to Provide the Principal Infrastructure Services as described in Schedule 3B of the Infrastructure Agreement ("the **Services**").
- (B) InfraCo has engaged the Subconsultant to provide the Subconsultant Services.
- (C) The Beneficiary has an interest in the Subconsultant Services.
- (D) InfraCo requires the Subconsultant to enter into a collateral warranty in favour of the Beneficiary.
- (E) The Subconsultant has agreed to enter into this Deed with the Beneficiary, for the benefit of the Beneficiary.

**AGREED TERMS****1 DEFINITIONS**

- 1.1 In this Deed unless otherwise stated defined terms shall have the same meaning ascribed to them in Schedule 3B of the Infrastructure Agreement. The following terms shall have the following meanings:

**"Infrastructure Agreement"** means an agreement in writing dated on or about the date hereof between InfraCo and the Authority.

**"Party"** means a party to this Deed.

**"Permitted Uses"** means:

- (a) understanding the Infrastructure Works, the CVL Transformation and Associated Projects,
- (b) operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting, upgrading and replacing the Infrastructure Works, any Equipment or Plant and Materials,
- (c) extending, interfacing with, integrating with, connection into and adjusting the Infrastructure Works and/or the CVL Transformation and/or Associated Projects,
- (d) enabling the Beneficiary, Network Rail or Others to carry out the operation, maintenance, repair, modification, alteration, enhancement, re-figuration, correction, upgrading and replacement of the CVL Asset and Network Rail's Network,

- (e) enabling the Beneficiary and InfraCo (or any successor operator) to perform their function and duties as Infrastructure Manager and operator of the CVL Asset and Network Rail's Network as relevant, and enabling Network Rail to perform its function and duties as Infrastructure Manager of the CVL Assets and Network Rail's Network as relevant,
- (f) executing and completion the Infrastructure Works, the CVL Transformation and Associated Projects, and
- (g) designing, testing and commissioning the Infrastructure Works, the CVL Transformation and Associated Projects.

**"Project"** means the CVL Transformation.

**"Property"** means the CVL Assets.

**"Subconsultant Appointment"** means an agreement in writing dated on or about the date hereof between the Subconsultant and InfraCo.

**"Subconsultant Background IPR"** means all IPR other than Foreground IPR which is or becomes owned by the Subconsultant which is required for the full performance of the Subconsultant Services including that which the Authority needs to use in order for the Authority to enjoy the rights granted to it under or pursuant to Schedule 3B of the Infrastructure Agreement and / or to perform its obligations under or pursuant to Schedule 3B of the Infrastructure Agreement and / or in relation to the CVL Transformation and / or Associated Projects.

**"Subconsultant Services"** means the services referred to in the Subconsultant Appointment which relate to the carrying out of services related to Schedule 3B of the Infrastructure Agreement, performed by or on behalf of the Subconsultant under the Subconsultant Appointment.

## **2 COMPLY WITH THE SUBCONSULTANT APPOINTMENT**

2.1 The Subconsultant warrants to the Beneficiary that:

- (a) it has complied, and shall continue to comply, with its obligations relating to the Subconsultant Services under the Subconsultant Appointment;
- (b) it has exercised and shall continue to exercise the Required Standard when carrying out design in respect of the Subconsultant Services; and
- (c) has not and will not specify or use Deleterious Materials in the Subconsultant Services.

2.2 The Subconsultant recognises that the Beneficiary has relied on or will rely upon the Subconsultant's skill and care and on the full and proper performance of the Subconsultant's obligations relating to the Subconsultant Services under the Subconsultant Appointment.

2.3 In proceedings for breach of this clause 2, the Subconsultant may:

- (a) rely on any limit of liability or other term of the Subconsultant Appointment; and
- (b) raise equivalent rights of defence as it would have had if the Beneficiary had been named as a joint employer, with InfraCo, under the Subconsultant Appointment (for this purpose not taking into account any set-off or counterclaim against the actual employer under the Subconsultant Appointment).

- 2.4 The Subconsultant's duties or liabilities under this Deed shall not be negated or diminished by any:
- (a) approval or inspection of:
    - (i) the Property; or
    - (ii) the Project; or
    - (iii) any designs or specifications for the Property or the Subconsultant Services; or
  - (b) testing of any work, goods, materials, plant or equipment; or
  - (c) omission to approve, inspect or test,
- by or on behalf of the Beneficiary or InfraCo.
- 2.5 This Deed shall not negate or diminish any other liability or obligation otherwise owed to the Beneficiary by the Subconsultant.
- 2.6 InfraCo acknowledges that no amendment to or variation to Schedule 3B of the Infrastructure Agreement, nor any waiver, release, settlement or estoppels in respect of any of InfraCo's obligations under Schedule 3B of the Infrastructure Agreement shall in any way affect the Subconsultant's obligations to the Beneficiary pursuant to this Deed except in circumstances where the Beneficiary has given its prior written consent to such amendment, variation, waiver, release, settlement or estoppel.

### **3 STEP-IN RIGHTS: SUBCONSULTANT MAY NOT TERMINATE OR DISCONTINUE**

- 3.1 The Subconsultant shall not exercise, or seek to exercise, any right to:
- (a) terminate its employment under the Subconsultant Appointment; or
  - (b) discontinue performance of the Subconsultant Services,
- 3.2 for any reason (including any breach on the part of InfraCo) without giving the Beneficiary at least twenty (20) Business Days' written notice of its intention to do so. Any notice from the Subconsultant shall specify the grounds for the Subconsultant's proposed termination or discontinuance.
- 3.3 If the Subconsultant Appointment allows the Subconsultant a shorter notice period for the exercise of a right referred to in clause 3.1, the notice period in the Subconsultant Appointment shall be extended to take account of the notice period required under clause 3.1.
- 3.4 The Subconsultant's right to terminate its employment under the Subconsultant Appointment, or to discontinue performance of the Subconsultant Services, shall cease if, within the period referred to in clause 3.1, the Beneficiary gives notice to the Subconsultant, copied to InfraCo:
- (a) requiring the Subconsultant not to terminate its employment or not to discontinue performance of the Subconsultant Services under the Subconsultant Appointment;
  - (b) acknowledging that the Beneficiary (or its nominee) will assume all InfraCo's obligations under the Subconsultant Appointment; and
  - (c) undertaking that the Beneficiary or its nominee will pay to the Subconsultant:
    - (i) any sums due and payable to the Subconsultant under the Subconsultant Appointment in future; and

- (ii) any sums then due and payable to the Subconsultant under the Subconsultant Appointment that are unpaid.
- 3.5 If the Beneficiary (or its nominee) serves notice on the Subconsultant under clause 3.3, then, from the date of service of the notice, the Subconsultant Appointment shall continue in full force and effect, as if it had been entered into between the Subconsultant and the Beneficiary (to the exclusion of InfraCo).
- 3.6 In complying with this clause 3, the Subconsultant:
  - (a) does not waive any breach of the Subconsultant Appointment or default under the Subconsultant Appointment by InfraCo; and
  - (b) may exercise its right to terminate its employment under the Subconsultant Appointment, or discontinue performance of the Subconsultant Services, after the expiry of the notice period referred to in clause 3.1, unless the Subconsultant's right to terminate or discontinue has ceased under clause 3.3.

#### **4 STEP-IN RIGHTS: BENEFICIARY MAY STEP-IN**

- 4.1 Without affecting clause 3.1, if the Beneficiary serves a notice on the Subconsultant, copied to InfraCo, that:
  - (a) confirms that the Beneficiary wishes to step-in to the Subconsultant Services under the Subconsultant Appointment; and
  - (b) complies with the requirements for a Beneficiary's notice under clause 3.3,then, from the date of service of the notice,
  - (i) the Subconsultant Appointment shall continue in full force and effect, as if it had been entered into between the Subconsultant and the Beneficiary (or its nominee), to the exclusion of InfraCo;
  - (ii) the Subconsultant Appointment shall be deemed to include such of the terms and conditions of the Infrastructure Agreement as are strictly necessary to give effect to and continue the operation of the Subconsultant Appointment; and
  - (iii) the parties shall take all steps and do all things as necessary to give effect to this clause 4.1 including as may be necessary entering into an amended and re-stated Subconsultant Appointment as a stand-alone document.

- 4.2 The Subconsultant shall assume that, between InfraCo and the Beneficiary, the Beneficiary may give a notice under clause 4.1. The Subconsultant shall not enquire whether the Beneficiary may give that notice.

- 4.3 In complying with this clause 4 the Subconsultant does not waive any breach of the Subconsultant Appointment or default under the Subconsultant Appointment by InfraCo.

#### **5 STEP-IN RIGHTS: SUBCONSULTANT'S POSITION AND INFRACO'S CONSENT**

- 5.1 The Subconsultant shall not incur any liability to InfraCo by acting in accordance with clause 3 or clause 4.
- 5.2 InfraCo has entered into this Deed to confirm its consent to the agreement.

#### **6 STEP-IN RIGHTS: BENEFICIARY'S GUARANTEE**

If a Beneficiary's notice under clause 3 or clause 4 refers to the Beneficiary's nominee, the Beneficiary shall be liable to the Subconsultant, as guarantor, for the payment of any

sums due and payable from time to time to the Subconsultant from the Beneficiary's nominee.

## **7 NO INSTRUCTIONS TO SUBCONSULTANT BY BENEFICIARY**

Unless the Beneficiary has stepped-in under clause 3 or clause 4, the Beneficiary may not give instructions to the Subconsultant under this Deed.

## **8 PRIORITY OF STEP-IN**

Where the Subconsultant has given rights in relation to the Subconsultant Appointment similar to those contained in this Deed to any other person then if both the Beneficiary and any such other person serve notice under clause 3 or clause 4, the notice served by the Beneficiary shall prevail.

## **9 INTELLECTUAL PROPERTY**

9.1 The Parties agree that the Foreground IPR in all Documentation and works that have been created wholly or mainly in connection with the performance of [Works][Services] (including IPR created by a subcontractor or sub-subcontractor of any tier) vests in the [Beneficiary][Authority]. The Subconsultant shall procure that each subcontractor (or sub-subcontractor of any tier) shall assign such Foreground IPR prepared or developed by or on behalf of the subcontractor (or sub-subcontractor) in the performance of the [Works][Services] to the [Beneficiary][Authority]. The Subconsultant shall not be liable for any use of the Foreground IPR other than that for which the same was originally prepared and provided.

9.2 In respect of the Subconsultant's Background IPR, the Subconsultant (as beneficial owner) hereby grants with immediate effect and in respect of Third Party Background IPR, the Subconsultant shall procure the grant of a non-exclusive, world-wide, perpetual, irrevocable, royalty-free licence (including the right to assign, novate and otherwise transfer and/or grant sub-licences) to the [Beneficiary][Authority] to use the Subconsultant's Background IPR and Third Party Background IPR for any of the Permitted Uses.

9.3 The Subconsultant shall not be liable for use of the Documentation for any purpose other than that for which it was prepared and / or provided.

9.4 The Subconsultant shall provide to the [Beneficiary][Authority] prompt access to all Documentation in whatever form reasonably requested at any time but at the latest on termination or expiry of the Infrastructure Agreement.

9.5 The Subconsultant indemnifies the [Beneficiary][Authority] against all Losses arising out of any use by the [Beneficiary][Authority] of the Subconsultant's Background IPR prepared by, or on behalf of, the Subconsultant (which is being used for the purpose for which it was provided) including, without limitation, any claim that the exploitation of the licence granted by the Subconsultant under clause 9.2 infringes the intellectual property rights or any other rights of any third party.

## **10 PROFESSIONAL INDEMNITY INSURANCE**

10.1 The Subconsultant shall maintain professional indemnity insurance at the Subconsultant's cost for an amount of at least [REDACTED] for any one occurrence or series of occurrences arising out of any one event for a period beginning on the date of this Deed and ending 12 years after the date of practical completion of the Project under the Subconsultant Appointment, provided that such insurance is available at commercially reasonable rates. The Subconsultant shall maintain that professional indemnity insurance:

(a) with reputable insurers lawfully carrying on insurance business in the UK;

- (b) on customary and usual terms and conditions prevailing for the time being in the insurance market; and
  - (c) on terms that:
    - (i) do not require the Subconsultant to discharge any liability before being entitled to recover from the insurers; and
    - (ii) would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights Against Insurers) Act 2010.
- 10.2 Any increased or additional premium required by insurers because of the Subconsultant's claims record or other acts, omissions, matters or things particular to the Subconsultant shall be deemed to be within commercially reasonable rates.
- 10.3 The Subconsultant shall not, without the Beneficiary's written consent, by any act or omission lose or affect the Subconsultant's right to make, or proceed with, that claim against the insurers.
- 10.4 The Subconsultant shall immediately inform the Beneficiary if the Subconsultant's required professional indemnity insurance ceases to be available at commercially reasonable rates, so that the Subconsultant and the Beneficiary can discuss how best to protect the respective positions of the Beneficiary and the Subconsultant regarding the Project and the Property, without that insurance.
- 10.5 The Subconsultant shall fully co-operate with any measures reasonably required by the Beneficiary, including:
- (a) completing any proposals for insurance and associated documents; or
  - (b) maintaining insurance at rates above commercially reasonable rates, if the Beneficiary reimburses the Subconsultant for the net cost of that insurance above commercially reasonable rates.
- 10.6 Whenever the Beneficiary reasonably requests, the Subconsultant shall send the Beneficiary evidence that the Subconsultant's professional indemnity insurance is in force, including, if required by the Beneficiary, an original letter from the Subconsultant's insurers or brokers confirming:
- (a) the Subconsultant's then current professional indemnity insurance; and
  - (b) that the premiums for that insurance have been paid in full at the date of that letter.

## **11 LIABILITY PERIOD**

The Beneficiary may not commence any legal action against the Subconsultant under this Deed after 12 years from the date of practical completion of all of the Project.

## **12 ASSIGNMENT**

- 12.1 The Subconsultant may not assign or transfer any rights under this Deed without the prior written consent of the Beneficiary.
- 12.2 The Beneficiary may assign the benefit of this Deed:
- (a) on two occasions to any person; and
  - (b) without counting as an assignment under clause 12.2(a):
    - (i) by way of security to a Funder (including any reassignment on redemption of security); or

- (ii) to and from a subsidiary or other associated companies within the same group of companies as the Beneficiary so long as that assignee company remains within the same group of companies as the Beneficiary; or
- (iii) to and from any third party in which the Welsh Government shall have a controlling interest.

### **13 NOTICES**

13.1 Each notice or other communication ("**Notice**") to be given under this Deed 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.

13.2 Any Notice to be given by one Party to another under this Deed shall (unless one Party has specified another address to the other Party, such address to take effect on 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) Beneficiary:

3 Llys Cadwyn

Pontypridd

Wales

CF37 4TH

Attention: Legal Services Director

(b) Subconsultant:

[ADDRESS]

Attention: [CONTACT]

(c) InfraCo:

[ADDRESS]

Attention: [CONTACT]

13.3 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.

### **14 THIRD PARTY RIGHTS**

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

**15      GOVERNING LAW AND JURISDICTION**

- 15.1      This Deed, 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.
- 15.2      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 Deed or its subject matter or formation (including non-contractual disputes or claims).



This collateral warranty has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

**EXECUTED** as a **DEED** by  
[SUBCONSULTANT] acting by a director, in  
the presence of:

.....  
SIGNATURE OF DIRECTOR  
.....  
SIGNATURE OF WITNESS Director  
NAME OF WITNESS – BLOCK CAPITALS  
ADDRESS OF WITNESS  
OCCUPATION OF WITNESS

**EXECUTED** as a **TRANSPORT FOR WALES** acting by a director, in the presence of:

.....  
SIGNATURE OF DIRECTOR  
.....  
SIGNATURE OF WITNESS Director  
NAME OF WITNESS – BLOCK CAPITALS  
ADDRESS OF WITNESS  
OCCUPATION OF WITNESS

**EXECUTED** as a **DEED** by **AMEY KEOLIS INFRASTRUCTURE/SEILWAITH AMEY KEOLIS LIMITED** acting by a director, in the presence of:

.....  
SIGNATURE OF DIRECTOR  
Director  
.....  
SIGNATURE OF WITNESS  
NAME OF WITNESS  
ADDRESS OF WITNESS  
OCCUPATION OF WITNESS

**Appendix 10 of Schedule 3B**

**Form of Performance Bond**

**GUARANTEE BOND**

**relating to the provision of the Infrastructure  
Services and AKI Infrastructure Works in  
connection with the CVL Transformation and / or  
Associated Projects**

**Transport for Wales** (1)  
**("Authority")**

and

**Amey Keolis Infrastructure / Seilwaith Amey Keolis Limited** (2)  
**("InfraCo")**

and

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

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

**BETWEEN**

- (1) **TRANSPORT FOR WALES** a company incorporated in England and Wales with registered number 09476013 and whose registered office is at 3 Llys Cadwyn, Pontypridd, Wales, CF37 4TH ("**Authority**");
- (2) **AMEY KEOLIS INFRASTRUCTURE / SEILWAITH AMEY KEOLIS LIMITED** incorporated and registered in England and Wales with company number 11389544 whose registered office is at Transport For Wales CVL Infrastructure Depot, Ty Trefnidiaeth, Treforest Industrial Estate, Gwent Road, Pontypridd, CF37 5UT ("**InfraCo**"); and
- (3) [**GUARANTOR**] incorporated and registered in England and Wales with company number [COMPANY NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] ("**Guarantor**").

**BACKGROUND**

- (A) The Authority is party to an agreement which was originally entered into on 12 October 2018 between Keolis Amey Wales Cymru Limited (company number 11391059) (the "**ODP**") and InfraCo, which was subsequently novated from the ODP to the Authority pursuant to a deed of novation entered into between [INSERT PARTIES] on [INSERT DATE] (the "**Infrastructure Agreement**").
- (B) Pursuant to Schedule 3B of the Infrastructure Agreement ("**Schedule 3B**"), InfraCo is required to provide the Infrastructure Services and any Additional Infrastructure Services and/or AKI Infrastructure Works instructed by the Authority to be provided by InfraCo in accordance with Schedule 3B pursuant to a Package Order.
- (C) Pursuant to Schedule 3B, InfraCo is required to obtain and maintain, or procure the obtaining and maintaining of, a bond in the form of this Bond to be provided by the Guarantor to the Authority.
- (D) For the avoidance of doubt, this bond relates solely to InfraCo's obligations set out in Schedule 3B in respect of [the Infrastructure Services and AKI Infrastructure Works to be provided by InfraCo in relation to the CVL Transformation / the [Additional Infrastructure Services / AKI Infrastructure Works] provided by InfraCo in relation to an Associated Project]<sup>12</sup>.

**AGREED TERMS**

**1 DEFINITIONS**

- 1.1 In this Bond unless otherwise stated defined terms shall have the same meaning ascribed to them in Schedule 3B. The following terms shall have the following meanings:

"**Bond**" means this bond.

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

"**Insolvency**" has the meaning given to it in Schedule 10.2 to the Infrastructure Agreement.

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

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<sup>12</sup> DN: Select as applicable.

**"Maximum Amount"** means the maximum amount of this Bond which shall not exceed in aggregate [REDACTED]<sup>13</sup>.

**"Party"** means a party to this Bond.

## **2 PAYMENT**

2.1 The Guarantor guarantees to pay to the Authority any and all Loss caused by:

- (a) InfraCo's breach of Schedule 3B; and / or
- (b) Insolvency of InfraCo,

up to the Maximum Amount, but shall not be required to pay any losses, liabilities, costs or expenses in connection with:

- (i) the Authority's mobilisation of, and transfer of responsibility to, Wales Infrastructure Manager of Last Resort Limited (company number 12213395 or procurement costs in respect of a Successor Operator (as defined in the Infrastructure Agreement); or
- (ii) InfraCo's failure to comply with its obligations under Schedule 14 (Preservation of Assets) and/or Schedule 15 (Obligations associated with Termination) of the Infrastructure Agreement.

2.2 The Authority may deliver a Demand to the Guarantor requiring the Guarantor to pay the Loss specified in the Demand, up to the Maximum Amount. Subject to Clause 2.1, the Guarantor shall pay the sum specified in the Demand to the Authority within 5 Business Days of receipt of the Demand.

2.3 The Demand must:

- (a) be in writing and state:
  - (i) the breach or Insolvency of InfraCo 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 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 expire on the earliest of:

- (a) the date of issue of the final defects certificate in relation to the whole of the CVL Transformation<sup>14</sup>; and

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<sup>13</sup> DN: the Maximum Amount of [REDACTED] shall be included where clause 16.2 of Schedule 3B of the Infrastructure Agreement applies. Where the performance bond relates to Associated Projects, the Maximum Amount to be set out here shall be such amount calculated in accordance with clause 16.3A of Schedule 3B of the Infrastructure Agreement.

<sup>14</sup> DN: in relation to the performance bond referred to in clause 16.2 of Schedule 3B of the Infrastructure Agreement, the wording set out in clause 3 of the performance bond as drafted applies. Where the performance bond relates to

(b) [INSERT DATE REQUIRED BY PARAGRAPH 16.2 OF SCHEDULE 3B]

(hereinafter referred to as "**Expiry**").

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

#### **4 VARIATIONS TO SCHEDULE 3B**

- 4.1 Schedule 3B may be modified, amended or supplemented in any way without the consent of the Guarantor.

- 4.2 The 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 InfraCo;
- (b) invalidity, avoidance or termination of Schedule 3B;
- (c) any alteration of the terms, conditions or provisions of Schedule 3B;
- (d) the extent or nature of Schedule 3B;
- (e) the entry into of any Package Order between the Authority and InfraCo pursuant to the terms of Schedule 3B; or
- (f) any extension of time under Schedule 3B,

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

#### **5 PRIORITY OF CLAIMS AGAINST INFRACO**

- 5.1 Until the Authority has recovered all sums due to it under or in connection with Schedule 3B, the 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 InfraCo in competition with the Authority; or
- (b) enforce any security over the assets of InfraCo in respect of any such payment or liability in competition with the Authority.

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

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

- (a) to pay to the Authority any sums due from InfraCo to the Authority under or in connection with Schedule 3B; and
- (b) subject to Clause 5.2(a), for the benefit of the 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 InfraCo in favour of the Authority under or in connection

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Associated Projects, the Expiry Date to be set out here shall be finalised in accordance with clause 16.3A of Schedule 3B of the Infrastructure Agreement and the drafting of clause 3 of the performance bond amended accordingly.

with Schedule 3B shall be conclusive evidence of any liability of InfraCo to which that judgment, award, agreement or decision relates.

6.2 Insolvency of InfraCo shall not reduce, release or impair the liability of the 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, Notices 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 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:

[Transport for Wales  
3 Llys Cadwyn  
Pontypridd  
Wales  
CF37 4TH]

Attention: [Director of Rail Operations]

(b) Guarantor:

[ADDRESS]

Attention: [CONTACT]

(c) InfraCo:

Amey Keolis Infrastructure / Seilwaith Amey Keolis Limited  
10 Furnival Street  
London  
EC4A 1AB

7.3 Attention: secretariat@amey.co.uk 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 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 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 Infrastructure Agreement).

## **9 RIGHTS OF THIRD PARTIES**

- 9.1 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 and takes effect on the date stated at the beginning of it.

**EXECUTED** as a **DEED** by **TRANSPORT FOR WALES** acting by a director, in the presence of:

.....  
[SIGNATURE OF WITNESS]

[NAME OF WITNESS – BLOCK CAPITALS]

[ADDRESS OF WITNESS]

[OCCUPATION OF WITNESS]

**EXECUTED** as a **DEED** by **AMEY KEOLIS INFRASTRUCTURE / SEILWAITH AMEY KEOLIS LIMITED** 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]

**EXECUTED** as a **DEED** by [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

.....  
[SIGNATURE OF DIRECTOR]  
Director

.....  
[SIGNATURE OF DIRECTOR]  
Director





### **Appendix 11 of Schedule 3B**

#### **Milestone Table for Principal Infrastructure Services**

##### **Milestone Criteria – KEY:**

- A Clear, complete, accurate, compliant with relevant regulations, consistent with the terms of the Infrastructure Agreement and CVL design, good value to the Authority and follows Good Industry Practice. Where an initial version of a document is submitted, it should be based on information reasonably available for that stage of development
- B As per the Process for Acceptance of Document Deliverables set out in Schedule 18.3 Appendix 1
- C Consistent with the principles in the initial version submitted in the Final Tender, and as amended by previous Stagegate close out.
- D Clearly identified: timescales, resource requirements, management, governance and control points, risks and issues. Evidence that resources are in place to deliver.
- E A set of deliverables as defined within the Authority's Plan of Works and associated annexes and their compliance with the CVL Engineering Requirements, CVL Requirements Summary and the Design Standards as agreed between InfraCo and the Authority.

For the avoidance of doubt, Achievement of a Planned Milestone Deliverable Delivery Date shown in the Milestone Table does not trigger payment of a Milestone Payment and failure to Achieve a Planned Milestone Deliverable Delivery Date shown in the Milestone Table does not trigger payment of a Milestone Delay Payment. As more particularly set out in the Conditions of Contract for Infrastructure Services, Milestone Payments are triggered by Achievement of the relevant Milestone, and Milestone Delay Payments are triggered by the InfraCo's failure to Achieve a Planned Milestone Delivery Date.

Milestone reference	Date of Certificate of Completion	Milestone Payment	Milestone Delay Payment (per week)	Milestone Delay Payment Cap	Programme reference	Planned Milestone Delivery date	Planned Milestone Deliverable Delivery Date	
CVL Milestone 1	03-Sep-18							
CVL Milestone 2	18-Dec-18							
CVL Milestone 3	22-Feb-19							
CVL Milestone 4	02-Jul-19							
CVL Milestone 5	06-Dec-19							
CVL Milestone 6	11-Mar-20							
CVL Milestone 7	30-Apr-20							
CVL Milestone 8	20-Oct-20							
CVL Milestone 9 - TAM Stage C designs complete						24-May-21		
Stage Gate Approval - CVLICC Building					CVL-ME1-RS0ICC-C-ALL-99750		13-Sep-19 A	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Stage C - Design Finish E&P and Highways CVLICC					CVL-ME1-RS0ICC-C-ALL-24780		17-Sep-19 A	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Stage Gate Approval - CVLICC Stage C					CVL-ME1-RS0ICC-C-ALL-35110		17-Sep-19 A	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Stage Gate Approval for Stage C Taff's Well Depot					CVL-ME1-RS0TAF-C-ALL-34580		13-Feb-20 A	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Civils Form 001 Submitted - TPS					CVL-ME2-RS0TPS-C-CIV-98760		17-Feb-20 A	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Signalling Stage C Design Completion CVLICC					CVL-ME1-RS0ICC-C-ALL-96240		31-Mar-20 A	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
CVL Red Line 3 - Stadler Initial Battery Modelling					CVL-116900		08-Jul-20 A	Objective evidence provided that all the Stadler Battery Model has been submitted and accepted
CVL Red Line 5 - Passenger Exchange Requirements - Platform Extensions					CVL-116920		25-Sep-20 A	A, B, C, E Supported by objective evidence that the Passenger Exchange Requirements for platform extensions is complete
Completion of all identified Critical Actions by M8 - Ref Doc Tfw tracker 20/12/2019					CVL-114460		25-Sep-20	Objective evidence that the items listed as Red Lines and critical actions for M8 are completed
Stage Gate Approval - Signalling Stage C (Ex MS6)					CVL-ME1-RS0ICC-C-ALL-25700		25-Sep-20	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Stage Gate Approval for Stage C - Traction Power (Ex MS6) including Issue ECC					CVL-ME2-RS0TPS-C-ALL-26750		01-Oct-20	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Acceptance of PMO management plans					CVL-111930		08-Oct-20	D Acceptance by Tfw of the management plans submitted by the ODP.
Agreement of Transformation proposal					CVL-116830		09-Oct-20	D Acceptance by Tfw of the final Transformation Proposal submitted by the ODP.
Transformation proposal Agreed					CVL-23190		09-Oct-20	D Acceptance by Tfw of the final Transformation Proposal submitted by the ODP.
Complete closure of Programme open items (QSRA report P80 no longer relevant)					CVL-111210		20-Oct-20	Objective evidence that the Open items for the Integrated Master Programme have been closed to enable 'programme acceptance' and provision of a QSRA
Design Finish CTL Stage C					CVL-ME1-RS3CTL-C-ALL-24590		29-Oct-20	A, B, C, E Supported by objective evidence inclusive of production of ECC encompassing all disciplines that all CTL Stage C design are complete
Design Finish R2P Stage C (Ex MS6)					CVL-ME1-RS0R2P-C-ALL-26580		03-Nov-20	A, B, C, E Supported by objective evidence inclusive of production of ECC encompassing all disciplines that all R2P Stage C design are complete

Design Finish ABD Stage C					CVL-ME1-RS1ABD-C-ALL-24530		05-Nov-20	A, B, C, E Supported by objective evidence inclusive of production of ECC encompassing all disciplines that all ABD Stage C design are complete
Acceptance of Programme - complete closure of open items & QSRA report P80					CVL-111920		24-Nov-20	D Acceptance by TfW of the Integrated Master Programme submitted by the ODP.
Design Finish MER Stage C					CVL-ME1-RS1MER-C-ALL-26600		16-Dec-20	A, B, C, E Supported by objective evidence inclusive of production of ECC encompassing all disciplines that all MER Stage C design are complete
Design Finish THT Stage C					CVL-ME1-RS2THT-C-ALL-24570		06-Jan-21	A, B, C, E Supported by objective evidence inclusive of production of ECC encompassing all disciplines that all THT Stage C design are complete
CVL Red Line 4 - Operational Modelling & Timetabling					CVL-116910		08-Jan-21	A, B, C, E Supported by objective evidence that the operational Modelling & timetabling is complete
Design Finish QSS (TAM) Stage C					CVL-ME1-RS1QSS-C-ALL-69750		24-May-21	A, B, C, E Supported by objective evidence inclusive of production of ECC encompassing all disciplines that all QSS Stage C design are complete
CVL Milestone 9 - TAM Stage C Designs complete					CVL-111150		24-May-21	A, B, C, E Supported by objective evidence inclusive of production of ECC encompassing all disciplines that all TAM Stage C design are complete
CVL Milestone 10 - TAM Stage E Detail Design Complete						17-Aug-22		
Issue AFC - Pway - Devils Bridge - Removed from scope					CVL-ME2-RS0R2P-E-PWY-111300		14-Feb-20 A	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFC - Treforest Estate New Station Slew					CVL-ME1-RS0R2P-E-PWY-111280		14-Aug-20 A	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFCs - Level crossing closures					CVL-ME1-RS0R2P-E-CIV-73090		11-Nov-20	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Stage E Design Finish ICC Building					CVL-ME1-RS0ICC-E-ALL-35680		13-Nov-20	A, B, C, E Supported by objective evidence inclusive of production of ECC encompassing all disciplines that all ICC Building Stage E design are complete
Issue AFC - Pway - Level Boarding					CVL-ME2-RS0R2P-E-PWY-111330		20-Nov-20	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFC - Pway - Line Speed Improvements					CVL-ME2-RS0R2P-E-PWY-111350		24-Nov-20	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFC - Bridge Parapets					CVL-ME2-RS0R2P-E-CIV-111890		26-Nov-20	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFCs - Mountain Ash loop ABD					CVL-ME1-RS1ABD-E-PWY-111370		26-Nov-20	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Stage E - Pway - Taffs Well AFC					CVL-ME1-RS0R2P-E-PWY-111270		26-Nov-20	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFC - Gelinys Bridge					CVL-ME1-RS0R2P-E-HW-111260		04-Dec-20	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFC - Pway - Ynysgau					CVL-ME2-RS0R2P-E-PWY-111310		11-Dec-20	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFCs - Cwmcynon Track Lower (Works to be removed)					CVL-ME2-RS1ABD-E-PWY-111380		15-Dec-20	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFCs - Aberdare to Cwmbach ABD					CVL-ME1-RS1ABD-E-PWY-111360		16-Dec-20	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFCs - Signal Civils & LOC bases ABD					CVL-ME1-RS1ABD-E-SIG-111350		22-Dec-20	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFCs - Old Colliery Track Lower					CVL-ME2-RS1ABD-E-PWY-111390		29-Dec-20	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFC - Highways TAF					CVL-ME1-RS0TAF-E-HW-99160		31-Dec-20	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.

Stage E Issue AFC - Treforest Station & Footbridge R2P - Completion					CVL-ME1-RS0R2P-E-CIV-111240		08-Jan-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Stage E Issue AFC - Taffs Well Station & Footbridge R2P - Completion					CVL-ME1-RS0R2P-E-CIV-111250		08-Jan-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Stage E Issue AFC - UTXs R2P - Completion					CVL-ME1-RS0R2P-E-CIV-111290		08-Jan-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFCs - OLE - Bridge Parapet works					CVL-ME2-RS1ABD-E-CIV-111910		12-Jan-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFC - Signalling TAF					CVL-ME1-RS0TAF-E-SIG-64230		12-Jan-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFC - OLE - R2P					CVL-ME2-RS0R2P-E-OLE-111880		14-Jan-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFC - Car park TAF					CVL-ME1-RS0TAF-E-BDG-72860		19-Jan-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFC - Maintenance Building TAF					CVL-ME1-RS0TAF-E-BDG-72850		02-Feb-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFC Civils Structures TAF					CVL-ME1-RS0TAF-E-CIV-61730		02-Feb-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFC PWay - Pontygwaith TL					CVL-ME1-RS1MER-E-PWY-107030		02-Feb-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFCs Civils THT					CVL-ME1-RS2THT-E-CIV-15070		02-Feb-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFCs - OLE ABD					CVL-ME2-RS1ABD-E-OLE-111900		04-Feb-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Stage E Civils Design R2P - Completion					CVL-ME1-RS0R2P-E-CIV-111350		05-Feb-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFC - Pway TAF					CVL-ME1-RS0TAF-E-PWY-64190		09-Feb-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue LOC Drawing AFC Drop 3 (4 off)					CVL-ME1-RS1MER-E-SIG-106980		22-Feb-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFC Rhymney TPS					CVL-ME2-RS0TPS-E-TPS-114430		04-Mar-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFC Queen St North TPS					CVL-ME2-RS0TPS-E-TPS-114410		04-Mar-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFC Abercynon TPS					CVL-ME2-RS0TPS-E-TPS-114390		04-Mar-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFC Taffs Well TPS					CVL-ME2-RS0TPS-E-TPS-114370		04-Mar-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFC Pontypridd TPS					CVL-ME2-RS0TPS-E-TPS-114350		04-Mar-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFC Upper Boat TPS					CVL-ME2-RS0TPS-E-TPS-114330		04-Mar-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFC - OLE TAF					CVL-ME1-RS0TAF-E-OLE-64150		09-Mar-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Detail Design Finish TAF Depot					CVL-ME1-RS0TAF-E-ALL-23480		09-Mar-21	A, B, C, E Supported by objective evidence that all Taffs well depot design are complete

Issue AFC Radyr TPS					CVL-ME2-RS0TPS-E-TPS-114310		11-Mar-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue LOC Drawing AFC Drop 4 (4 off) MER					CVL-ME1-RS1MER-E-SIG-107080		19-Mar-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFC Cardiff Canton TPS					CVL-ME2-RS0TPS-E-TPS-08430		30-Mar-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFCs - Aberdare Station					CVL-ME1-RS1ABD-E-CIV-111340		31-Mar-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFC All sites - TPS					CVL-ME2-RS0TPS-E-TPS-114290		13-Apr-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFC - TPS CIV					CVL-ME2-RS0TPS-E-CIV-96910		13-Apr-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFC - TPS E&P					CVL-ME2-RS0TPS-E-EP-96970		13-Apr-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFCs Signalling - ABD					CVL-ME1-RS1ABD-E-SIG-111400		16-Apr-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Design Finish ABD Stage E					CVL-ME1-RS1ABD-E-RA-33830		16-Apr-21	A, B, C, E Supported by objective evidence inclusive of production of ECC encompassing all disciplines that all ABD Stage E design are complete
Issue AFCs - Signalling THT					CVL-ME1-RS2THT-E-SIG-13780		26-Apr-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Detail Design Milestone - Line of route MER					CVL-ME1-RS1MER-E-CIV-107040		29-Apr-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFCs Signalling Civils					CVL-ME1-RS3CTL-E-CIV-111840		13-May-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
RS1MER Issue AFC PWay - Pentre Bach MER					CVL-ME1-RS1MER-E-PWY-09060		19-May-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFCs Signalling					CVL-ME1-RS3CTL-E-SIG-111850		10-Jun-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFCs GEO THT					CVL-ME1-RS2THT-E-GEO-74060		15-Jun-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
RS1MER Issue AFC PWay - Quakers Yard MER					CVL-ME1-RS1MER-E-PWY-107010		02-Jul-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFCs Station refurb					CVL-ME1-RS3CTL-E-CIV-111830		19-Jul-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFCs Bridge / Parapet Works MER					CVL-ME1-RS1MER-E-CIV-08730		22-Jul-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFCs Dinas Rhondda Station/ Platform Works THT					CVL-ME1-RS2THT-E-CIV-116700		16-Aug-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFCs - OLE CTL					CVL-ME3-RS3CTL-F-OLE-111440		18-Aug-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
P-way Stage E - Dinas Rhondda to Porth loop & William Place lowering - Issue AFCs					CVL-ME1-RS2THT-E-PWY-107320		19-Aug-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFCs - Rhondda College Footbridge - THT					CVL-ME1-RS2THT-E-CIV-15300		23-Aug-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFCs Ynyswen Station / Platform Works THT					CVL-ME1-RS2THT-E-CIV-15270		26-Aug-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.

Issue OLE AFCs MER					CVL-ME4-RS1MER-E-OLE-01550		07-Sep-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFCs Bridge Parapet Works THT					CVL-ME4-RS2THT-E-CIV-14830		07-Oct-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFCs Station / Platform Works MER					CVL-ME1-RS1MER-E-CIV-13610		13-Oct-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFCs Station Refurbishment MER					CVL-ME1-RS1MER-E-CIV-25450		13-Oct-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFCs Civils THT					CVL-ME4-RS2THT-E-CIV-09910		18-Oct-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFCs Treherbert Station/ Platform Works					CVL-ME1-RS2THT-E-CIV-116720		22-Oct-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Design Finish CTL Stage E					CVL-ME1-RS3CTL-E-ALL-26820		10-Nov-21	A, B, C, E Supported by objective evidence inclusive of production of ECC encompassing all disciplines that all CTL Stage E design are complete
Design Finish MER Stage E					CVL-ME1-RS1MER-E-ALL-26790		02-Dec-21	A, B, C, E Supported by objective evidence inclusive of production of ECC encompassing all disciplines that all MER Stage E design are complete
Issue AFCs Electrification THT					CVL-ME4-RS2THT-E-OLE-01720		24-Dec-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Design Finish THT Stage E					CVL-ME1-RS2THT-E-ALL-26810		09-Feb-22	A, B, C, E Supported by objective evidence inclusive of production of ECC encompassing all disciplines that all THT Stage E design are complete
Issue AFCs E&P THT					CVL-ME4-RS2THT-E-EP-10420		09-Feb-22	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Stage E design signalling - Completion					CVL-ME1-RS0R2P-E-CIV-111320a		13-May-22	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Design Finish Stage E R2P					CVL-ME1-RS0R2P-E-ALL-26780		13-May-22	A, B, C, E Supported by objective evidence inclusive of production of ECC encompassing all disciplines that all R2P Stage E design are complete
CVL Milestone 10 - TAM Stage E Designs complete					CVL-111100		17-Aug-22	A, B, C, E Supported by objective evidence inclusive of production of ECC encompassing all disciplines that all TAM Stage E design are complete
Stage E Design Finish - TAM Data					CVL-ME1-RS0ICC-E-SIG-100440		17-Aug-22	A, B, C, E Supported by objective evidence inclusive of production of ECC encompassing all disciplines that all TAM DATA Stage E design are complete
CVL Milestone 11 - Infrastructure change & Electrification of R2P, ABD, Canton ATPS						17-Nov-22		
ABD Pway works complete pre blockade					CVL-ME1-RS1ABD-F-PWY-110850		14-Jun-21	A, B, C, E Supported by objective evidence that ABD Pway works are complete
R2P Bridge parapet works complete					CVL-ME2-RS0R2P-F-CIV-12040		18-Jun-21	A, B, C, E Supported by objective evidence that bridge parapet works R2P are complete
CVL ICC Building complete					CVL-ME1-RS0ICC-F-BDG-111200		02-Aug-21	Evidence of the ODP accepting the Infrastructure Works from the Contractor
CVL ICC Building fit out complete					CVL-ME1-RS0ICC-F-BDG-111210		03-Aug-21	Evidence of the ODP accepting the Infrastructure Works from the Contractor
ABD Bridge parapet works complete					CVL-ME2-RS1ABD-F-CIV-12090		13-Sep-21	A, B, C, E Supported by objective evidence that bridge parapet works ABD are complete
CVLICC Operational					CVL-ME1-RS0ICC-F-SIG-23760		10-Nov-21	Evidence of the ODP accepting into operations the Infrastructure Works
CTL Bridge parapet works complete					CVL-ME3-RS3CTL-F-CIV-12240		29-Nov-21	A, B, C, E Supported by objective evidence that bridge parapet works CTL are complete

R2P Civils complete pre blockade					CVL-ME1-RS0R2P-F-CIV-110840		30-Nov-21	A, B, C, E Supported by objective evidence that Civil works R2P are complete
ABD Civils complete pre blockade					CVL-ME1-RS1ABD-F-SIG-110860		03-Dec-21	A, B, C, E Supported by objective evidence that Civil works ABD are complete
R2P Pway works complete pre blockade					CVL-ME1-RS0R2P-F-PWY-110820		11-Dec-21	A, B, C, E Supported by objective evidence that R2P Pway works are complete
CTL Civils complete pre blockade					CVL-ME1-RS3CTL-F-CIV-110960		04-Feb-22	A, B, C, E Supported by objective evidence that Civil works CTL are complete
MER Pway works complete pre blockade					CVL-ME1-RS1MER-F-PWY-110880		19-Apr-22	A, B, C, E Supported by objective evidence that MER Pway works are complete
THT Pway works complete pre blockade					CVL-ME1-RS2THT-F-PWY-110910		18-May-22	A, B, C, E Supported by objective evidence that THT Pway works are complete
CTL signalling install works complete pre blockade					CVL-ME1-RS3CTL-F-SIG-110950		18-Aug-22	A, B, C, E Supported by objective evidence that CTL signalling works pre blockade are complete
R2P signalling install works complete pre blockade					CVL-ME1-RS0R2P-F-SIG-110830		22-Aug-22	A, B, C, E Supported by objective evidence that R2P signalling works pre blockade are complete
MER Civils complete pre blockade					CVL-ME1-RS1MER-F-SIG-110890		30-Aug-22	A, B, C, E Supported by objective evidence that Civil works MER are complete
ABD signalling install works complete pre blockade					CVL-ME1-RS1ABD-F-SIG-110870		02-Sep-22	A, B, C, E Supported by objective evidence that ABD signalling works pre blockade are complete
MER signalling install works complete pre blockade					CVL-ME1-RS1MER-F-SIG-110900		06-Sep-22	A, B, C, E Supported by objective evidence that MER signalling works pre blockade are complete
THT signalling install works complete pre blockade					CVL-ME1-RS2THT-F-SIG-110930		20-Sep-22	A, B, C, E Supported by objective evidence that THT signalling works pre blockade are complete
THT Civils complete pre blockade					CVL-ME1-RS2THT-F-SIG-110920		30-Sep-22	A, B, C, E Supported by objective evidence that Civil works THT are complete
TPS In place for OLE Energisation R2P - THT					CVL-ME2-RS0TPS-F-TPS-12060		25-Oct-22	A, B, C, E Supported by objective evidence that TPS is available to energise R2P-THT
Criadd Milestone Event 1 - Testing & Commissioning TAM Phase 1 (THT, R2P, ABD, MER & CTL) Inc CVLICC					CVL-103170	25-Oct-22		Evidence of the ODP accepting into operations the Infrastructure Works
CVL Milestone 11 - Infrastructure change & Electrification of R2P, ABD, Canton ATFS					CVL-111110		17-Nov-22	Evidence of the ODP accepting into operations the Infrastructure Works
ABD OLE Installation complete					CVL-ME2-RS1ABD-F-OLE-12050		17-Nov-22	A, B, C, E Supported by objective evidence that ABD OLE works are complete
R2P OLE Installation complete					CVL-ME2-RS0R2P-F-OLE-12070		17-Nov-22	A, B, C, E Supported by objective evidence that R2P OLE works are complete
Criadd Milestone Event 2 - OLE Energisation R2P & ABD (OLE Commissioning R2P, ABD & Canton ATFS)					CVL-106730	17-Nov-22		Evidence of the ODP accepting into operations the Infrastructure Works
CVL Milestone 12 - CAR Stage C Designs complete						29-Dec-21		
Design Finish CTL Stage C ME3					CVL-ME3-RS3CTL-C-ALL-69770		29-Oct-20	A, B, C, E Supported by objective evidence inclusive of production of ECC encompassing all disciplines that all CTL Stage C design are complete
Design Finish CAN Stage C					CVL-ME5-RS0CAN-C-ALL-41470		02-Dec-20	A, B, C, E Supported by objective evidence inclusive of production of ECC encompassing all disciplines that all CAN Stage C design are complete
Design Finish RHY Stage C					CVL-ME5-RS5RHY-C-ALL-69890		05-May-21	A, B, C, E Supported by objective evidence inclusive of production of ECC encompassing all disciplines that all RHY Stage C design are complete



Design Finish QSN Stage C					CVL-ME5-RS2QSN-C-ALL-24580		13-Sep-21	A, B, C, E Supported by objective evidence inclusive of production of ECC encompassing all disciplines that all QSN Stage C design are complete
Design Finish - PEN Stage C					CVL-ME5-RS5PEN-C-ALL-24610		24-Nov-21	A, B, C, E Supported by objective evidence inclusive of production of ECC encompassing all disciplines that all PEN Stage C design are complete
Design Finish QSS Stage C ME3					CVL-ME3-RS1QSS-C-ALL-69760		06-Dec-21	A, B, C, E Supported by objective evidence inclusive of production of ECC encompassing all disciplines that all QSS Stage C design are complete
Design Finish QSS Stage C					CVL-ME5-RS1QSS-C-ALL-24550		06-Dec-21	A, B, C, E Supported by objective evidence inclusive of production of ECC encompassing all disciplines that all QSS Stage C design are complete
CVL Milestone 12 - CAR Stage C Designs complete					CVL-112960		29-Dec-21	A, B, C, E Supported by objective evidence inclusive of production of ECC encompassing all disciplines that all CAR Stage C design are complete
CVL Milestone 13 - CAR Stage E Designs complete						26-Jul-23		
Issue AFCs - Civils Design completion QSS					CVL-ME5-RS1QSS-E-CIV-111450		25-Sep-20	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFCs - OLE CAN					CVL-ME5-RS0CAN-E-OLE-73520		14-Apr-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Stage E Design Finish CAN					CVL-ME5-RS0CAN-E-ALL-40090		19-Apr-21	A, B, C, E Supported by objective evidence inclusive of production of ECC encompassing all disciplines that all CAN Stage E design are complete
Issue AFCs - Civils CAN					CVL-ME5-RS0CAN-E-CIV-40310		19-Apr-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFCs - Pway CAN					CVL-ME5-RS0CAN-E-PWY-40280		19-Apr-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFCs - Built Environment CAN					CVL-ME5-RS0CAN-E-BDG-40190		19-Apr-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFCs - Civils Bridge Parapet works CTL					CVL-ME3-RS3CTL-E-CIV-111420		04-Jun-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFCs - QSS OLE					CVL-ME3-RS1QSS-E-OLE-03560		06-Dec-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFC Pway RHY					CVL-ME5-RS5RHY-E-PWY-111730		08-Feb-22	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFCs - Signalling Civils QSN					CVL-ME5-RS2QSN-E-SIG-111500		15-Mar-22	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFC Hengoe Footbridge RHY					CVL-ME5-RS5RHY-E-CIV-111690		26-Apr-22	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFCs - Bridge Parapet Works QSS					CVL-ME3-RS1QSS-E-CIV-08760		17-May-22	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Detailed Design Complete BAR					CVL-ME5-RS5BAR-E-ALL-110320		01-Jul-22	A, B, C, E Supported by objective evidence inclusive of production of ECC encompassing all disciplines that all BAR Stage E design are complete
Issue AFC Station platform RHY					CVL-ME5-RS5RHY-E-CIV-111680		04-Aug-22	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFCs - Pway PEN					CVL-ME5-RS5PEN-E-PWY-111630		15-Sep-22	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFCs - Civils Station Platforms PEN					CVL-ME5-RS5PEN-E-CIV-111610		15-Sep-22	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFC Llanbradach Bridge RHY					CVL-ME5-RS5RHY-E-CIV-111700		27-Sep-22	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFCs - Signalling - QSN					CVL-ME5-RS2QSN-E-SIG-111530		28-Oct-22	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.



Issue AFCs - Signalling QSS					CVL-ME5-RS1QSS-E-SIG-111460		28-Oct-22	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Design Finish QSS Stage E					CVL-ME5-RS1QSS-E-ALL-26800		28-Oct-22	A, B, C, E Supported by objective evidence inclusive of production of ECC encompassing all disciplines that all QSS Stage E design are complete
Issue AFC Signalling RHY					CVL-ME5-RS5RHY-E-SIG-111740		09-Nov-22	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Design Finish Stage E RHY					CVL-ME5-RS5RHY-E-ALL-66560		09-Nov-22	A, B, C, E Supported by objective evidence inclusive of production of ECC encompassing all disciplines that all RHY Stage E design are complete
Design Finish QSN Stage E					CVL-ME5-RS2QSN-E-ALL-24560		21-Dec-22	A, B, C, E Supported by objective evidence inclusive of production of ECC encompassing all disciplines that all QSN Stage E design are complete
Issue AFCs - Signalling PEN					CVL-ME5-RS5PEN-E-SIG-111640		03-Jan-23	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFCs - Civils Station PEN					CVL-ME5-RS5PEN-E-CIV-111620		05-Jan-23	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Design Finish PEN Stage E					CVL-ME5-RS5PEN-E-ALL-24950		05-Jan-23	A, B, C, E Supported by objective evidence inclusive of production of ECC encompassing all disciplines that all PEN Stage E design are complete
CVL Milestone 13 - CAR Stage E Designs complete					CVL-112970		26-Jul-23	A, B, C, E Supported by objective evidence inclusive of production of ECC encompassing all disciplines that all CAR Stage E design are complete
Stage E Design Finish - CAR Data					CVL-ME5-RS0ICC-E-ALL-107690		26-Jul-23	A, B, C, E Supported by objective evidence inclusive of production of ECC encompassing all disciplines that all CAR DATA Stage E design are complete
CVL Milestone 14 - Infrastructure Phase 2 CAR Complete						06-Nov-23		
Canton Depot Upgrade Commissioning Completion					CVL-ME5-RS0CAN-F-ALL-26140		25-Dec-21	Evidence of the ODP accepting into operations the Infrastructure Works following the upgrades at Canton
RS0TPS - Upper Boat (Trefforest) Traction Power Feeder Supply Available					CVL-39190		29-Jul-22	Objective evidence that the DNO supply is live.
QSN Pway works complete pre blockade					CVL-ME6-RS2QSN-F-PWY-111020		17-Dec-22	A, B, C, E Supported by objective evidence that QSN Pway works are complete
QSN Civils complete pre blockade					CVL-ME5-RS2QSN-F-CIV-111000		02-May-23	A, B, C, E Supported by objective evidence that Civil works QSN are complete
RHY Pway works complete pre blockade					CVL-ME5-RS5RHY-F-PWY-111080		02-May-23	A, B, C, E Supported by objective evidence that RHY Pway works are complete
QSS Civils complete pre blockade					CVL-ME5-RS1QSS-F-CIV-110990		13-Jun-23	A, B, C, E Supported by objective evidence that Civil works QSS are complete
QSS signalling install works complete pre blockade					CVL-ME5-RS1QSS-F-SIG-110980		04-Jul-23	A, B, C, E Supported by objective evidence that QSS signalling works pre blockade are complete
RHY Civils complete pre blockade					CVL-ME5-RS5RHY-F-CIV-111060		17-Jul-23	A, B, C, E Supported by objective evidence that Civil works RHY are complete
PEN Pway works complete pre blockade					CVL-ME5-RS5PEN-F-PWY-111050		17-Jul-23	A, B, C, E Supported by objective evidence that PEN Pway works are complete
QSS Pway works complete pre blockade					CVL-ME5-RS1QSS-F-PWY-110970		17-Jul-23	A, B, C, E Supported by objective evidence that QSS Pway works are complete
QSN signalling install works complete pre blockade					CVL-ME5-RS2QSN-F-SIG-111010		18-Jul-23	A, B, C, E Supported by objective evidence that QSN signalling works pre blockade are complete
RHY signalling install works complete pre blockade					CVL-ME5-RS5RHY-F-SIG-111070		01-Aug-23	A, B, C, E Supported by objective evidence that RHY signalling works pre blockade are complete
PEN signalling install works complete pre blockade					CVL-ME5-RS5PEN-F-SIG-111040		15-Aug-23	A, B, C, E Supported by objective evidence that PEN signalling works pre blockade are complete

PEN Civils complete pre blockade					CVL-ME5-RS5PEN-F-CIV-111030		09-Oct-23	A, B, C, E Supported by objective evidence that Civil works PEN are complete
Criadd Milestone Event 5 - Phase 2 Testing & Commissioning CAR (QSS, QSN. PEN & RHY)					CVL-103240	24-Oct-23		Evidence of the ODP accepting into operations the Infrastructure Works
CVL Milestone 14 - Infrastructure Phase 2 CAR Complete					CVL-111160		06-Nov-23	Evidence of the ODP accepting into operations the Infrastructure Works
Criadd Milestone Event 6 - OLE Energisation QSN (Queen St - Caerphilly) & CRY (OLE Commissioning CRY & LIS) & BAR					CVL-106760	06-Nov-23		Evidence of the ODP accepting into operations the Infrastructure Works
CVL Milestone 15 - Infrastructure ready for EIPS - Treherbert to Cardiff Bay MV Passenger Services Start (new timetable)						30-Nov-23		
MER Bridge parapet works complete					CVL-ME4-RS1MER-F-CIV-12290		01-Oct-21	A, B, C, E Supported by objective evidence that bridge parapet works MER are complete
QSS Bridge parapet works complete					CVL-ME3-RS1QSS-F-CIV-12270		27-Jul-22	A, B, C, E Supported by objective evidence that bridge parapet works QSS are complete
CTL OLE Installation complete					CVL-ME3-RS3CTL-F-OLE-12300		17-Nov-22	A, B, C, E Supported by objective evidence that CTL OLE works are complete
QSS OLE Installation complete					CVL-ME3-RS1QSS-F-OLE-12280		17-Nov-22	A, B, C, E Supported by objective evidence that QSS OLE works are complete
Criadd Milestone Event 3 - OLE Energisation QSS (R2Q) & CTL (OLE Commissioning CTL, QSS (Radyr to Queen Street))					CVL-106740	17-Nov-22		Evidence of the ODP accepting into operations the Infrastructure Works
All Documents for EIPS available TAM Commissioning					CVLFTN-2700		03-May-23	Evidence that Health and Safety files for CVL transformation complete including AMP and as built information available in original editable format and control copies on the CDE and a complete set of CVL design standards online.
All Documents for EIPS available QSS (R2Q) & CTL Energisation					CVL-ME1-RS1QSS-G-ALL-2730		04-May-23	Evidence that Health and Safety files for CVL transformation complete including AMP and as built information available in original editable format and control copies on the CDE and a complete set of CVL design standards online.
All Documents for EIPS available R2P & ABD Energisation					CVLFTN-2720		04-May-23	Evidence that Health and Safety files for CVL transformation complete including AMP and as built information available in original editable format and control copies on the CDE and a complete set of CVL design standards online.
THT Bridge parapet works complete					CVL-ME4-RS2THT-F-CIV-12250		22-May-23	A, B, C, E Supported by objective evidence that bridge parapet works THT are complete
THT OLE Installation complete					CVL-ME4-RS2THT-F-OLE-12310		05-Jul-23	A, B, C, E Supported by objective evidence that THT OLE works are complete
MER OLE Installation complete					CVL-ME4-RS1MER-F-OLE-12260		05-Jul-23	A, B, C, E Supported by objective evidence that MER OLE works are complete
Criadd Milestone Event 4 - OLE Energisation MER & THT (Electrification Commissioning MER, THT)					CVL-106750	05-Jul-23		Evidence of the ODP accepting into operations the Infrastructure Works
CVL Milestone 15 - Infrastructure ready fo EIPS - Treherbert to Cardiff Bay MV Passenger Services Start (new timetable)					CVL-112920		30-Nov-23	Evidence of the ODP accepting into operations the Infrastructure Works
All Documents for EIPS available MER & THT Energisation					CVL-ME1-RS1MER-G-ALL-2740		30-Nov-23	Evidence that Health and Safety files for CVL transformation complete including AMP and as built information available in original editable format and control copies on the CDE and a complete set of CVL design standards online.
CVL Milestone 16 - Completion of ERDF funded works						30-May-23		
A new footbridge over Taffs Well Station					CVL-116950		06-Sep-21	Evidence that the infrastructure provided as part of the ODP's solution has the delivered the Authority's ERDF requirements
RS1ABD - Aberdare to Pontyprid Capacity Enhancement and Electrification Completion					CVL-100500		03-Dec-21	Evidence that the infrastructure provided as part of the ODP's solution has the delivered the Authority's ERDF requirements
Rail access / egress at Taffs Well,					CVL-116940		18-Dec-21	Evidence that the infrastructure provided as part of the ODP's solution has the delivered the Authority's ERDF requirements

New road access to the site via a new bridge					CVL-116930		18-Dec-21	Evidence that the infrastructure provided as part of the ODP's solution has the delivered the Authority's ERDF requirements
RS0TAF - Taff's Well Depot Commissioning Complete					CVL-100490		30-Mar-22	Evidence that the infrastructure provided as part of the ODP's solution has the delivered the Authority's ERDF requirements
RS1MER - Merthyr Tydfil to Abercynon Capacity Enhancement and Electrification Completion					CVL-100510		30-Aug-22	Evidence of the ODP accepting into operations the Infrastructure Works
WW Station Improvement Works Completed					CVL-117980		25-Oct-22	Evidence that the infrastructure provided as part of the ODP's solution has the delivered the Authority's ERDF requirements
EW Station Improvement Works Completed					CVL-117970		28-Dec-22	Evidence that the infrastructure provided as part of the ODP's solution has the delivered the Authority's ERDF requirements
RS2THT - Teherbert to Pontypridd Capacity Enhancement and Electrification Completion					CVL-100520		22-Feb-23	Evidence of the ODP accepting into operations the Infrastructure Works
RS5RHY - Heath High Level to Rhymney Capacity Enhancement Completion & Part OLE					CVL-100530		12-May-23	Evidence of the ODP accepting into operations the Infrastructure Works
ERDF Capacity Enhancement Works Completed (Planned)					CVL-111940		30-May-23	Evidence that the infrastructure provided as part of the ODP's solution has the delivered the Authority's ERDF requirements
CVL Milestone 16 - Completion of ERDF funded works					CVL-111180		30-May-23	Evidence that the infrastructure provided as part of the ODP's solution has the delivered the Authority's ERDF requirements
RS1QSS - Cardiff Bay Phase 1 - Redoubling					CVL-100550		30-May-23	A, B, C, E Supported by objective evidence that QSS redoubling and temp platform constructed
Criadd Milestone Event 9 - Completion of ERDF funded works					CVL-118320	30-May-23		Evidence of the ODP accepting into operations the Infrastructure Works
CVL Milestone 17 - Infrastructure change & Electrification CAR & BAY						06-Dec-23		
Stage C Design Finish BAR					CVL-ME0-RS5BAR-C-ALL-67360		29-Dec-20	A, B, C, E Supported by objective evidence that all BAR Stage C design are complete
Design Finish BAY Stage C					CVL-ME0-RS5BAY-C-ALL-24640		29-Dec-21	A, B, C, E Supported by objective evidence that all BAY Stage C design are complete
Stage Gate Approval for Stage 1 - Stage C Bay Extension to the Flourish					CVL-ME0-RS5BAY-C-ALL-36510		29-Dec-21	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
AFC Issued Station upgrade works BAR					CVL-ME0-RS5BAR-C-ALL-110300		01-Jul-22	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFCs - Pway BAY					CVL-ME9-RS5BAY-E-PWY-36730		13-Sep-22	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFCs - Station Flourish BAY					CVL-ME9-RS5BAY-E-CIV-36810		13-Sep-22	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFCs - Station Loudon Square					CVL-ME9-RS5BAY-E-CIV-46050		13-Sep-22	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFCs - Signalling Civils BAY					CVL-ME9-RS5BAY-E-CIV-36990		15-Sep-22	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFCs - HW BAY					CVL-ME9-RS5BAY-E-HW-25060		15-Sep-22	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Stage E Design Finish BAY					CVL-ME9-RS5BAY-E-ALL-37010		13-Oct-22	A, B, C, E Supported by objective evidence inclusive of production of ECC encompassing all disciplines that all BAY Stage E design are complete
Issue AFCs - Signalling BAY					CVL-ME9-RS5BAY-E-SIG-36850		13-Oct-22	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Craidd Milestone Event 7 - Commissioning BAY - To be deleted & merged with ME5 (Scope to be confirmed)					CVL-107150	06-Nov-23		Evidence of the ODP accepting into operations the Infrastructure Works
RS5BAY - Flourish Extension Completion					CVL-96840		13-Nov-23	Evidence of the ODP accepting into operations the Infrastructure Works(including any associated Local Authority approvals and approved system of Safety Verification)
CVL Milestone 17 - Infrastructure change & Electrification CAR & BAY					CVL-111960		18-Nov-23	Evidence of the ODP accepting into operations the Infrastructure Works

Criadd Milestone Event 8 - OLE Energisation RHY (Electrification Commissioning RHY)					CVL-106770	18-Nov-23		Evidence of the ODP accepting into operations the Infrastructure Works
All Infrastructure Change Works Completion					CVL-70380		06-Dec-23	Evidence of the ODP accepting into operations the Infrastructure Works
CVL Milestone 18 - Infrastructure ready for EIPS - Rhymney Line Flirt Service Start - Transformation Works Complete							08-Apr-24	
Design Finish RHY Stage C					CVL-ME8-RS5RHY-C-ALL-109350		16-Mar-21	A, B, C, E Supported by objective evidence that all RHY Stage C design are complete
Stage C - Design Finish QSN					CVL-ME6-RS2QSN-C-ALL-109980		15-Apr-21	A, B, C, E Supported by objective evidence that all QSN Stage C design are complete
Issue AFC Bridge Parapets QSN					CVL-ME6-RS2QSN-E-CIV-111770		04-Jan-22	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFC OLE QSN					CVL-ME6-RS2QSN-E-OLE-111780		28-Jan-22	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Stage E - Design Finish QSN					CVL-ME6-RS2QSN-C-ALL-110010		28-Jan-22	A, B, C, E Supported by objective evidence inclusive of production of ECC encompassing all disciplines that all QSN Stage E design are complete
Issue AFCs OLE RHY					CVL-ME8-RS5RHY-E-OLE-111810		16-Mar-22	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Issue AFCs Bridge Parapets RHY					CVL-ME8-RS5RHY-E-CIV-111800		27-Sep-22	A, B, C, E Where relevant this will be supported by objective evidence by the ODP of accepting the IDP design prior to submission to the Authority for Acceptance.
Stage E Design Finish RHY					CVL-ME8-RS5RHY-E-ALL-109650		27-Sep-22	A, B, C, E Supported by objective evidence inclusive of production of ECC encompassing all disciplines that all RHY Stage E design are complete
QSN Bridge parapet works complete					CVL-ME6-RS2QSN-F-CIV-12700		25-Oct-22	A, B, C, E Supported by objective evidence that bridge parapet works QSN are complete
RHY Bridge parapet works complete					CVL-ME8-RS5RHY-F-CIV-12710		12-May-23	A, B, C, E Supported by objective evidence that bridge parapet works RHY are complete
TPS In place for OLE Energisation RHY					CVL-ME8-RS0TPS-F-TPS-12720		03-Jun-23	A, B, C, E Supported by objective evidence that TPS is available to energise RHY
QSN OLE Installation complete					CVL-ME6-RS2QSN-F-OLE-12690		06-Nov-23	A, B, C, E Supported by objective evidence that QSN OLE works are complete
RHY OLE Installation complete					CVL-ME8-RS5RHY-F-OLE-12740		06-Dec-23	A, B, C, E Supported by objective evidence that RHY OLE works are complete
All Documents for EIPS available Bay Commissioning					CVL-ME7-RS5BAY-G-ALL-2760		29-Feb-24	Evidence that Health and Safety files for CVL transformation complete including AMP and as built information available in original editable format and control copies on the CDE and a complete set of CVL design standards online.
All Documents for EIPS available RHY Energisation					CVL-ME1-RS0TPS-G-ALL-2770		22-Mar-24	Evidence that Health and Safety files for CVL transformation complete including AMP and as built information available in original editable format and control copies on the CDE and a complete set of CVL design standards online.
All Documents for EIPS available QSN Energisation					CVL-ME1-RS0TPS-G-ALL-2750		01-Apr-24	Evidence that Health and Safety files for CVL transformation complete including AMP and as built information available in original editable format and control copies on the CDE and a complete set of CVL design standards online.
CVL Milestone 18 - Infrastructure ready fo EIPS - Rhymney Line FLIRT Service Start - Transformation works complete					CVL-112940		08-Apr-24	Evidence that Health and Safety files for CVL transformation complete including AMP and as built information available in original editable format and control copies on the CDE and a complete set of CVL design standards online.
All Documents for EIPS available CAR					CVL-ME5-RS0FTN-G-ALL-2710		08-Apr-24	Evidence that Health and Safety files for CVL transformation complete including AMP and as built information available in original editable format and control copies on the CDE and a complete set of CVL design standards online.

## **Appendix 12 of Schedule 3B**

### **Milestone Criteria**

#### **1 MILESTONE CRITERIA**

- 1.1 This Appendix 12 of Schedule 3B specifies the process for establishing and / or developing the Milestone Criteria for the Milestones defined in Schedule 3B.
- 1.2 The Milestone Criteria may apply either to a Milestone or a Milestone Deliverable.
- 1.3 InfraCo shall develop the Milestone Criteria applicable to each Milestone and Milestone Deliverable and provide the same to the Authority for acceptance.
- 1.4 The Milestone Criteria shall be set out in:
  - (a) the Milestone Table; and / or
  - (b) the Infrastructure Works Plan provided always that any Milestone Criteria included in the Infrastructure Works Plan which is not set out in the Milestone Table or proposes a change to that which is set out in the Milestone Table shall require prior written approval by the Authority no later than 28 days prior to the Planned Milestone Delivery Date for the relevant Milestone or Milestone Deliverable.
- 1.5 Each Milestone Criteria shall include (but not be limited to) the following criteria as relevant to the Milestone or Milestone Deliverable:
  - (a) a clear description of the Milestone or Milestone Deliverable;
  - (b) all licences, permits, consents or other approvals required to be obtained by, or on behalf of, InfraCo for the Milestone Deliverable to be met;
  - (c) the quality and / or standards conformance relating to the Milestone or Milestone Deliverable;
  - (d) the procedure, testing and processes required to be carried out to demonstrate that the Milestone Criteria is capable of being met;
  - (e) conformance to the detailed design for the Milestone or Milestone Deliverable; and
  - (f) any other relevant matters specified by InfraCo or reasonably requested by the Authority.
- 1.6 The description of each Milestone Criteria shall be such that each Milestone Criteria is capable of objective confirmation of Achievement.
- 1.7 InfraCo shall demonstrate the performance of the Milestone Criteria in respect of Achievement to the reasonable satisfaction of the Authority.
- 1.8 Each Milestone Criteria and its use in the Achievement of Milestones may be subject to audit by the Authority at the Authority's sole discretion.
- 1.9 The Authority will only issue a Milestone Achievement Certificate for a Milestone when each of the Milestone Deliverables within a Milestone have been Achieved.

**Appendix 13 to Schedule 3B**

Authority's Plan of Works



TRAFNIDIAETH  
CYMRU  
TRANSPORT  
FOR WALES

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## Infrastructure Plan of Work



## TfW Plan of Works

Transport for Wales has developed a standard plan of work to provide a staged / gated delivery process for infrastructure projects.  
This is to be used on all infrastructure capital works.

Bidders shall be aware that the content of these slides/requirements may be modified post tender.

Bidders are expected to have completed the highlighted activities prior to submission of Final ITSFT in Stages A and B.

<b>Stage A – Develop output requirements and options</b>	<b>Stage B – Options development and selection</b>	<b>Stage C – Preliminary design</b>	<b>Stage D – Statutory process</b>	<b>Stage E – Detailed design</b>	<b>Stage F – Construct, commission &amp; handover</b>	<b>Stage G - Closeout</b>
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## Comparison of Project Lifecycle Processes

TfW Plan of Work	Stage A – Develop Output Requirements and Options		Stage B – Options Development and Selection	Stage C – Preliminary design	Stage D – Statutory process	Stage E – Detailed Design	Stage F – Construct, commission & handover	Stage G – Closeout	
Network Rail Process	GRIP 1 – Output definition	GRIP 2 – Feasibility	GRIP 3 – Option selection	GRIP 4 – Single option development		GRIP 5 – Detailed design	GRIP 6 – Construct, test & commission	GRIP 7 – Scheme handback	GRIP 8 – Project close out
Highways Agency – Project Control	Key decision point (KDP)1 – Option identification		KDP 2 – Option selection	KDP 3 – Preliminary design	KDP 4 – Statutory procedures & powers	KDP 5 – Construction preparation	KDP 6 – Construct, commission, handover	KDP 7 - Closeout	
Welsh Government Key Stage Approval process			KS 2 – Option development assessment & selection	KS 3 – Preliminary design	KS 4 – Statutory process	KS 6 – Detailed design & construction, commissioning, handover & aftercare			

Transport for Wales – Wales & Borders Rail Service and South Wales Metro

03/05/17

## Plan of work

Stage	TfW Design Development Item	Required for Final ITSFT
<b>A Output Requirements and Options</b>	A1) Document the Client Requirements for the project (For example, increase line capacity or reduce delays)	Yes
	A2) Identify applicable Standards and Proposed Derogations	Yes
	A3) Review Planning requirements and define strategy (Planning Act, Highways Act, TWAO etc.)	Yes
	A4) Identify viable solutions in response to the requirements	Yes
	A5) BIM Execution Plan to meet requirements of BS1192 and PAS 1192	Yes
	A6) Review land requirements, and route safeguarding / improvement lines	Yes
	A7) Produce public consultation strategy	Yes
	A8) Design development plan	Yes
	A9) Construction stage plan	Yes
	A10) Maintenance & renewals plan – part of AM/IM response	Yes
	A11) Gap analysis on background data, consider additional surveys and check legal access rights	Yes
	A12) Assess strategic options in terms of environmental impact, demand forecasts and economic benefits (validate data)	Yes
	A13) Identify environmental constraints, Equality Impact Assessment (EqIA) screening, analysis and monitoring	Yes
	A14) Delivery programme	Yes
	A15) Refine the cost estimate of options (including an OB allowance for risk)	Yes
	A16) Produce risk management plan & risk register	Yes

## Plan of work

Stage	TfW Design Development Item	Required at Final ITSFT
<b>B Options Development &amp; Selection</b>	B1) Develop options for addressing constraints	Yes
	B2) Stakeholder Engagement	Optional
	B3) Identify options to be taken to public consultation (record decisions of why options have been selected and deselected)	Optional
	B4) Carry out public consultation including exhibitions	N/A
	B5) Record all feedback and analyse comments received and input to option selection	Optional
	B6) Sustainability & carbon assessment of options	Optional
	B7) Review options against the Client requirements	Yes
	B8) Refine the cost estimate for the options (including OB allowance for risk)	Optional
	B9) Refine the environmental impact assessment, demand forecasts and economic benefits	Optional
	B10) Complete feasibility design of options and produce options appraisal report	Yes
	B11) Confirm preferred option	Yes
	B12) Develop indicative programme & key milestones	Yes
	B13) Review against the budget Target Cost	Yes
	B14) F10 notification to HSE of impending construction project	N/A
	B15) Update risk register	Yes

## Plan of work

Stage	TfW Design Development Item
<b>C Preliminary Design</b>	C1) Initiation of the development of the design of the chosen single option (all technical disciplines)
	C2) Agree CVL design standards
	C3) Land referencing for improvement works
	C4) If early contractor involvement procurement method selected; appoint contractor
	C5) Develop reference alignment & clearances that underpins other disciplines and extent of works at each station
	C6) Carry out desk studies (services, geotechnical, environmental, archaeology, flood risk etc.)
	C7) Carry out detailed surveys (such as topographical, geotechnical, environmental, noise, archaeology, flood risk, structural etc.)
	C8) Ground Investigation Report
	C9) Structural inspections & structural assessments (obtain historical and commission new)
	C10) Electro-Magnetic Compatibility (EMC) assessments, HAZID & traction power modelling
	C11) Statutory undertakers enquiries and budget estimates (including new power supplies for substations and station facilities)
	C12) Environmental Scoping and Screening decision
	C13) Prepare ground remediation strategies for improvement works
	C14) Stakeholder engagement (all meetings and discussions to be formally recorded)
	C15) Hold community consultation including exhibitions, complete consultation report and resolve or rebut outstanding issues
	C16) Maintenance & renewals strategy
	C17) Testing & Commissioning Plan
	C18) Systems Definition & Integration Plan

Transport for Wales – Wales & Borders Rail Service  
and South Wales Metro

03/05/17



## Plan of work

Stage	TfW Design Development Item
<b>C Preliminary Design (continued)</b>	C19) Power study assessments & whole life costing
	C20) Asbestos Management Plan
	C21) Prepare drafts of statutory requirement documents (Environmental & Transport Assessments etc.; also see Stage D)
	C22) Peer review of design and design freeze
	C23) List of departures from standard and derogations from CVL design standards
	C24) Interdisciplinary checks and reviews for frozen design
	C25) Agree approvals process with approvals bodies (e.g. Network Rail, Local Highway Authority etc.)
	C26) Prepare Code of Construction Practice (Part One: Updated by ODP)
	C27) Prepare draft Orders, Book of Reference and land plans / planning submissions
	C28) Prepare construction constraints document including construction phasing and 'High Level' programme
	C29) Stage I Road Safety Audit, Risk Assessments and Pre-Safety Verification meetings
	C30) Risk management plan & hazard log
	C31) Prepare Pre-Construction Information and Health & Safety File
	C32) Refine and complete detailed design deliverables (specifications, drawings etc.)
	C33) Develop target prices for stages E-G (individually or collectively depending upon residual risks)
	C34) Develop delivery programme & milestones
	C35) Update risk register



## Plan of work

Stage	TfW Design Development Item
<b>D Statutory process</b>	D1) Finalise draft Orders and planning applications
	D2) Publish draft Orders
	D3) Exchange Land Certificates & Planning Consents
	D4) Structures (Approvals in Principle)
	D5) Notice(s) to Treat & Enter
	D6) General Vesting Declaration: Planning Meeting, Notices and Registration of Title
	D7) Submit for Building Regulations
	D8) Submit for Approval (Highways Act 1980 orders / Planning Act 2008 / Listed Building Consent / Conservation Area Consents / Transport & Works Act Order)
	D9) Consultation through Statutory Period of the above processes
	D10) Prepare Proof of Evidence / Statement of Case ready for Public Inquiry; if objections can't be removed through negotiation
	D11) Present evidence and rebuttals to objections at Public Inquiry (Highways Act 1980 / TWAO)
	D12) The Planning Inspectorate panel or inspector makes recommendations to the Secretary of State
	D13) Issue Secretary of State's decision letter confirming whether orders / development consent are to be confirmed as published in draft, rejected or amended order / development consent
	D14) Update risk register

## Plan of work

Stage	TfW Design Development Item
<b>E Detailed Design</b>	E1) Produce a complete, robust engineering design that underpins definitive cost/time/resource and risk estimates
	E2) Obtain approval and undertake any advance works or advance statutory undertakers diversions
	E3) Agree costs of construction with the contractor. If ECI is procurement method; agree final target price
	E4) Produce the final business case
	E5) Baseline surveys (noise, vibration, environmental etc.)
	E6) Draft highway and railway interface documents with 3rd Parties
	E7) Asset Protection Agreements with Network Rail (BAPA/APA)
	E8) Liaise with Emergency Services, TRANSEC and review PAS 68 security requirements
	E9) Alignment design
	E10) Track form design
	E11) Drainage design
	E12) Traction power & earthing & bonding, stray current and lightening protection design
	E13) Overhead line equipment
	E14) Communications design
	E15) Signalling design
	E16) Civils design (Stations, Buildings, Highways etc.)

## Plan of work

Stage	TfW Design Development Item
<b>E Detailed Design (Continued)</b>	E17) Mechanical & electrical design (including lighting, lifts etc.)
	E18) Structural design & analysis
	E19) Category II and III checks on structures
	E20) Foundation design
	E21) Geotechnical Design Report
	E22) Calculations
	E23) Approval in Principle for structures (Local Highway Authority)
	E24) Complete detailed design (full design to which the project will be built).
	E25) Design commentaries for each technical discipline
	E26) List of departures from standard and derogations from CVL design standards
	E27) Stage 2 Road Safety Audits
	E28) Specification
	E29) Drawings
	E30) Site Information
	E40) Obtain notice to proceed
	E41) Update risk register



## Plan of work

Stage	TfW Design Development Item
<b>F Construct, Commission &amp; Handover</b>	F1) Seal Orders, issue notices to treat and enter, take possession of land and where appropriate registration of title
	F2) Code of Construction Practice (Part Two: Prepared by IDP) agreed and stakeholder engagement plan updated
	F3) Discharge of any pre-commencement planning conditions
	F4) Site & Environmental Management Plan
	F5) Update HSE Form F10 Notification at the start and end of construction works
	F6) Mobilisation including setting up site compounds
	F7) Order Long Lead Items (e.g. specialist track)
	F8) Agree Highway and Railway Interface Documents with 3rd Parties
	F9) Book railway possessions and agree Traffic Management plans
	F10) Temporary Traffic Regulation Orders
	F11) Handover inspection of worksites
	F12) Construction of works
	F13) Delivery to the specification and testing to confirm compliance.
	F14) Commission scheme and test operation in accordance with design and requirements
	F15) Seal Permanent Traffic Regulation Orders; if required

## Plan of work

Stage	TfW Design Development Item
<b>F Construct, Commission &amp; Handover (continued)</b>	F16) Snagging
	F17) Discharge of Planning Conditions
	F18) Stage 3A and 3B Road Safety Audits
	F19) Product data sheets, maintenance manuals and certification for installed equipment
	F20) Inspection of worksites and handback
	F21) Handover asset for operation with as-built drawings and health and safety file
	F22) Ensure compliance of as built data with BIM Execution Plan
	F23) Integrate as built data into asset management system
	F24) Safety Verification
	F25) Completion
	F26) Open scheme to operations
	F27) Defects period
	F28) Update risk register

## Plan of work

Stage	TfW Design Development Item
<b>G Closeout</b>	G1) Agree final account with ODP/IDP
	G2) Contractor completes outstanding works (or re work)
	G3) Complete a review of project delivery
	G4) Lessons Learnt Log or Report

**Authority's Plan of Works Annex - Products required for each Stage Gate of the Authority's Plan of Works**

Stage D to G - to be completed in the PD&D Stage in collaboration with InfraCo  
*(Items in italics are initial thoughts captured during contractualisation discussions but are not comprehensive)*

Preliminary Design Product ID Number	Deliverables	Definition	A Develop output requirements and options	B Options development and selection	C Preliminary design	D Statutory process	E Detailed design	F Construct, commission and handover	G Close out and as built design
<b>Core Elements</b>									
N/A	Concept Design	The outputs for this element provides a credible design solution that is described in a range of products and deliverables, which have sufficient information available to develop further possible options, It is not anticipated to be at a high level of accuracy and would be based upon existing, available data sets and any available survey information.	Deliverables	Deliverables					
N/A	Preliminary Design	This is a single design option that is selected and supported by a single option selection report. An adequate level of survey, design development and review has been undertaken to confirm, via professional heads of discipline, that the chosen solution is the correct solution and that it meets the minimum requirements of the Project. The single option selection should also be supported by suitably competent asset-specific professional engineers representing the AM/IM team. The design selected will have undergone a multidisciplinary review at regular intervals during its design development.			Deliverables				
N/A	Statutory Process	This is the associated statutory elements required to successfully lead to a compliant solution.				Deliverables			
N/A	Detailed Design	This is the detailed design which has been developed in accordance with the standards, requirements necessary for construction to take place.					Deliverables		
N/A	Construct, commission and handover of assets to maintenance	This is the construction, commissioning and handover phase of the Project.						Deliverables	

N/A

Close out and as built design

This is the effective completion of the Project and the design detail that describes the asset that has been constructed and installed.

*Deliverables***Systems Engineering**

1	Systems Integration Plan	<p>A plan that includes the key elements of the solution, includes the following key areas;</p> <p>1 Introduction 2 System Requirements 3 System Components 4 Applicable Standards 5 System Integration Matrix 6 Hazard Log 7 Management System and Authority Control 8 Supporting Tools and Methods 9 Interfaces 10 Resilience 11 Verification and validation</p>	Deliverable	Deliverable	Deliverable
2	Signalling Scheme Performance Assessment Report	Required on complex schemes with performance criteria that need to be evidenced that the design can achieve the required timetable outputs, in particular at junction layout options to compare options and determine the benefits (Could be combined with products 3 & 4 if appropriate).	Update Concept Design operational model, where required	Update Concept Design operational model, where required	Deliverable
3	Route Capacity Assessment Report	A review of the scheme options to demonstrate that the train services requirements have been achieved and tests the layout for capacity, including platform occupancy at key interchange stations (Could be combined with products 2 & 4 if appropriate).	Update Concept Design operational model, where required	Update Concept Design operational model, where required	Deliverable
4	Timetable Performance Modelling Assessment Report	Required to show that any line speed changes, or journey time improvements that are required as part of the train services requirements are deliverable, the output shall include output of timetabling modelling and / or journey time assessment to demonstrate the performance outputs can be achieved. Where necessary this will include reports and simulations to support line of sight operation and junction analysis for on-street elements. Could be combined with products 2 & 3 if appropriate.	Update Concept Design operational model, where required	Update Concept Design operational model, where required	Deliverable

5	RAM Plan	Required to show the reliability output. This plan will contain information showing how the Reliability, Availability and Maintainability is addressed on this project and can be included in the System Integration Plan if agreed with the Authority. The output should contain the system RAM Model and the system RAM Assessment.	Deliverable (requirements capture only)	Deliverable	Deliverable	
<b>Surveying and Mapping</b>						
6	Project Survey Strategy	Updated at each TFW Plan of Work stage, this document sets out what surveys that are required and the survey methods that will be adopted and when. It details the process and procedures, controls and methods as well as data handling techniques to promote integration of survey data and activity through the stages of Project.	Deliverable	Deliverable	Deliverable	
7	Survey Reports	This is the report that is compiled following the site survey and the survey of existing services and contains details of the permanent survey control stations and includes details of the Horizontal and Vertical control diagrams.		Deliverable	Deliverable	
8	Site Surveys			Deliverables (Walk-throughs & Desktop only)	Deliverable	
9	Survey of Existing Services - Buried Services	This is a physical survey on site. This is either a physical survey on site or a desk top survey.		Deliverable	Deliverable	
<b>General Design</b>						
10	Requirements/Technical Work scopes, including design commentaries and list of engineering standards across disciplines	This is the report or data output that provides a detailed list of requirements that is either extracted from the CVL Engineering Requirements document. the Standard developed by InfraCo and accepted by the Authority or those developed for inclusion in the agreed requirements management software - this will allow the designer to evidence traceability of the requirements into the design. Requirements Management Plan with content in ComplyPro.	Deliverable	Deliverable	Deliverable	
11	Cable Routing Strategy	This document describes the strategy for mapping cables through the duration of the project.		Deliverable	Deliverable	
12	Earthing and Bonding Strategy, including Lightning Protection (Proposed to be combined with EMC strategy)	The document describes how the earthing and bonding is carried out across the disciplines including earthing diagram schematics		Deliverable	Deliverable	
13	Earthing Diagram	A diagram, at an appropriate scale, that shows the earthing across disciplines.				Deliverable

14	Redundant Asset Register	A register of assets that are due to be made redundant.		Deliverable (High Level)	Deliverable (Detail)
15	Recoveries Programme	A document, including a programme which details how redundant assets are to be recovered.		Deliverable (High Level)	Deliverable (Detail)
16	Equipment Layout Diagrams	General equipment layout diagrams across the various applicable disciplines.		Deliverable	

#### Engineering Assurance

17	Designers Risk Log	Records of identified risks and assumptions, interfaces and interdependencies identified during the design process and at design reviews.	Deliverable	Deliverable	Deliverable	Deliverable
18	Designers Risk Assessments (CDM)	These can be included in other deliverables, if adequately identified within those deliverables, or produced as a stand alone document.	Update Concept Design, where required	Deliverable	Deliverable	Deliverable
19	Design Compliance Certificate	Confirmation that the design complies with the requirements and later in the project lifecycle that the installation complies with the design, this would generally be signed by the Engineering Manager and endorsed by the appropriate Professional Head.		Deliverable	Deliverable	Deliverable
20	Compliance Matrix	A schedule of requirements only which is generally used to record the compliance status, or the intended compliance status, with linked evidence.	Deliverable	Deliverable	Deliverable	Deliverable
21	Product Acceptance Certificates (As required)	This documentation is required when introducing new products that require approval.			Deliverable	
22	Constructability Assessment	The document outlines the constructability of the options prior to single option selection and can include early contractor involvement.			Deliverable	
23	Inter Disciplinary Reviews (IDR) and Check Certificates (IDC)	Records of evidence to demonstrate that continuous interdisciplinary reviews have been undertaken and formal interdisciplinary checks have been completed, these would generally include a certificate per deliverable		Deliverable	Deliverable	Deliverable
24	Master Records Register	Register of InfraCo approved Design Deliverables and Master Records that are signed copies of the current operational infrastructure.	Deliverable (Concept Design plus other new deliverables)	Deliverable	Deliverable	
25	Entry in Service Strategy	The document/strategy would include details of how the infrastructure is proposed to be brought into service/carried out. The use of a check list should be included as appropriate to cross reference other documents as appropriate.			Deliverable	Deliverable

26	Testing and Commissioning Strategies	Document/statement of the proposed testing methodology, where single commissioning can have a combined Strategy and Plan.		Deliverable	Deliverable
27	Engineering Deliverables Review Plan (As required)	Required on larger projects/programmes to assist in the planning of the design review process.	Deliverable	Deliverable	Deliverable
28	Proposed Derogations and Temporary Non-Compliances	List of any proposed derogations and TNC's.		Deliverable	Deliverable
<b>Operations and Maintenance</b>					
29	Maintenance Strategy & Requirements	A document that contains the details of any required, specific maintenance requirements that need to be considered within the operational environment as the asset is transferred into railway operations and any associated strategy and requirements, in particular around the training and development of individuals and any specialist plant and equipment that maybe required, including strategic spares.	Deliverable ComplyPro requirements capture only	Deliverable	Deliverable
<b>EMC</b>					
30	EMC Strategy (This may be a combined earthing, bonding and EMC Strategy)	This document outlines the details associated with the proposed EMC strategy.		Deliverable	Deliverable
<b>Electrification and Plant</b>					
31	Approval in Principle - Form A's	To include, as required by system design: - Contact Systems - OLE - SCADA - Signal Power Supplies - Points Heating - Lighting - AC Networks - 25kV AC - Protection - 25kV AC - DC Networks - DC & Phase 3 - Protection - DC & Phase 3 - AC/DC Interface - E&P multiple sub-disciplines			Deliverable
32	Major Feeding Diagrams	A diagram, at an appropriate scale, that details out, at a suitable level of detail the proposed feeding arrangements for the option(s).	Deliverable	Deliverable	Deliverable
33	Emergency Feeding Diagrams/Limits of Safe Feeding	These diagrams show the extent of allowable feeding under outage conditions.		Deliverable	Deliverable



34	Electrical Sectioning Diagram/Isolations Diagrams/Instructions	This covers both AC/DC systems and includes diagrams and instructions, this should also include details of local isolation diagrams, at an appropriate scale, for any depots and sidings that are proposed to be energised.		Deliverable	Deliverable	Deliverable
35	OLE Capability Assessment	A document that summarises the OLE capability that is available to undertake the proposed OLE design and construction.		Deliverable		
36	OLE Layout Plan	A diagram, at an appropriate scale, that details the proposed OLE layout.			Deliverable (Outline)	Deliverable (Detail)
37	General Arrangement of Limited Electrical Clearances, including PES Arrangements	A typical cross section of the proposed OLE details.		Deliverable	Deliverable	
38	Signal Power Supply Strategy	A document that summarises the Signal Power Supply Strategy with any supporting diagrams at a suitable scale.		Deliverable	Deliverable	
39	Load Schedule - LV Supplies	A summary of the load schedules.		Deliverable	Deliverable	
40	Distribution Network Load including Power Simulation Modelling	A distribution network loading data set that has been derived from detailed and extensive Power Simulation Modelling.	Update Concept Design operational model, where required	Update Concept Design operational model, where required	Deliverable	
41	DNO Supply Application	DNO connection applications (including Network Rail connection application at Canton)	Deliverable	Deliverable	Deliverable	
42	TNO Supply Application	National Grid connection application for Upper Boat	Deliverable	Deliverable	Deliverable	
<b>Signalling</b>						
43	Scaled Signalling Scheme Plan to include: - Table of Routes - Aspect Sequence Chart - Braking Distance Calculations - Design Assumptions	A set of scaled signalling scheme plans that show the exact location of all signalling assets and proposed modifications.			Deliverable	
44	Signalling Scheme Sketch	Semi-scale drawings that are used to aid option development and modelling, that can allow the completion of operational modelling.	Concept Design 5 Mile Diagram	Deliverable		
45	Assessment of Signalling Systems before signalling design alterations	Document summarising the results of the assessment of the signalling system(s) to be at a suitable level of detail to inform design development.	Concept Design 5 Mile Diagram	Deliverable	Deliverable	
46	Site Survey Sketch	Sketches that indicate the relative position of equipment, these can be combined with other documents.		Deliverable	Deliverable	
47	Signal Sighting Forms	As described by the deliverable.			Deliverable	
48	Train Detection Proposal Paper	As required.		Deliverable		

49	Signalling Approval in Principle Forms Final Project Specification (FPS)	This is the Approval in Principle Forms that is supported by other deliverables and includes details of the proposed scope that has been selected.		Deliverable	
50	Control Tables (Includes mechanical and locking tables)	The detail of the interlocking controls to be applied and any wiring design requirements at the appropriate stage of the design development.			Deliverable
51	Prevention and Mitigation of Overruns - Preliminary Assessment	As described by the deliverable.	Deliverable	Deliverable	
52	Prevention and Mitigation of Overruns - Junction Screening Tool (Covered under SORAT)	A document that contains a simple quantitative assessment of the risk of train conflicts within a proposed junction layout to facilitate option selection. Provides documentary evidence that a risk based approach to layout design has been considered in the option selection.	Deliverable		
53	Prevention and Mitigation of Overruns - Signal Assessment Tool (Covered under SORAT)	A document that considers the purpose of the prevention and mitigation of overruns, using appropriate tools to undertake a quantitative assessment of the risk of overrunning any specific signals, shall consider, where appropriate a TPWS effectiveness Report.		Deliverable	
54	Prevention and Mitigation of Overruns - Detailed Risk Assessment - ROL - Permissive Working - Overbraking - Buffer Stops (Covered under SORAT)	This document contains a detailed assessment based upon the findings of the SAT.		Deliverable	
55	Line speed Increase Risk Assessment (Covered under SORAT)	A summary report/output of the risk assessments associated with any proposed line speed improvements.		Deliverable	
56	Operations & control Strategy Requirements	A document that assesses the strategy and requirements for the control and transition of each of the technical options.	Deliverable		
57	Signage Sighting Form	As described by the deliverable.		Deliverable	
58	Correlation Reports and Waivers	As described by the deliverable.		Deliverable	Deliverable
59	ARS specifications	As described by the deliverable.		Deliverable	
60	Interlocking Rule Requirement	As described by the deliverable.		Deliverable	
61	Signalling Principles Review	As described by the deliverable.		Deliverable	
<b>Telecoms</b>					
62	Site Survey Report - Copper + Fibre Cable infrastructure (including position of joints) and other telecoms assets	As described by the deliverable.	Deliverable	Deliverable	

	likely to be affected by the proposed works			
63	FTN/GSM-R High level design to support the signalling and telecoms network	A summary document of the high level design aspects associated with the FTN/GSM-R and the project requirements associated with these assets.	Deliverable	Deliverable
64	Site Survey Report - Public Address, Voice Alarm and LLPA	As described by the deliverable.	Deliverable	Deliverable
65	PA - Acoustic Survey	As described by the deliverable.	Deliverable	Deliverable
66	Option Selection (Stage B) - Approval in Principle (Stage C) - Operational Telecoms	This is the Approval in Principle Forms that is supported by other deliverables and includes details of the proposed scope that has been selected .	Deliverable	Deliverable
67	Risk Assessment for Additional Phones	Site assessments of telephone provision.		Deliverable
68	Option Selection (Stage B) - Approval in Principle (Stage C) - Station Information and Surveillance Systems, including CCTV cone coverage	Option selection report that incorporates the AIP and other associated information.	Deliverable	Deliverable
<b>Track</b>				
69	Track Geometry Analysis for LSI Schemes	A summary report of the analysis associated with any proposed LSI.		Deliverable
70	Track Quality Assessment	Assessment of the existing and predicted SD's for speed and tonnage increases as part of the project.	Deliverable	
71	Rail Defect Analysis	Report that considers the defect clustering as a means of establishing the need to deal with rail defects/track issues.		Deliverable
72	Track Componentry Assessment	Assessment of the existing plain line track and S&C for speed and tonnage increases as part of the project.	Deliverable	Deliverable
73	S&C site condition inspection report	Assessment of the existing S&C for speed and tonnage increases as part of the project.	Deliverable	Deliverable
74	Gauging Assessment Report	As described by the deliverable.	Deliverable	Deliverable
75	Track Bed Investigation and recommendation report/design, including details of Trackform			Deliverable
76	standard and any specialist S&C	Track bed investigation and assessment which incorporates design recommendations.		
	Approval in Principle - Form	As described by the deliverable.		Deliverable
<b>Drainage (Track)</b>				
77	Drainage design	Design Commentary of the proposed drainage design.	Deliverable	Deliverable

78	Drainage assessment, including flood risk assessment as required	Desk top study and report, with walk out, as required, to establish key issues and consideration of the drainage system and the risk of flooding across the area of the project.	Deliverable	
79	Drainage survey	The completion of any drainage surveys that have been identified by the drainage assessment and a means to establish condition and capacity.	Deliverable	Deliverable
<b>Civils, Buildings, Lifts and Stations</b>				
80	Prefeasibility Report	Design commentary as appropriate.	Deliverable	
81	Feasibility Report - Civils, Buildings, Lifts and Stations	A report that details the issues to be addressed, should include details associated with bridge strikes from road vehicles and where appropriate water borne vessels, vehicle incursion, structural assessment results, durability, water management, scour, waterproofing, protection against derailment, accidental loading, trespass, vandalism, parapet and handrails and safety barriers, bearings, track-bridge interaction, structural gauging and clearances, electrical clearances and architectural considerations.	Deliverable (available survey data)	Deliverable (full survey outputs)
82	Mining Report	Report that details and summarises the issues for consideration associated with any mining activity within the project area.	Deliverable	Deliverable
83	Ground and Structures Investigation Proposals	Documented proposals for GI and structural surveys.	Deliverable	Deliverable
84	Condition Survey Report, including station lighting assessability audits as required	Inspection reports on Civils, Buildings, Lifts and Station assets, vegetation and other related conditions to be addressed.	Deliverable	Deliverable
85	Drainage - Initial Survey and Condition Assessment	Report that covers other drainage aspects that are not considered within the track drainage elements.	Deliverable	Deliverable
86	Structures Gauging Report	Vertical lateral clearances to structures that covers the elements that are not covered in the track deliverables.	Deliverable (Key sites)	Deliverable (with full survey results)
87	Factual Ground and Structures Investigation Report	Summary report on the Ground and Structures investigation outputs and their impact upon the design development and the aspects that require further consideration.		Deliverable
88	Geotechnical Design Report	Summary report on the Geotechnical investigation outputs and their impact upon the design development and the aspects that require further consideration.		Deliverable
89	Approval in Principle Assessment	As described by the deliverable.		Deliverable
90	Structures Detailed Assessment, including parapet risk assessments	Report that summarises the detailed assessment of the inspection reports, including any impact on parapets that need to be considered within the design development.		Deliverable

91	Fire and Emergency Evacuation Report	Report that details out the requirements associated with the Fire and Emergency Evaluation.	Deliverable	Deliverable
92	Approval in Principle - Design	As described by the deliverable.		Deliverable
93	Aesthetic Assessment Report, including interface with branding as appropriate	Report that summarises the aspects of aesthetics including urban realm finishes that need to be considered as part of the design development.		Deliverable
94	Road Safety Audit	Road Safety Audit in accordance with the Design Manual for Roads and Bridges for station forcourt works and any works on the Public Highway.		Deliverable
<b>Civils Earthworks, Foundations and Retaining Walls</b>				
95	Change of use evaluation	A report that outlines any proposed changes of use of any assets that needs further consideration within the design development.	Deliverable	
96	Monitoring & Maintenance Regime for Excavations	A summary of any required monitoring and maintenance activities associated with excavations that are to be progressed as part of the works.	Deliverable	Deliverable
<b>Lineside Infrastructure</b>				
97	Lineside Boundary Assessment	A summary of any Lineside boundary issues.	Concept Design Boundary Schedule and any additional information available	Concept Design Boundary Schedule and any additional information available
98	Lineside Access Review	A report that details any changes proposed to the lineside access arrangements as part of the development of the design.	Concept Design Boundary Schedule and any additional information available	Concept Design Boundary Schedule and any additional information available
99	Lineside Access Layout Design	A report that details any changes proposed to the lineside access layout arrangements as part of the development of the design.		Deliverable (after Discovery and Authority surveys)
<b>Stations &amp; Car Parks</b>				

100	Passenger Demand Report	A report that considers the Passenger Demand and its impact upon the stations and associated car parks.	Deliverable		
101	Sustainability and energy efficiency options report	A report that details the sustainability aspects and energy efficiency aspects of the design proposals at stations and car parks, can be included in other elements of the deliverables if considered more appropriate.	Deliverable	Deliverable	
102	Operational Assessment Report	A document that considers the impact of the design solution(s) on the operational railway, this should be developed in conjunction with the railway operator.	Deliverable	Deliverable	
103	Staffing and Operational Management Plan	This report details the impact on the operational and maintenance staff of the proposed design solution(s) during the project lifecycle and proposals on how this can be managed.		Deliverable	
<b>Building Services</b>					
104	Assessment of existing conditions	A report of existing conditions of the assets, including lighting, heating, ventilation, drainage, waste disposal, hygiene and electrical supplies for lighting visually inspect the existing lighting type/lamp source and condition. Sample lux level readings taken to verify poor or inadequate lighting levels etc. This should include the monitoring of the existing incoming electrical supply.	Deliverable		
105	Approval in Principle and details of outline design	As described by the deliverable.		Deliverable	
106	Lifts Schedule	A report that details the schedule of lifts across the project network with a summary of any proposed works at each of the locations, developed further as the design develops.		Deliverable	
<b>Level Crossings</b>					
107	Operational Suitability Assessment	A document that details the operational suitability of the existing level crossings given the design development and changes in the various aspects of level crossing usage and also the other associated interfaces.	Deliverable		
108	Level Crossing Use Census	A report that details the crossing use census.	Deliverable		
109	Level Crossing Ground Plan - Outline	A drawing that provides outline details, to scale, of the proposed level crossing equipment.		Deliverable (after full surveys)	
110	Level Crossing Ground Plan - Final	A drawing that provides final layout details, to scale, of the proposed level crossing equipment.			Deliverable
111	Level Crossing Consultation Meeting	A report that details the stakeholder engagement undertaken and a summary of any concerns that have been raised and need to be considered as part of the development of the design, including and risks and or concerns that need to be addressed.	Deliverable	Deliverable	

112	Level Crossing Orders (as appropriate)	As described by the deliverable.		Deliverable	
<b>Ergonomics</b>					
113	Ergonomics Integration Strategy/Plan	A document that outline the planned approach to the development/consideration of Ergonomics within the development of the design solutions.	Deliverable	Deliverable	
114	Ergonomics Design File	As described by the deliverable.	Deliverable	Deliverable	
115	Control Centre Baseline Survey	A summary report which details the baseline survey associated with any existing assets.	Deliverable		
116	Workload Assessment(s)	As described by the deliverable.	Deliverable		
117	Operational Concept(s)	As described by the deliverable.	Deliverable	Deliverable	
118	Control Centre Operations Floor Layout Design	Drawing of the proposed floor layout of the Operations Floor, scale to be appropriate.	Deliverable	Deliverable	
119	Control Centre Environmental Specification	As described by the deliverable.		Deliverable	
120	Operations Migration Plan	A report that details the Operations Migration Plan.		Deliverable	
121	Alarm Strategy	A report that details the Alarm Strategy, this can be merged into another document if appropriate.		Deliverable	
122	Ergonomics Approval in Principle Submission	As described by the deliverable.		Deliverable	
123	Station control room design	Drawing of the proposed Station control room, scale to be appropriate.	Deliverable	Deliverable	
124	Station control system design	A document that details the Station control system design.	Deliverable	Deliverable	
125	Ticket office design	Drawing of the proposed Ticket Office design, scale to be appropriate.	Deliverable	Deliverable	
126	Staffed Information Point Design	As described by the deliverable.	Deliverable	Deliverable	
127	System User Requirements Analysis	As described by the deliverable.	Deliverable	Deliverable	
128	System User Testing Trail Plans	As described by the deliverable.	Deliverable	Deliverable	
129	Novel Operations Risk Assessment	As described by the deliverable.		Deliverable	
<b>Sustainability</b>					
130	Sustainability Design Plan	As described by the deliverable.	Deliverable	Deliverable	
<b>Target Price and QRA</b>					
131	Outline Target Price	Completed Cost Templates.	Deliverable	Deliverable	-
132	QRA	Completed QRA documentation.		Deliverable	Deliverable
133	Final Target Price	Completed Cost Templates.		Deliverable	Deliverable

Programme						
134	CVL Transformation Delivery Programme	<p>Programme which includes a WBS that allows the programme as a minimum to filter out the following programmes;</p> <ul style="list-style-type: none"> <li>- Design Programme</li> <li>- Procurement Programme</li> <li>- Construction Programme</li> <li>- Week day night time and Possessions Programme</li> <li>- Package Order IDP Infrastructure Works Programme</li> <li>- Commissioning Programme</li> <li>- Milestone Summary</li> </ul>	<div>Deliverable High Level Programme</div>	<div>Deliverable Level 3 Programme</div>	<div>Deliverable Level 4 Programme</div>	
Schematic						
135	A1 Schematic	An A1 Schematic, with an appropriate level of detail that will develop further as the design progresses.	<div>Deliverable</div>	<div>Deliverable</div>	<div>Deliverable</div>	



**Appendix 14 of Schedule 3B**

**Framework Agreement Information**

The form of Framework Agreement Information is contained on the CD-Rom attached to Appendix 14 of Schedule 3B of the ODP Grant Agreement.

**Appendix 15 of Schedule 3B**

Not Used

**Appendix 16 of Schedule 3B**

## Draft Process for Best Value

- [illegible]

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**Appendix 17 of Schedule 3B**

**Template Form of IDP Contract**

The template form of IDP Contract is contained on the CD-Rom attached to Appendix 17 of Schedule 3B of the ODP Grant Agreement.

**Appendix 18 of Schedule 3B**

Not used



## **Appendix 19 of Schedule 3B**

### **Change Mechanism**

#### **1 RIGHT TO VARY**

##### **1.1 The Authority:**

- (a) may initiate Variations at any time prior to Completion, either by an instruction or by a request for InfraCo to submit a proposal; and
- (b) shall, subject to the remainder of this clause 1 (Right to Vary), be entitled to give an instruction at any time to omit any item, thing, matter or work forming part of the Infrastructure Services or any part thereof or the AKI Infrastructure Works or any part thereof and shall be entitled to procure that such omitted services or works be provided by Others.

InfraCo shall have no claim against the Authority for loss of use, loss of business, loss of opportunity or loss of contract or for any indirect or consequential loss in respect of any such omission.

##### **1.2 InfraCo shall execute and be bound by each Variation, unless InfraCo promptly gives notice to the Authority stating (with supporting particulars) that:**

- (a) it will materially impact upon the safety of the Infrastructure Services or any part thereof or the Infrastructure Works or any part thereof, or
- (b) the Variation is prohibited by Law; or
- (c) that InfraCo is not qualified to Provide the new or varied Infrastructure Services or AKI Infrastructure Works.

Upon receiving this notice, the Authority shall cancel or vary the instruction.

##### **1.3 InfraCo may of its own accord submit a written proposal to the Authority to initiate a Variation which (in InfraCo's opinion) will, if adopted:**

- (a) accelerate completion of the Infrastructure Services or the AKI Infrastructure Works;
- (b) reduce the cost of executing, maintaining or operating the AKI Infrastructure Works or the CVL Asset Transformation or any Associated Projects;
- (c) improve the efficiency or value to the Authority of the completed AKI Infrastructure Works;
- (d) improve the efficiency of the operational services to be provided by InfraCo; or
- (e) otherwise be of benefit to the Authority,

in which case the proposal (which shall include the items listed in clause 2 of this Appendix 19) shall be prepared at the cost of InfraCo and at the Authority's sole discretion the Parties shall follow the procedure set out in clause 2 of this Appendix 19.

##### **1.4 Notwithstanding any other provision of the Infrastructure Agreement or any Package Order, InfraCo shall have no entitlement to recover any Cost or Losses or any loss of profit or loss of revenue incurred as a result of a Variation and no entitlement to an extension of time where a Variation results from any negligence, default or breach of contract by InfraCo.**

## **2 VARIATION PROCEDURE**

2.1 The Authority may issue a request in the form for variation requests to be agreed between the Parties (acting reasonably) for a proposal from InfraCo, prior to instructing a Variation. InfraCo shall respond in writing as soon as practicable and in any event within 28 days of such request, or within such other reasonable period as may be specified in such request or approved by the Authority acting reasonably, by submitting:

- (a) a description of the proposed services or works to be performed and a programme for their execution,
- (b) InfraCo's proposal for any necessary modifications to the programme and to the Completion Date and Milestone Delivery Dates,
- (c) InfraCo's proposal for adjustment to the Prices (which shall include all additional costs or other sums InfraCo shall require for the execution or by reason of the Variation and shall be based upon the Staff Rates and any other rates, prices and principles stated in the CVL Cost Template, unless InfraCo is able to demonstrate on reasonable grounds that such rates and prices would be inappropriate) and any consequent adjustment to the schedule of payments, and
- (d) InfraCo's assessment of any impact of the Variation in question on any applicable Standards, health and safety, or those matters referred to in clause 21 of Schedule 3B.

For the avoidance of doubt, InfraCo's proposal shall include all consequences of the proposed Variation, including any further Variation or Proposed Consequential Change which will result from or be required in order to facilitate the implementation of the proposed Variation, and shall remain open for acceptance by the Authority for such period as may be specified in the request for the proposal.

2.2 The Authority shall be entitled to instruct InfraCo to execute in whole or in part a Variation which is the subject of a proposal, submitted by InfraCo under this clause 2 pending the acceptance of such proposal by the Authority. If the relevant proposal is not ultimately accepted by the Authority, the penultimate paragraph of this clause 2 shall apply.

2.3 Each instruction to execute a Variation, with any requirements for the recording of Cost, shall be issued by the Authority to InfraCo, who shall acknowledge receipt. Any Cost of a Variation shall be based on the Staff Rates and any other rates, prices and principles set out in the CVL Cost Template (unless InfraCo is able to demonstrate on reasonable grounds that such rates and prices would be inappropriate).

2.4 Where the Authority instructs a Variation in accordance with an accepted proposal submitted by InfraCo, the programme, the Completion Date and Milestone Delivery Dates (as applicable), the forecast Prices, and relevant schedule of payments shall be modified or adjusted, as appropriate, in accordance with the proposals that have been accepted. Where adjustments to the time for Completion of the Infrastructure Services or AKI Infrastructure Works (as applicable), the forecast Prices and / or relevant schedule of payments cannot be agreed, the Authority may if it chooses to proceed and upon instructing or approving a Variation, proceed to determine any adjustments to the Completion Date and Milestone Delivery Dates (as applicable), the forecast Prices and relevant schedule of payments. These adjustments to the forecast Prices shall be based upon the Staff Rates and any other rates and prices stated in the CVL Cost Template (unless InfraCo is able to demonstrate on reasonable grounds that such rates and prices would be inappropriate).

2.5 If InfraCo disagrees with the determination made by the Authority it shall give notice to that effect to the Authority within 14 days of receipt of such determination. If InfraCo fails to give such notice it shall be deemed to have accepted the determination made by the Authority. If InfraCo does give notice of disagreement in accordance with the above, then either Party may refer the matter for determination in accordance with Appendix 7

(Dispute Resolution). Unless and until the Parties agree the effect of a Variation on the Completion Date and Milestone Delivery Dates (as applicable), the forecast Prices and relevant schedule of payments or such effects are otherwise determined in accordance with Appendix 7 (Dispute Resolution) of Schedule 3B then the Authority shall, if it wishes InfraCo to proceed with the Variation, pay InfraCo in accordance with InfraCo's proposal.

- 2.6 Any instruction to execute a Variation issued by the Authority's Project Manager shall be in the form annexed to this Appendix 19 of Schedule 3B and the Infrastructure Services and / or AKI Infrastructure Works under Schedule 3B or the relevant Package Order shall be varied accordingly.

**Appendix 20 of Schedule 3B**

Notice to Proceed



**TRAFNIDIAETH  
CYMRU  
TRANSPORT  
FOR WALES**

Llawr 5, Tŷ South Gate  
Stryd Wood  
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029 2167 3434  
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5th Floor, South Gate House  
Wood Street  
Cardiff CF10 1EW  
029 2167 3434  
contact@tfw.gov.wales  
tfw.gov.wales

To: Keolis Amey Wales Cymru Limited,  
C/O Amey Rail, Maindee Depot,  
Off Caerleon Road,  
Newport,  
Wales  
NP19 9DZ.

From: [REDACTED] Rail Programme Director, Transport for Wales

Date: 20<sup>th</sup> October 2020

Dear Sir / Madam,

**Notice to Proceed – Principle Infrastructure Services and CVL Transformation**

We refer to the ODP Grant Agreement entered between us on 4<sup>th</sup> June 2018 (the "ODP Grant Agreement").

Terms used in this notice shall have the meanings given to them in the ODP Grant Agreement.

Pursuant to clause 4B of Annex 1 of Part B of Appendix 5 of Schedule 3B of the ODP Grant Agreement, we hereby confirm that the Preliminary Design and Discovery Phase has ended and give you Notice to Proceed with the Principal Infrastructure Services to be carried out during the Detailed Design and Management Phase in respect of the CVL Transformation with effect from 1<sup>st</sup> April 2020.

This Notice references and relies upon the following Deliverables provided to the Authority:

Deliverable	Document Reference	Date Received	Status
CVL – [TRAN01-KAW-ZZ-CVL-BBC-Z-MN-000001 P08] - CVL Transformation Proposal (Final Submission) (inc CVL - 26320)	TRAN01-KAW-ZZ-CVL-BBC-Z-MN-000001 P08	16 <sup>th</sup> June 2020	Accepted



Cyfeiriad cofrestredig y swyddfa: Canolfan QED, Prif Heol, Ystâd Ddiwydiannol Trefforest, Pontypridd CF37 5YR.  
Trafnidiaeth Cymru rhif cwmni: 09476013. Cwmni cyfyngedig drwy warrant. Cofrestredig yng Nghymru.  
Registered office address: QED Centre, Main Avenue, Trefforest Industrial Estate, Pontypridd CF37 5YR.  
Transport for Wales company number: 09476013. A company limited by guarantee. Registered in Wales.



The deliverable CVL – [TRAN01-KAW-ZZ-CVL-BBC-Z-MN-000001 P08] – CVL Transformation Proposal (Final Submission) (inc CVL – 26320) contains the sub deliverables specified as required in clause 4.1 of Annex 1 of Part B of Appendix 5 of Schedule 3B of the ODP Grant Agreement.

This Notice to Proceed is conditional upon the acceptance by the Authority of the following deliverables concerning which the Authority has provided requirements for change:

Deliverable	Document Reference	Required Date	Authority's Required Changes
Complete closure of Programme open items, QSRA report P80 and QCRA	N/A	Estimated QSRA completion by 9 <sup>th</sup> October 2020	Move to Milestone 9 as sub-deliverable
Acceptance of Programme	N/A	Estimated completion by 16 <sup>th</sup> October 2020	Move to Milestone 9 as sub-deliverable
CA81 (Red Line 3) 12 x sub deliverables - Stadler Battery Modelling and PES Solution	Smart Electrification Summary Report TRAN01-KAW-ZZ-CVL-RPT-Z-SE-000004	Estimated completion by 24 <sup>th</sup> May 2021	Move to Milestone 9 as sub-deliverable
CA82 - Commercial implication of the VE solution on the rolling stock contracts	N/A	Estimated completion by 24 <sup>th</sup> May 2021	Move to Milestone 9 as sub-deliverable
CA83A - Ballast Depth	N/A	Estimated completion by 21 <sup>st</sup> October 2020	Move to Milestone 9 as sub-deliverable
CA83B (Red Line 4 & 5) 7 x sub deliverables- Platform extensions and passenger exchange.	N/A	Estimated completion by 24 <sup>th</sup> May 2021	Move to Milestone 9 as sub-deliverable



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FOR WALES**

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5th Floor, South Gate House  
Wood Street  
Cardiff CF10 1EW  
**029 2167 3434**  
contact@tfw.gov.wales  
tfw.gov.wales

CA84 - Level Boarding on CVL and NR Infrastructure	N/A	Estimated completion by 21 <sup>st</sup> October 2020	Move to Milestone 9 as sub-deliverable
CA89/90/91 - all Final Target Price related (Upon completion of Stage E Design for RS0R2P and RS1ABD, the ODP shall submit a revised CVL Transformation Estimate, considering the latest information available).	N/A	Estimated by 29 <sup>th</sup> January 2021	Move to Milestone 9 as sub-deliverable

We confirm that Option C (Target cost) set out in the Conditions of Contract for Infrastructure Services and as set out in the Activity Schedule document of Target pricing provided by the ODP as a component of the Transformation Proposal, shall apply to the whole of the Principal Infrastructure Services to be provided by the ODP during the whole of the Detailed Design and Management Phase from the 1<sup>st</sup> April 2020.

Please note and for the avoidance of doubt, that this Notice to Proceed does not constitute acceptance by the Authority of any adjustment or amendment to your obligations under the ODP Grant Agreement.

Please acknowledge and confirm your acceptance of this Notice to Proceed.

Yours faithfully,

Karl Gilmore  
Rail Programme Director  
Transport for Wales



Cyfeiriad cofrestredig y swyddfa: Canolfan QED, Prif Heol, Ystâd Ddiwydiannol Trefforest, Pontypridd CF37 5YR.  
Trafnidiaeth Cymru rhif cwmni: 09476013. Cwmni cyfyngedig drwy warrant. Cofrestrwyd yng Nghymru.  
Registered office address: QED Centre, Main Avenue, Trefforest Industrial Estate, Pontypridd CF37 5YR.  
Transport for Wales company number: 09476013. A company limited by guarantee. Registered in Wales.

## **Appendix 21 of Schedule 3B**

### **Concept Design**

The Concept Design is contained on the CD-Rom attached to Appendix 21 of Schedule 3B of the ODP Grant Agreement and is comprised of the following documents. The Parties shall seek to agree by the Novation Time any required value engineering-related amendments to the Concept Design.

<b>Product Number</b>	<b>Product Title</b>	<b>CVL Concept Design Document paragraph reference</b>	<b>File Name</b>	<b>Version</b>	<b>Date</b>
<b>1</b>	Design Development Status Schedule	3.1 a)	01-000-KEA-Design Development Status Schedule- V4.0-031117	V4.0	03/11/2017 Product is resubmitted at V4.0 (no change)
<b>2</b>	High Level Programme	3.1 b)	W&B CVL High Level v05.5 - 22052018	V5.5	22/05/2018
<b>3</b>	Indicative Depot and Stabling Facilities	3.1 c)	03-000-KEA-Indicative Depot and Stabling Facilities-V5.0-211217	V5.0	21/12/2017
<b>4</b>	Possession Blockade Schedule	3.1 d)	04-000-KEA-Possession Blockade Schedule-V5.0-211217	V5.0	21/12/2017
<b>5</b>	A1 Plan of the CVL Network	3.1 e)	05-000-KEA-A1 Plan of the CVL Network-V4.0-031117	V5.0	21/12/2017
<b>6</b>	Design Development Commentary	3.1 g)	06-000-KEA-Design Development Commentary-V5.0-211217	V5.0	21/12/2017
<b>7</b>	Accessibility Model Input Proforma	3.1 h)	07-000-KEA-Accessibility Model Input Proforma-V4.0-031117	V4.0	03/11/2017 Product is resubmitted at V4.0 (no change)
<b>8</b>	NR Boundary Schedule	3.1 i)	08-000-KEA-NR Boundary Schedule-V5.0-211217	V5.0	21/12/2017
<b>9</b>	Level Crossing Schedule	3.2 a)	09-1.01-KEA-Level Crossing Schedule-V5.0-211217	V5.0	21/12/2017
<b>10</b>	Railsys and Traction Power Simulation Input Parameters	3.3 c)	10-1.02-KEA-Railsys and Traction Power Simulation Input-V4.0-031117	V5.0	21/12/2017
<b>11</b>	Infrastructure Improvements Schedule	3.4 a)	11-1.04-KEA-Infrastructure Improvements Schedule-V4.0-031117	V5.0	21/12/2017
<b>12</b>	1:1000 Scale Alignment Plans (CDF and CQS)	3.4 b)	12-1.04-KEA-Scale Alignment Plans CDF and CQS- V3.0-220917	V3.0	22/09/2017 Product is resubmitted at V3.0 (no change)



<b>13</b>	Typical Cross Sections	3.4 c)	13-1.04-KEA-Typical Cross Sections-V4.0-031117	V4.0	03/11/2017 Product is resubmitted at V4.0 (no change)
<b>14</b>	Route Diagrams	3.1 d)	14-1.04-KEA-Route Diagrams-V5.0-211217	V5.0	21/12/2017
<b>15</b>	Stations Schedule	3.5 a)	15-1.06-KEA-Stations Schedule-V5.0-211217	V5.0	21/12/2017
<b>16</b>	Structures Schedule	3.6 a)	16-1.07-KEA-Structures Schedule-V4.0-031117	V5.0	21/12/2017
<b>17</b>	Extendibility Outline Response	3.8 a)	17-000-KEA-Extendibility Outline Response-V5.0-211217	V5.0	21/12/2017
<b>18</b>	CVL Cost Template	2.1	N/A	N/A	N/A
<b>19</b>	Feeder Station Drawing	3.3 a)	19-1.03-KEA- Feeder Station Drawing-V5.0-211217	V5.0	21/12/2017
<b>20</b>	Master Submission Document List	N/A	20-000-KEA-Master Submission Document-V5.0-211217	V5.0	21/12/2017
<b>21</b>	KA ITSFT Volume 8 extraction	N/A	KA ITSFT vol 8 extraction 20180518 clean.docx	N/A	18/05/2018

**Appendix 22 of Schedule 3B**

**CVL Engineering Requirements**

The CVL Engineering Requirements are contained on the CD-Rom attached to Appendix 22 of Schedule 3B of the ODP Grant Agreement and are comprised of the following documents:

- 1** CVL Engineering Requirements; and
- 2** CVL Engineering Requirements Summary.

## **Appendix 23 to Schedule 3B**

### **Trust Deed<sup>15</sup>**

#### **Trust Deed**

This agreement is made between the Authority, InfraCo and the Named Suppliers.

Terms in this deed have the meanings given to them in the contract between

..... and .....

for

..... ([the Infrastructure Services/AKI Infrastructure Works]).

#### **Background**

The Authority and InfraCo have entered into a contract for [the Infrastructure Services/AKI Infrastructure Works].

The Named Suppliers have entered into contracts with InfraCo or a Subcontractor in connection with [the Infrastructure Services/AKI Infrastructure Works].

InfraCo has established a Project Bank Account to make provision for payment to InfraCo and the Named Suppliers.

#### **Agreement**

The parties to this deed agree that:

- (a) sums due to InfraCo and Named Suppliers and set out in the Authorisation are held in trust in the Project Bank Account by InfraCo for distribution to InfraCo and Named Suppliers in accordance with the banking arrangements applicable to the Project Bank Account,
- (b) further Named Suppliers may be added as parties to this deed with the agreement of the Authority and InfraCo. The agreement of the Authority and InfraCo is treated as agreement by the Named Suppliers who are parties to this deed,
- (c) this deed is subject to the law of the contract for [the Infrastructure Services/AKI Infrastructure Works],
- (d) the benefits under this deed may not be assigned.

Executed as a deed on .....

by

..... (Authority)

..... (InfraCo)

..... (Named Suppliers)

---

<sup>15</sup> The Trust Deed set out in this Appendix 23 is in template form only. Where the Authority requires a Trust Deed to be entered into, the template form shall be subject to such amendments as are reasonably required to give effect to the project structure and the parties shall do all things necessary to give effect to this drafting note.

## **Appendix 24 to Schedule 3B**

### **Joining Deed**<sup>16</sup>

This agreement is made between the Authority, InfraCo and ..... (the Additional Supplier).

Terms in this deed have the meanings given to them in the contract between .....

and ..... for ..... ([the Infrastructure Services/AKI Infrastructure Works]).

### **Background**

The Authority and InfraCo have entered into a contract for the *works*.

The Named Suppliers have entered into contracts with InfraCo or a Subcontractor in connection with [the Infrastructure Services/AKI Infrastructure Works].

InfraCo has established a Project Bank Account to make provision for payment to InfraCo and the Named Suppliers.

The Authority, InfraCo and the Named Suppliers have entered into a deed as set out in Annex 1 (the Trust Deed), and have agreed that the Additional Supplier may join that deed.

### **Agreement**

The Parties to this deed agree that

- the Additional Supplier becomes a party to the Trust Deed from the date set out below,
- this deed is subject to the law of the contract for [the Infrastructure Services/AKI Infrastructure Works],
- the benefits under this deed may not be assigned.

Executed as a deed on .....

by

..... (Authority)

..... (InfraCo)

..... (Additional Supplier)

---

<sup>16</sup> The Joining Deed set out in this Appendix 24 is in template form only. Where the Authority requires a Joining Deed to be entered into, the template form shall be subject to such amendments as are reasonably required to give effect to the project structure and the parties shall do all things necessary to give effect to this drafting note.

**Appendix 25 to Schedule 3B**

**Staff Rates**

The Staff Rates are subject to indexation. The Staff Rates apply to staff sub-contracted from an Affiliate.

Role / Grade	Total Annual Cost of Employment	Working Days per annum	Total Daily Rate	OH&P	Fixed OH	Fixed Profit	Equivilant Rate 19/20	Equivilant rate 20/21	Equivilant rate at 2017/18 Prices
Head of Commercial	██████	██	████	████	████	████	████	████	████
Land Agent	██████	██	████	████	████	████	████	████	████
Assistant Land Agent	██████	██	████	████	████	████	████	████	████
Assistant Design Programme Manager	██████	██	████	████	████	████	████	████	████
Assistant Commissioning Manager	██████	██	████	████	████	████	████	████	████
BIM Coordinator	██████	██	████	████	████	████	████	████	████
BIM Modeller	██████	██	████	████	████	████	████	████	████
ProjectWise System Manager	██████	██	████	████	████	████	████	████	████
Package Management and Depots	██████	██	████	████	████	████	████	████	████
Estimating Manager	██████	██	████	████	████	████	████	████	████
Package Order Commercial Lead	██████	██	████	████	████	████	████	████	████
Operations Manager	██████	██	████	████	████	████	████	████	████
Senior Access Planner	██████	██	████	████	████	████	████	████	████
Planning Assistant	██████	██	████	████	████	████	████	████	████
Senior Operations Supervisor	██████	██	████	████	████	████	████	████	████
SPICOP	██████	██	████	████	████	████	████	████	████

PICOP	██████	██	██████	██████	██████	██████	██████	██████	██████
ES	██████	██	██████	██████	██████	██████	██████	██████	██████
Project Operations Interface Specialist	██████	██	██████	██████	██████	██████	██████	██████	██████
Assistant Planner	██████	██	██████	██████	██████	██████	██████	██████	██████
Principal Programme & Controls Manager	██████	██	██████	██████	██████	██████	██████	██████	██████
Programme Construction Manager	██████	██	██████	██████	██████	██████	██████	██████	██████
Depot Manager	██████	██	██████	██████	██████	██████	██████	██████	██████
Risk manager	██████	██	██████	██████	██████	██████	██████	██████	██████

## Role Descriptions

	Grade ID	Role	Minimum Requirements
		<b>Design SoR</b>	
d1	D	Assistant Commercial Manager	[REDACTED]
d2	D	Assistant Director	[REDACTED]
d3	D	Assistant Engineer	[REDACTED]
d4	D	Assistant Environmentalist	[REDACTED]
d5	D	Assistant Project Manager	[REDACTED]
d6	D	CAD Technician	[REDACTED]
d7	D	Commercial Manager	[REDACTED]
d8	D	CRE/CEM	[REDACTED]
d9	D	Data Analyst	[REDACTED]
d10	D	Design Co-ordinator	[REDACTED]
d11	D	Engineer	[REDACTED]
d12	D	Environmentalist	[REDACTED]
d13	D	Graduate Engineer	[REDACTED]
d14	D	Junior Professional	[REDACTED]
d15	D	Junior Technical	[REDACTED]

d16	D	Principal Commercial Manager	[REDACTED]
d17	D	Principal Engineer CRE	[REDACTED]
d18	D	Principal Environmentalist	[REDACTED]
d19	D	Principal Project Manager	[REDACTED]
d20	D	Project Manager	[REDACTED]
d21	D	Resource Manager	[REDACTED]
d22	D	Senior Architect	[REDACTED]
d23	D	Senior CAD Technician	[REDACTED]
d24	D	Senior Engineer	[REDACTED]
d25	D	Senior Professional (Building Engineer)	[REDACTED]
d26	D	Senior Project Manager	[REDACTED]
d27	D	Senior Technical (Building Engineer)	[REDACTED]



d28	D	Snr Commercial Manager	[REDACTED]
d29	D	Snr Environmentalist	[REDACTED]
d30	D	Technical Director	[REDACTED]

		<b>PM SoR</b>	
PM1	PM	Access Manager	[REDACTED]
PM2	PM	Assistant	[REDACTED]
PM3	PM	Assistant Buyer	[REDACTED]
PM4	PM	Assistant Commercial Manager	[REDACTED]
PM5	PM	Assistant Flex	[REDACTED]
PM6	PM	Assistant PM	[REDACTED]
PM7	PM	Building Information Modelling Manager	[REDACTED]
PM8	PM	Buyer	[REDACTED]
PM9	PM	Commercial Assistant	[REDACTED]
PM10	PM	Commercial Manager	[REDACTED]
PM11	PM	Design Project Manager	[REDACTED]
PM12	PM	Document Controller	[REDACTED]
PM13	PM	Engineering Manager Stage 0	[REDACTED]
PM14	PM	Engineering Manager Stage 1	[REDACTED]

PM15	PM	Engineering Manager Stage 1.1	[REDACTED]
PM16	PM	Environmental Manager	[REDACTED]
PM17	PM	HSQE Lead	[REDACTED]
PM18	PM	HSQE Manager 1	[REDACTED]
PM19	PM	HSQE Manager 2	[REDACTED]
PM20	PM	IDP Project Manager Civils / Stations	[REDACTED]
PM21	PM	IDP Project Manager Depot CVLICCC	[REDACTED]
PM22	PM	IDP Project Manager Electrification	[REDACTED]
PM23	PM	IDP Project Manager Misc. / Veg / Fencing	[REDACTED]
PM24	PM	IDP Project Manager Pway	[REDACTED]
PM25	PM	IDP Project Manager Signalling	[REDACTED]

PM26	PM	NR Interface Manager	
PM27	PM	PC Site Co-ordinator 1	
PM28	PM	PC Site Co-ordinator 2	
PM29	PM	Planner	
PM30	PM	Principal Commercial Manager	
PM31	PM	Principal Contractor Manager	
PM32	PM	Procurement Manager	
PM33	PM	Programme Commercial Director	
PM34	PM	Programme Controls Manager	
PM35	PM	Programme Engineering Manager	
PM36	PM	Project Principles Director (Principal Requirements Director)	
PM37	PM	Senior Planner	

PM38	PM	Senior Programme Manager	[REDACTED]
PM39	PM	Site construction Manager	[REDACTED]
PM40	PM	Stakeholder Liaison Assistant	[REDACTED]
PM41	PM	Stakeholder Liaison Manager	[REDACTED]
PM42	PM	Strategic Development Director	[REDACTED]
PM43	PM	Systems Integration Manager	[REDACTED]
PM44	PM	Team Organiser	[REDACTED]
PM45	PM	The Infrastructure Director	[REDACTED]

		<b>IM-AM SoR Discovery</b>	
IMD1	IMD	Account Director	[REDACTED]
IMD2	IMD	Administrator	[REDACTED]
IMD3	IMD	Analyst	[REDACTED]
IMD4	IMD	Assistant Analyst	[REDACTED]
IMD5	IMD	Commercial Assistant	[REDACTED]
IMD6	IMD	Commercial Manager	[REDACTED]
IMD7	IMD	Data clerk	[REDACTED]
IMD8	IMD	Document Manager	[REDACTED]
IMD9	IMD	E&P Asset Engineer	[REDACTED]
IMD10	IMD	E&P Inspection	[REDACTED]
IMD11	IMD	E&P Professional Head	[REDACTED]
IMD12	IMD	Environmental Asset Engineer	[REDACTED]
IMD13	IMD	Environmental Inspection	[REDACTED]
IMD14	IMD	Off track Asset Engineer	[REDACTED]

IMD15	IMD	Off Track Inspection	
IMD16	IMD	Off Track Professional Head	
IMD17	IMD	Principal Data Analyst	
IMD18	IMD	Protection Team	
IMD19	IMD	Senior Data Analyst	
IMD20	IMD	Signalling Asset Engineer	
IMD21	IMD	Signalling Inspection	
IMD22	IMD	Signalling Professional Head	
IMD23	IMD	Structures Asset Engineer	
IMD24	IMD	Structures Inspection	
IMD25	IMD	Structures Professional Head	
IMD26	IMD	Task brief and work package planning	

IMD27	IMD	Technical Director	[REDACTED]
IMD28	IMD	Telecomms Asset Engineer	[REDACTED]
IMD29	IMD	Telecoms Inspection	[REDACTED]
IMD30	IMD	Telecoms Professional Head	[REDACTED]
IMD31	IMD	Track Asset Engineer	[REDACTED]
IMD32	IMD	Track Inspection	[REDACTED]
IMD33	IMD	Track Professional Head	[REDACTED]
IMD34	IMD	Stations Asset Engineer	[REDACTED]



		<b>IM-AM Mobilisation</b>	
IMM1	IMM	Project Manager	[REDACTED]
IMM2	IMM	Administrator	[REDACTED]
IMM3	IMM	Planner	[REDACTED]
IMM4	IMM	Field Resources Manager	[REDACTED]
IMM5	IMM	Field Resources Assistant	[REDACTED]
IMM6	IMM	HSEQ Advisor	[REDACTED]
IMM7	IMM	HR Manager	[REDACTED]
IMM8	IMM	Procurement Manager	[REDACTED]
IMM9	IMM	Finance Manager	[REDACTED]
IMM10	IMM	Fleet and Plant Engineer	[REDACTED]
IMM11	IMM	Commercial Manager	[REDACTED]
IMM12	IMM	Commercial Assistant	[REDACTED]
IMM13	IMM	Task brief and work package planning	[REDACTED]
IMM14	IMM	Signalling Engineer	[REDACTED]
IMM15	IMM	Track Engineer	[REDACTED]

IMM16	IMM	E&P Engineer	
IMM17	IMM	Telecomms Engineer	
IMM18	IMM	Civils Engineer	
IMM19	IMM	Structures Engineer	
IMM20	IMM	Environmental Engineer	
IMM21	IMM	Stations Engineer	
IMM22	IMM	Data analysis Team	
IMM23	IMM	IT Systems Team	
IMM24	IMM	Signalling Technicians	

IMM25	IMM	P Way Technicians	[REDACTED]
IMM26	IMM	E&P Technicians	[REDACTED]
IMM27	IMM	Telecoms Technicians	[REDACTED]
IMM28	IMM	Civils Technicians	[REDACTED]
IMM29	IMM	Civils (Structures) Inspectors/Technicians	[REDACTED]
IMM30	IMM	Environmental Technicians	[REDACTED]
IMM31	IMM	Station specialist Technicians	[REDACTED]
IMM32	IMM	Head of Signalling	[REDACTED]
IMM33	IMM	Head of P Way	[REDACTED]
IMM34	IMM	Head of E&P	[REDACTED]
IMM35	IMM	Head of Telecoms	[REDACTED]
IMM36	IMM	Head of Civils	[REDACTED]
IMM37	IMM	Head of Civils (Structures)	[REDACTED]



## **Appendix 26 to Schedule 3B**

### **ERDF Requirements**

Notwithstanding anything to the contrary in this Schedule 3B or any Package Order, the Parties agree that:

- 1 For any Infrastructure Works and Infrastructure Services that are potentially in receipt of EU Funding ("**ERDF Funded Works**"), InfraCo shall work with and provide assistance to the Authority to ensure compliance with the requirements set out in the approval contracts for the schemes and with the Structural Fund Regulations. These are currently set out in [http://ec.europa.eu/regional\\_policy/en/information/legislation/regulations/](http://ec.europa.eu/regional_policy/en/information/legislation/regulations/)
- 2 InfraCo shall provide to the Authority documents, information and reports from time to time in order to monitor the compliance of EU funded operations with the Conditions of EU funding for any Infrastructure Works and Infrastructure Services.
- 3 InfraCo shall retain the original documents or versions certified to be in conformity with the originals relating to any ERDF Funded Works until the Authority confirms in writing that InfraCo is able to destroy them.
- 4 The Authority may carry out verification checks to cover administrative, financial, technical and physical aspects of the ERDF Funded Works to verify that the expenditure declared is real, and in accordance with EU Funding rules. The verification will be carried out on a sample basis determined by the Authority.
- 5 InfraCo must without charge, permit any officer or officers of the Authority, the Welsh European Funding Office, Welsh Audit Office, European Commission, the European Court of Auditors or European Anti Fraud Office (or successor organisations) at any reasonable time and on reasonable notice, to visit InfraCo premises and / or to inspect any of InfraCo activities that are in relation to ERDF Funded Works. This undertaking is without prejudice and subject to any other statutory rights and powers exercisable by the Authority, Wales Audit Office or the European Commission or any officer, servant or agent of any of the above.
- 6 Under paragraph 17 of Schedule 8 to the Government of Wales Act 2006 the Auditor General for Wales has extensive rights of access to documents and information relating to monies provided by the Welsh Government. He and his officials have the power to require relevant information and explanation that they may require and to require those persons to attend before them for such a purpose. The Auditor General and his staff may exercise this right at all reasonable times.

**Appendix 27 to Schedule 3B**

### Third Party Agreements

The following Third Party Agreements have been identified by the Authority and notified to InfraCo (as detailed in the applicable rows of the GAPP Tracker dated 11 December 2020 included in this Appendix 27) as at the Contract Date:

- 
- | Row | Bar Length (approx. % of total width) |
|-----|---------------------------------------|
| 1   | 85                                    |
| 2   | 78                                    |
| 3   | 88                                    |
| 4   | 86                                    |
| 5   | 92                                    |
| 6   | 100                                   |
| 7   | 98                                    |
| 8   | 45                                    |
| 9   | 100                                   |
| 10  | 52                                    |
| 11  | 55                                    |
| 12  | 48                                    |
| 13  | 35                                    |
| 14  | 50                                    |
| 15  | 42                                    |
| 16  | 40                                    |
| 17  | 38                                    |
| 18  | 40                                    |
| 19  | 35                                    |
| 20  | 40                                    |
| 21  | 68                                    |
| 22  | 62                                    |
| 23  | 42                                    |

- [REDACTED]
- [REDACTED] -

Date		Time		Location		Weather		Wind		Temperature		Humidity		Pressure		Visibility		Clouds		Remarks	
1	2023-10-27	08:00	08:15	10.5	10.8	10.2	10.5	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3
2	2023-10-27	08:15	08:30	10.5	10.8	10.2	10.5	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3
3	2023-10-27	08:30	08:45	10.5	10.8	10.2	10.5	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3
4	2023-10-27	08:45	09:00	10.5	10.8	10.2	10.5	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3
5	2023-10-27	09:00	09:15	10.5	10.8	10.2	10.5	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3
6	2023-10-27	09:15	09:30	10.5	10.8	10.2	10.5	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3
7	2023-10-27	09:30	09:45	10.5	10.8	10.2	10.5	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3
8	2023-10-27	09:45	10:00	10.5	10.8	10.2	10.5	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3
9	2023-10-27	10:00	10:15	10.5	10.8	10.2	10.5	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3
10	2023-10-27	10:15	10:30	10.5	10.8	10.2	10.5	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3
11	2023-10-27	10:30	10:45	10.5	10.8	10.2	10.5	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3
12	2023-10-27	10:45	11:00	10.5	10.8	10.2	10.5	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3
13	2023-10-27	11:00	11:15	10.5	10.8	10.2	10.5	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3
14	2023-10-27	11:15	11:30	10.5	10.8	10.2	10.5	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3
15	2023-10-27	11:30	11:45	10.5	10.8	10.2	10.5	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3
16	2023-10-27	11:45	12:00	10.5	10.8	10.2	10.5	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3
17	2023-10-27	12:00	12:15	10.5	10.8	10.2	10.5	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3
18	2023-10-27	12:15	12:30	10.5	10.8	10.2	10.5	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3
19	2023-10-27	12:30	12:45	10.5	10.8	10.2	10.5	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3	10.0	10.3
20	2023-10-27	12:45	1																		



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**Appendix 28 to Schedule 3B**

Programme Controls Management Plan

# Wales and Borders Rail Service and South Wales Metro

TRAN01 - CVL Transformation

3.2.1 Programme Control Management Plan | P03.1

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TRAN01-KAW-ZZ-CVL-GSP-Z-PC-000001

## Document Control Sheet

Project Name:	Wales and Borders Rail Service and South Wales Metro
Project Number:	TRAN01 - CVL Transformation
Report Title:	3.2.1 Programme Control Management Plan
Report Number:	TRAN01-KAW-ZZ-CVL-GSP-Z-PC-000001
Plan of Work Stage	
ELR	
Mileage From	***M ***ch
Mileage To	***M ***ch

## Issue Record

Issue Status/Amendment	Prepared	Reviewed	Approved
P03.1 S0 Initial non-contractual code Initial	Name: ---  Signature:  Date: ---	Name: ---  Signature:  Date: ---	Name: ---  Signature:  Date: ---
P02 S3 Fit for Internal Review and Comment Stage C Final Submission	Name:  Signature:  Date: 29/08/19	Name: R.Ladd  Signature:  Date: 29/08/19	Name:  Signature:  Date: 29/08/19
--- ---	Name:  Signature:  Date: ---	Name:  Signature:  Date: ---	Name:  Signature:  Date: ---



## **2 Compliance, Briefing, Reviewing and Updating**

- 2.1 This is a mandatory document and will be complied with by Keolis Amey and all contractors from the date of first issue.
- 2.2 The content of this document will be briefed to the project team, including contractors, by the Programme Delivery Director. If the plan is changed then the changes will be re-briefed.
- 2.3 This is a live document for the duration of the project and will be updated whenever necessary. As a minimum, the content will be reviewed at least every 6 months or following any significant change in the scope of the work or changes to key personnel.
- 2.4 All reviews (including where no changes are being made) and amendments to the document will be summarised in the Document History and highlighted using change lines in the right-hand margin where necessary. Refer to QA-MgtReview-PR-01.

## **3 Reference Documentation**

TRAN01-KAW-ZZ-CVL-GSP-Z-DM-000006: 2.1 Project Definition

TRAN01-KAW-ZZ-CVL-GSP-Z-PC-0000002 Earned Value Management Plan (EVMP)

TRAN01-KAW-ZZ-CVL-GSP-Z-MN-000006 Design Programme Management Plan

TRAN01-KAW-ZZ-CVL-GSP-Z-RK-000001 Risk (& Opportunity) Management Plan

TRAN01-KAW-ZZ-GSP-Z-DC-000002 Document Control Strategy Procedure



## Contents

2	Compliance, Briefing, Reviewing and Updating .....	III
3	Reference Documentation.....	III
4	Glossary .....	VI
5	Introduction & Purpose .....	VIII
6	Project Scope.....	VIII
7	PCMP Scope.....	IX
8	Project Controls Strategy.....	IX
9	Key Elements of Project Controls Approach .....	X
10	Key Roles and Responsibilities .....	X
11	Programme Controls Team Roles and Responsibilities .....	11
12	RACI Matrix of Roles and Responsibilities .....	14
13	Meetings .....	15
14	Work Breakdown Structure .....	16
15	Amey Consulting WBS .....	16
16	Principal WBS .....	16
17	Integrated Systems.....	17
18	Primavera P6.....	17
19	SAP .....	18
20	Risk Assurance Platform (RAP).....	18
21	Oracle Primavera Risk Analysis .....	18
22	Risk.....	18
23	PowerBI .....	18
24	Sypro .....	19
25	Projectwise.....	19
26	SharePoint.....	19
27	Project Controls Data Flow .....	19
28	Continuous Improvement.....	20
29	Lessons Learned .....	21
30	Management Information (MI) Reporting & Project Analytics .....	21
31	Action Tracker.....	22
32	Project Controls.....	22
33	Project Reporting.....	23
34	Progress Meetings.....	24
35	Change Management.....	24
36	Contract Change Management .....	25
37	Programme Change Cycle - ODP Review & Challenge AC design programmes .....	26
38	Planning and Scheduling .....	27
39	Submission .....	29
40	Baseline Master Programme.....	30
41	Programme for Acceptance .....	30
42	Accepted Programme.....	31



43	Weekly Work Plan .....	31
44	Cost Management .....	32
45	Risk .....	34
46	Document Controls .....	34
47	Shared Drive File Structure .....	34
48	Appendices .....	36



## 4 Glossary

Term	Definition
AC	Actual Cost
ACWP	Actual Cost of Work Performed
AfP	Application for Payment
BCWS	Budgeted Cost of Work Scheduled
BEI	Baseline Execution Index
CBD	Contract Budget Baseline
CBS	Cost Breakdown Structure
CDB	Current Delivery Budget
CE	Compensation Event
CI	Continuous Improvement
CPR	Cost Performance Reports
CVL	Core Valley Lines
DCMA	Defence Contract Management Agency
DM	Delivery Manager
EAC	Estimate at Completion
EIPS	Entry into Passenger Service
EM	Engineering Manager
EPPM	Enterprise Project Portfolio Management
ETC	Estimate to Complete
EVM	Earned Value Management
EWN	Early Warning Notice
ICE	Implemented Compensation Event
IDP	Infrastructure Development Partner
IMS	Integrated Management System
JSG	Joint Steering Group?

JTRG	Joint Transformation Review Group
JV	Joint Venture
KPI	Key Performance Indicators
MI	Management Information
NEC	New Engineering Contract
ODB	Original Delivery Budget
ODP	Operating Development Partner
PCMS	Project Control Management System
PCP	Project Control Plan
PfA	Programme for Acceptance
PM	Project Manager
PMO	Project Management Office
PPM	Principal Project Manager
PV	Planned Value
QCRA	Quantitative Cost Risk Assessment
QSRA	Quantitative Schedule Risk Assessment
RACI	Responsible, Accountable, Consulted and Informed Matrix.
RAP	Risk Assurance Platform
RASCI	Responsible, Accountable, Supporting, Consulted, Informed
RE	Responsible Engineer
TfW	Transport for Wales
TRA	Time Risk Allowance
WAF	Work Authorisation Forms
WBS	Work Breakdown Structure

## 5 Introduction & Purpose

- 5.1 This document provides an overview of the Project Control Management Systems for the Wales & Borders CVL Transformation. It explains the organisation, systems, and processes for the monitoring, reporting and management of the InfraCo's scope, programme, budget, costs, resources, change and risk. These are to be applied to the entire South Wales Metro and Wales & Borders Rail Services programme of infrastructure work.
- 5.2 The objective of this document is to describe the project control requirements of the Design and Management phase of the CVL Transformation, in particular the work breakdown structure, work authorisation forms and progress reporting, to ensure that project progress and cost is managed and tracked robustly. This document provides the framework for the control and reporting of project progress for the Wales & Borders CVL Transformation and explains the processes that are to be applied to the entire South Wales Metro and Wales & Borders Rail Services programme of infrastructure work.

## 6 Project Scope

- 6.1 The Wales & Borders CVL Transformation project is providing a significant upgrade of train services in the Central Metro area.
- 6.2 The Transformation Design and associated new Rolling Stock procurement must deliver the capability to operate the Central Metro "Train Service Requirement" or "TSR", as shown in Diagram 1.



Diagram 1 Train Service Requirement Diagram

- 6.3 Following the implementation of our concept design, four train services will run to and from every valley head each hour. This delivers a truly "metro" style turn-up-and-go service with trains as close as 5 minutes apart within the area south of the M4. In accordance with current and future passenger demands, these services for Central Metro will also run through Cardiff Central and down to Penarth and Barry delivering an integrated and

efficient passenger service. With retractable steps and a ~930mm floor height, the new trains for Central Metro will provide level boarding at every station.

- 6.4 TfW's Grant Agreement specification also required the development of a zero-carbon railway, including an expectation for network electrification using a proportion of the funding allocated for this purpose. The KA concept design achieves this with 25kV electrification over 120 single track kilometres, and reliance on the battery capability of the new train fleets, such that the CVL part of the network will be zero carbon.

## 7 PCMP Scope

- 7.1 The scope of the Programme Control Management Plan (PCMP) includes all aspects of the project controls functions such as estimating, cost control, planning and scheduling, trending, change control, continuous improvement, resource management, earned value assessment, risk management, financial and progress reporting and their automated systems, where applicable.
- 7.2 This PCMP document sits within the third tier of the wider suite of documents referred to as the Programme Execution Plan and Project Manual. Reference should be made to the other documents in this suite and relevant Keolis Amey standards where necessary.
- 7.3 For the Detailed Design and Management phase of the Grant Agreement, the Keolis Amey Infrastructure Services team will operate within the Keolis Amey Integrated Management System (IMS) and this document does not repeat the processes and procedures defined therein. Once fully mobilised, the Keolis Amey Infrastructure Limited Safety Management System will also be applicable to these works and, where they differ, will take precedence over any Keolis Amey IMS processes or procedures.
- 7.4 The content of this document applies to all design, construction and engineering assurance activities being undertaken as part of the CVL Transformation in connection with the Wales & Borders Rail Services by Keolis Amey.
- 7.5 Previous versions of the PCMP, formerly known as the Project Controls Framework, contained enough details for the preliminary Design and Discovery Phase only. This Stage C update is intended to develop the document that it is fit for purpose for the start of the Detailed Design and Management phase. It is a work in progress and will be updated as processes are better developed and defined.
- 7.6 A full and detailed scope and description of works can be found within 2.1 Project Definition TRAN01-KAW-ZZ-CVL-GSP-Z-DM-000006.

## 8 Project Controls Strategy

- 8.1 Amey Keolis Programme Controls mission statement:

'We have the systems, processes and people to deliver important project information to various stakeholders. We provided the project with visibility and enable confidence in

decision making. We, as a team, encourage and facilitate the sharing of information both internally and externally. Through our processes, experience, and collaboration with others, we aim to create an integrated analytical solution to meet all the project needs’.

## 9 Key Elements of Project Controls Approach

- 9.1 To engage and be approachable
- 9.2 To help increase awareness of project management best practices
- 9.3 We have an open and collaborative approach to understand, report, and manage the use of project information for the benefit of the project
- 9.4 We act as an Integration function, breaking down silos and ensuring collaboration.
- 9.5 Be the single point of contact for performance related data across the portfolio. Source of one project truth.
- 9.6 Clear ownership of programme, cost and budget, risk and change for each Project Portfolio by accountable Principle Project Managers (PPMs)
- 9.7 Integrated control systems to provide accurate and efficient collection, processing and analysis of project programme and cost performance data, allowing for timely reports and forecasts which enable key projects decisions. Where possible we will seek to minimise human intervention and eradicate duplicate handling of data
- 9.8 Capable people, proven techniques, and appropriate systems to provide integrated reporting and comprehensive performance data
- 9.9 Alignment with the requirements of the Grant Agreement - report for the ODP on design; procurement; construction and commissioning etc.

## 10 Key Roles and Responsibilities

- 10.1 The Programme Controls key roles are shown on the following organisation chart.

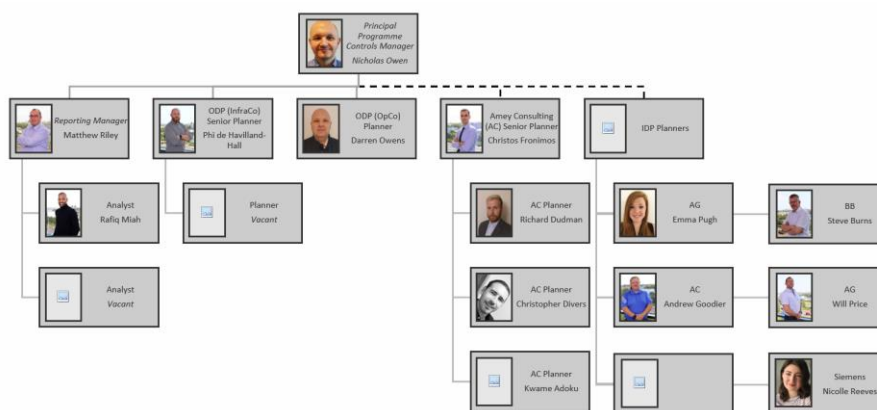


Diagram 2 Programme Controls Organisation Chart

TRAN01-KAW-ZZ-CVL-GSP-Z-PC-000001  
P03.1P03.1

## **11 Programme Controls Team Roles and Responsibilities**

### **11.1 Principal Programme and Controls Manager**

- Reports to the Infrastructure Services Director
- Coordinate the strategic delivery of the Project Controls Team and ensure best practice for Project Controls / Data Analytics
- Facilitate weekly / fortnightly / monthly reporting to TfW / Authority
- Co-ordination of budget & programme management (WBS), Earned Value Analysis Project Monitoring
- Responsible for the implementation of the PCP and for ensuring compliance with the Client's Project Controls requirement for ODP and IDPs.
- Responsible to the Keolis Amey Infrastructure Services Director for the establishment and operation of project controls in accordance with the contract requirements
- Owner of WBS and Scope dictionary. Any changes require PPCM approval.
- Point of contact for the IDPs for all Project Controls aspects.

### **11.2 Reporting Manager**

- Responsible to the Principal Programme and Controls Manager
- Internal and external monthly reporting, including the development and maintenance of interactive analytical dashboards
- Supports the analysis of performance indicators and monthly variances against the budget
- Supports the coordination between budget, cost, and programme
- Provide staff with training and guidance on the requirements for reporting and measuring of the works
- Develop and implementation of the action tracking management process and supporting the administration of the lessons learned process
- Provide support with process mapping, review and improvement as required
- Secretary to the Monthly Performance Reviews
- Reporting including analytical dashboards to track and increase visibility of planned vs actual data.
- Provides visibility of threats to contractual completion milestones to the Craidd alliance.

### **11.3 Data Analyst**

- Data gathering and verifying the integrity of the data
- Presentation of consolidated data

- Automation of monthly reporting processes
- Monthly reporting including analytical dashboards to track and increase visibility of planned vs actual data
- Establishment and management of integrated systems and processes
- Liaising with local data owners to ensure that local and corporate systems support data capture and reporting requirements
- Ensuring the timely submission of complete and accurate data in the prescribed format and frequency
- Supporting ad hoc requests for local performance data Producing daily / weekly / monthly / periodic reports showing performance against targets
- Helping to design and implement appropriate Key Performance Indicators (KPIs) for each business unit / contract / function
- Analysing KPI data to identify issues, trends, and improvement opportunities
- Benchmarking performance data across similar contracts / industries KPI Reporting Assisting in the creation of clear definitions for each KPI

#### 11.4 Planning Manager

- Report to the Planning and Controls Manager for maintaining the Master Programme
- Collaborate with the Project Manager in the preparation and updating of the Programme for Acceptance
- Collaborate with the Project Controls and Commercial Management teams to prepare the periodic reporting documentation
- Support the early warning and change management processes
- Coordinate with the Project Control Manager to manage Earned Value parameters maintained within the programme to facilitate reporting of actual and forecast project performance parameters.

#### 11.5 Planner

- Report to the Planning & Controls Manager for maintaining the Master Programme/ Integrate Master Schedule
- Collaborate with the Project Manager in the preparation and updating of the Programme for Acceptance
- Collaborate with the Project Controls and Commercial Management teams to prepare the periodic reporting documentation
- Support the early warning and change management processes
- Coordinate with the Project Control Manager to manage Earned Value parameters maintained within the programme to facilitate reporting of actual and forecast project performance parameters.

#### 11.6 Other Project Controls Functions Roles and Responsibilities

**Please note the following functions do not report under project controls. For dependencies between Project Control and the wider functions please see the RACI and RASCI sections.**

**11.7 Head of Commercial**

- Ensure that support is provided to the Project Managers to enable effective administration of the IDP contracts on behalf of the Authority
- Ensure timely and effective contract instructions are given
- Payments to IDP's are authorised
- Allocate risk between TfW/ODP and IDP's
- Agree the alliancing and incentives mechanisms
- Manage change
- Agree the IDP Target Cost for Works Delivery (Phase 2).

**11.8 Head of Estimating**

- Coordinate the production of all IDP cost estimates for inclusion within the CVL Transformation target cost proposal
- Validate IDP Target Cost (Phase 2) and reconcile to IDP cost estimates.

**11.9 Risk Manager**

- Responsible to the Project Manager for maintaining and updating the project Risk / Opportunities register and reporting to Commercial Manager risk exposure for the project
- Responsible for producing quarterly the QCRA/ QSRA report
- Chair risk meetings, attendance at Early Warning Meetings and Readiness Review Meetings
- Produce, review, and update the Risk Management Plan
- Assist the Project Manager in managing the project risk / opportunity register including the Project Managers project-wide risks
- Provide guidance to staff and supervisors regarding risk management.
- Further details can be found in the Risk (and Opportunity) Management Plan (TRAN01-KAW-ZZ-CVL-GSP-Z-RK-000001).

**11.10 Finance Manager**

- Management of the project finance team, all financial functions and activities on the project
- Ensure the systems are in place and operating effectively that comply with contractual and JV procedural requirements
- Management of all finance and related functions and systems – Process Controls Management System (PCMS)



- Provide accurate and timely financial reports, including the Defined Cost (ACWP)

#### 11.11 Contract Management

- Management of the ODP project commercial team
- Liaison and interface with TfW Commercial team to drive a consistent commercial approach
- Ensure the ODP commercial team provide support to the Project Managers to enable effective administration of the IDP contracts on behalf of the Authority
- Provide commercial support to the Senior Management Team
- Liaise with the Finance Manager to ensure Commercial and Finance functions are aligned

#### 11.12 Document Controller

- The document controller position forms part of the Business Information Management team.

### 12 RACI Matrix of Roles and Responsibilities

- 12.1 Below is a RACI (Responsible, Accountable, Consulted, and Informed) Matrix to show the Roles and Responsibilities of key functions within the Project that covers the traditional scope of Project Controls. Also included in Appendix 1.

Item	Task	PPMs	Project Controls	Planning	Finance	Commercial	Risk
1	Facilitate monthly reporting to TIW (including data from IDP and InfraCo.)	A	R	C	C	C	C
2	Co-ordination of budget & programme management (WBS)	A	R	I	I	I	
3	Earned value analysis & project monitoring	A	R	I	I	I	
4	Implementation of the Project Controls Plan	A	R	C			
5	Ensuring Compliance with the Clients Project Controls requirements	A	R				
6	Establishment and Operation of Project Controls in accordance with the contract requirements	A	R	I	I	I	I
7	Provide staff and supervisors with training and guidance on the requirements for reporting and measuring of the works	A	R				
8	Preparation of the updated accepted programme and associated reporting	A	I	R		C	I
9	Maintaining the Programme for Acceptance (PFA)	A	I	R		I	
10	Early warning and change management processes	A	C	C		R	C
11	Maintaining and updating the project Risk / Opportunities register and reporting to Commercial Manager risk exposure for the project	A	I	I		I	R
12	Chair risk meetings, attendance at early warning meetings and readiness review meetings	A	I	I		I	R
13	Produce, review and update the Risk Management Plan	A	I	I		I	R
14	Assist the Project Manager in managing the project risk / opportunity register including the Project Managers project-wide risks	A	I	C		C	R
15	Provide guidance and training to staff and supervisors in regard to risk management	A	C				R
16	Responsible for producing quarterly the QCRA/ QSRA report	A		C		C	R
17	Prepare and maintain value draw and EAC against level 9 on a monthly basis	A	C	C		R	
18	Preparation of the monthly costpack (SAP actuals, excel ledgers etc.)	A	I		R	I	
19	Establishment and management of integrated systems and processes. (Cost Management Systems, PowerBI)	A	R				
20	Maintain and manage the action tracker	A	R				
21	Support and facilitate the Lessons Learned process	A	R				
22	Contract administration	A		C		R	
23	Prepare and submit the application for payment (AFP)	A			R		
24	Produce and submit finance monthly reporting	A			R		
25	Tracking ACWP and performance indicators (SPI, CPI) paying attention to any deviation between the ETC/EAC and the BCWS	A	R				
26	Produce and maintain the interactive dashboards for internal management	A	R	I	I	I	I
27	Resource management	A	R	C	C	C	
	<b>Responsible</b> - Responsible for the successful completion of the task	R					
	<b>Accountable</b> - Supports the Responsible role in the completion of the task.	A					
	<b>Consulted</b> - Can provide valuable advice or consultation to contribute to the successful completion of the task	C					
	<b>Informed</b> - Informed about the task progress or the decisions in the task	I					

Diagram 3 Project Controls RACI

## 13 Meetings

13.1 Below is a table of key ODP meetings and their frequency.

Meeting	Frequency
JSG	4-weekly
InfraCo Board	4-weekly
OpCo Board	4-weekly
ODP Board	4-weekly
CVL Programme & Integration Board	4-weekly
Craidd Alliance	4-weekly
JTRG	4-weekly
SMT	Weekly
Budget Management Panel (GAPP)	Fortnightly
SLT	Fortnightly
Pre Exec	4-weekly

ODP Peer Review (GAPP)	Fortnightly
DD&M Board	4-weekly
Delivery Programme Change & Progress Panel	4-weekly

Table 1 Meetings

13.2 For further details refer to the programme cadence calendar ([Appendix 5](#)).

## 14 Work Breakdown Structure

- 14.1 A series of coding structures have been developed for use on the project, including a work breakdown structure, for the purpose of summary reporting and cost/programme integration.
- 14.2 This section expands on these elements and explains how they are utilised to facilitate a consistent and robust structure for project reporting and analysis.
- 14.3 The WBS used is determined by the contractor engaged on the CVL Transformation and loosely on the phase. There is currently one WBS that is being used by Amey Consulting for the design phase.
- 14.4 The second WBS that will be used by the IDPs for the Construction phase is structured around the Rail Method of Measurement (RRM).

## 15 Amey Consulting WBS

- 15.1 See [Appendix 2](#) for the full breakdown structure.
- 15.2 For further details on formal project reporting for Amey Consulting refer to Design Programme Management Plan TRAN01-KAW-ZZ-CVL-GSP-Z-MN-000006.

## 16 Principal WBS

- Level 0 – Project level
  - Level 1 – Milestone Event
  - Level 2 – Route Section
  - Level 3 – Authority Plan of Work Stage
  - Level 4 – Discipline
  - Level 5 – Deliverable
- 16.1 A full breakdown is included in [Appendix 3](#).
- 16.2 The Integrated Master Schedule (IMS) also has a lower level:

- Level 6 – Activity Detail

- 16.3 Other Project Control functions may need to develop their own structures. For example, commercial will have a Cost Breakdown Structure (CBS) which will follow the WBS but breakdown into some lower levels. Any other structure that need to be developed will be mapped to the principal WBS.
- 16.4 The formal project reporting level will be at Level 5 including Work Pack and Funding Stream. This includes Programme, Cost and EVM reporting. Ad hoc requests for further detailed reporting will be developed as they arise.
- 16.5 To ensure alignment across the various reporting systems, trackers, and data capture systems the WBS will be built into each document as a flat coding structure. This will allow different systems to be aligned and will help facilitate integration, through the WBS structure. The use of a 'flat' coding structure also provides the flexibility to 'shuffle' levels or filter individual codes to suit specific needs or project reporting requirements. The WBS will be mapped back to the IMS WBS structure.

## **17 Integrated Systems**

- 17.1 To comply with reporting requirements and facilitate day to day management of the project activities there are several systems that will be used both directly and indirectly by the project controls team. Each of these systems will be used to capture key data elements.
- 17.2 These different applications are accessed via the Amey IT infrastructure network.
- 17.3 This section identifies the key data drawn from each system and its primary functions on the project from the perspective of project controls.
- 17.4 Each of the systems described will utilise the WBS or, where required, have been mapped to the WBS to facilitate integration and alignment of data. This means all data collection for the programme, cost management, procurement, consents, reporting and risk management will have all been coded with the WBS.

## **18 Primavera P6**

- 18.1 Oracle Primavera P6 is an enterprise project portfolio management (EPPM) system and will be used for planning and scheduling. It will be the system of record for:
- Activity/Project Plan baselines

- Early start, late start, and planned dates
- Work Breakdown Structure (WBS) and assignments of activities
- Control Account Manager codes and assignments of activities
- Activity Codes (see [Appendix 4](#) for full list)

## **19 SAP**

19.1 SAP is the system of record for:

- Actual costs for Keolis Amey
- Keolis Amey Timesheets

19.2 SAP utilises a digit alphanumeric coding structure. To facilitate alignment of data between the cost capture system SAP and the various other data capture systems, the project WBS will be mapped to the SAP CBS. This map will be provided when developed.

## **20 Risk Assurance Platform (RAP)**

20.1 RAP will be the system of record for:

- Risk management
- Risk register
- Qualitative risk analysis

## **21 Oracle Primavera Risk Analysis**

21.1 PRA will be used for:

- Assessing the risk in the project programme
- Quantitative Schedule Risk Assessment (QSRA) to identify the confidence levels of meeting programme milestones

## **22 Risk**

22.1 Will be used to analyse risk using Monte Carlo simulation. This is a computerised mathematical technique that allows people to account for risk in quantitative analysis and decision making. Monte Carlo simulation provides the decision-maker with a range of possible outcomes and the probabilities they will occur for any choice of action. It shows all possibilities including the extreme possibilities. This means you can judge which risks accept and which ones to mitigate.

## **23 PowerBI**

23.1 PowerBI is used to facilitate dynamic business intelligence and streamline the integration of data from multiple sources. In addition to powerful data presentation and analytic tools, PowerBI acts as a data convertor tool between the numerous tools used across the project. It is the system of record for:

- Cost reporting
- Planning reporting
- Data Convertor processes to manage information
- Facilitate automation and integration of data
- Project Dashboards
- Integrated Business intelligence and data analytics

## **24 Sypro**

24.1 Sypro is a contract management system with workflows, communication flows and documentation management. Specifically set up for NEC contracts requirements. It is the project tool for:

- All formal contractual communication between Keolis Amey and Transport for Wales
- Communication and capture of Change Events including Implemented Change Events (ICEs), Notice of Compensation Events (NCEs) and Early Warning Notices (EWNs)

## **25 Projectwise**

25.1 Document management system. Currently in use on project as a store for Project procedures and work practices. It is the tool for:

- Capturing formal communications between TfW, ODP and IDPs
- Document repository for Keolis Amey
- Storing all project controls team related documentation. Further details on this can be found in Document Controls section.

## **26 SharePoint**

26.1 Project Control team files are stored here for backup and sharing internally of the project team.

## **27 Project Controls Data Flow**

- 27.1 The Project Controls data flow diagram shows the data flow and inputs from the various systems. It is a working document and will be updated as processes and the dashboards evolve.
- 27.2 The Project Controls data flow diagram for Design is shown below:

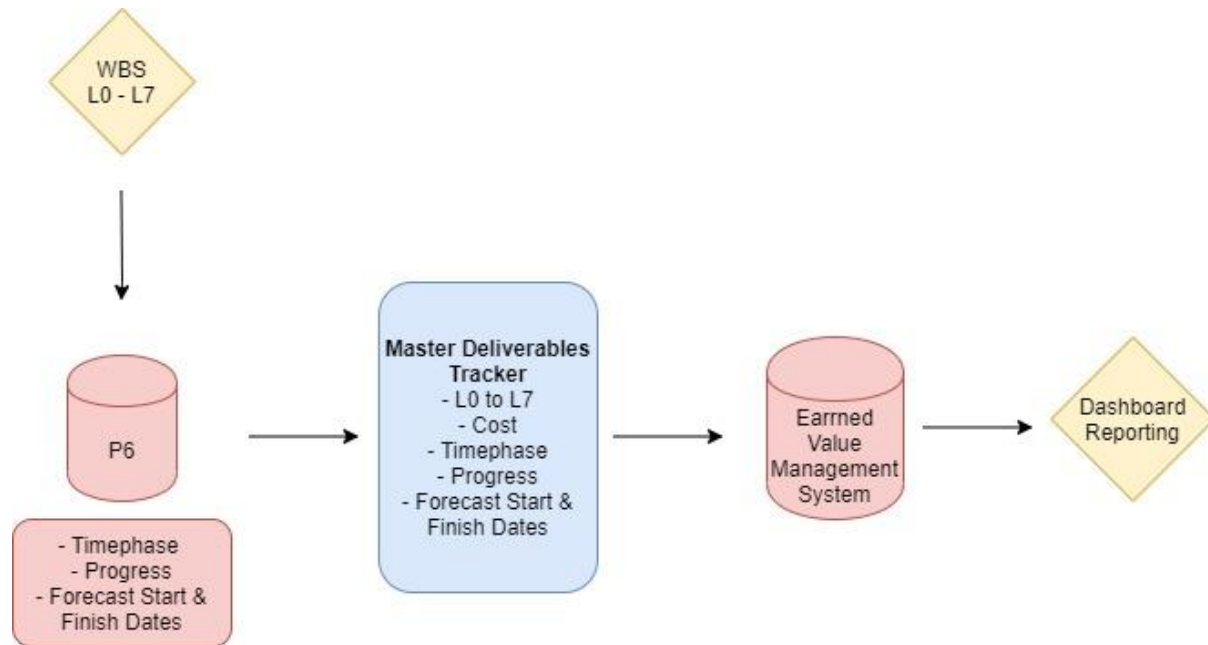


Diagram 4 shows PC Data Flow for Design

- 27.3 The Project Controls data flow diagram for construction is currently being defined and will be included in this document once completed.

## 28 Continuous Improvement

- 28.1 This section details a best practise approach to continuous improvement (CI). CI is an ongoing effort which seeks to improve processes and procedures. This is done by constantly evaluating outputs and looking to improve them by increasing efficiency, effectiveness, and flexibility.

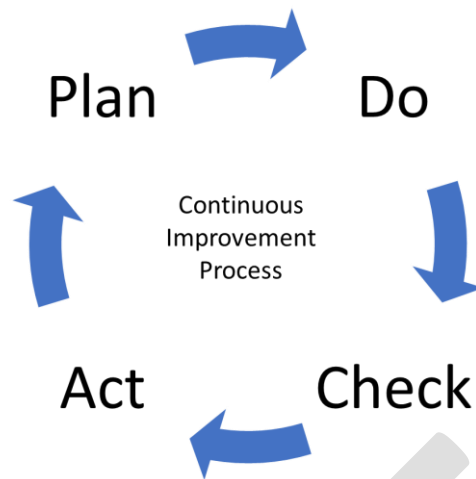


Diagram 5 shows the CI process

- 28.2 The diagram above show the continuous improvement cycle. Work is planned at the start and then carried out (do). It is important to check you work and then make adjustments (act) as necessary. This is then fed back into the plan.
- 28.3 The CI process is done through the lessons learned and Management Information (MI) Reporting/ Project Analytics. These processes enable a better insight into operations and reduce the chance of repeated mistakes and duplicated efforts.

## 29 Lessons Learned

- 29.1 The objective of the lessons learned process is to capture the positive and negative experiences of a project. Sharing lessons learned among project team members prevents an organisation from repeating the same mistakes and allows them to take advantage of organisational best practices. The lessons can be used for general information, work planning, or trend and analysis purposes. The output from this process can also be shared with parent companies as well, for other works or future tendering purposes.
- 29.2 The process for lessons learned is currently being defined and will be included here once complete.

## 30 Management Information (MI) Reporting & Project Analytics

- 30.1 One of the functions of the Project Controls team is the creation of the interactive analytical reporting dashboards. PowerBI is used as the tool to generate these. These dashboards provide a holistic view and increase visibility of the project performance. They allow for flexible reporting and effective analytics which in turn supports effective project management.



- 30.2 While Project Controls are accountable for the creation and management of these dashboards, the individual teams are ultimately responsible for the content of them. A set of integrated project-wide interactive analytical dashboards are currently being developed.

### **31 Action Tracker**

- 31.1 A future CI development will be to design an Action Tracker. When critical actions arise, they will be documented and tracked to completion. This provides an audit trail and status progress of critical actions.

### **32 Project Controls**

#### **32.1 Work Authorisation Forms (WAFs)**

- In accordance with the Keolis Amey project management guidance ConRW-PM-GD-06 Guidance Notes on Work Authorisation, all activities necessary to complete the project and meet the client requirements will be broken down into discrete work packages described by a WAF. Keolis Amey standard Form ConRW-PM-FO-07 provides the template for each WAF, which describes activities to be delivered by a Delivery Manager/Responsible Engineer (RE), specifying allocated hours, dependencies, methodology, deliverables, etc. Collectively, WAFs for the project will describe the work to be carried out by Delivery Managers and designers to complete the project.
- The relevant PMO Engineering Manager (EM) shall be consulted and agree each WAF to ensure the integration of planned activities.
- The Design Programme Manager (or designated design PM) is responsible for maintaining the WAFs on the project file.

#### **32.2 Performance Management and Forecasting**

- As part of month end closure and reporting process a comprehensive methodology of Earned Value Management will be implemented. For further detail on implementation refer to EVMP (TRAN01-KAW-ZZ-CVL-GSP-Z-PC-0000002).
- Accurate quantity data is essential for tracking unit rate performance. For further details on the basis of the progress capture - earning rules for each lifecycle of the project and associated assumptions please see EVMP (TRAN01-KAW-ZZ-CVL-GSP-Z-PC-0000002).

#### **32.3 Forecasting and Trends**

- To facilitate accurate forecasting and trend reporting a trending and progress process will be implemented as part of the monthly reporting

process. After initial handover of the tender budgets, forecasted EAC alongside the value draw is updated by the relevant IDPs or budget owner on a monthly basis.

- Monthly progress reviews are held in stages, as detailed below, by the individual PPMs and their team. For the list of attendees and purpose of each stage please refer to the cadence calendar.
  - Change and progress panels
  - Inter-package give/get review
  - Package programme review with PPMs
  - Full programme review with SMT

#### 32.4 Variance Analysis

- As part of the monthly issue of the cost reporting, 'In Period' and 'Cumulative' variances of the Current Delivery Budget and the current Estimate at Completion are provided along with commentary. Once the monthly reporting process has been agreed then more detailed steps will be provided.

### 33 Project Reporting

- 33.1 The Programme Controls team will provide detailed Programme Controls Reporting to implement and manage this Programme Control Management Plan.
- 33.2 The project will report on a monthly cycle. These reporting period cycles are now being defined and plans developed on how they will be managed.
- 33.3 The report will be delivered through SharePoint, prior to the monthly Joint Transformation Review Group meeting. The current agreed list of JTRG meeting dates are available through the programme cadence calendar ([Appendix 5](#)).
- 33.4 The content of the report will cover earned value metrics which will be jointly developed with TfW and will also include an overview of the key achievements within the period.
- 33.5 For internal progress reporting within Keolis Amey, DMs/REs will report to the Design Programme Manager/responsible Design PM, percentage completion against each WAF for which they are responsible. This will include a fresh forecast of the cost to complete by time and resource in the

format agreed at baseline for each WAF under the responsibility of each Delivery Manager/RE.

- 33.6 To facilitate the month end process a detailed reporting calendar is established. This outlines key steps, inputs, requirements, and outputs that feed the month end reporting cycle. Refer to [Appendix 5](#) for programme cadence calendar.
- 33.7 The programme cadence calendar provides an overview of the month end closure process and identifies the key steps and inputs required at each stage of the process.
- 33.8 Project Controls outputs will be summarised in a reporting RASCI. This will list the key documents produced or administered by project controls, the parties that are accountable, their purpose and the submission packs that they are included in. The reporting RASCI will be a working document that is periodically maintained and updated in accordance with project requirements (refer to [Appendix 5](#) programme cadence calendar).
- 33.9 Variance commentary will need to be provided on the monthly cost performance reports (CPR). The variance amounts and levels still need to be defined and agreed on.

## **34 Progress Meetings**

### **34.1 Programme Progress**

- Monthly progress meetings will be held to track design and construction progress regarding delivery timeframes, procurement progress and delivery.
- Minutes and actions from this meeting will be circulated on a monthly basis.

### **34.2 Client Progress Meetings**

- The ODP Transformation Delivery team will attend the Joint Transformation Review Group (JTRG) with the TfW Senior Programme Manager on a monthly basis.
- The details of the client meetings will be recorded by the TfW Senior Programme Manager and issued to the ODP Transformation Delivery team and located in the joint ProjectWise project folder.

## **35 Change Management**

- 35.1 Change Management is essential to maintain the breakdown of the current budget to reflect contract developments to date (e.g. the implementation of compensation events) and to communicate the current status of the budget to the Project Manager.
- 35.2 Budget Definitions:
- **Original Delivery Budget (ODB)** derived from the Working Estimate, produced using the Candy estimating system.
  - **Current Delivery Budget (CDB)** reflects the ODB plus all Implemented Compensation Events (ICEs) and budget transfers.
- 35.3 Current Budget transfers from one WBS element to another are closely controlled and recorded, as detailed below.
- The Current Delivery Budget is used to measure and monitor performance. It provides the baseline against which our actual performance will be compared to derive programme and cost performance indices. Deviations in performance from this baseline will be analysed to understand the reasons for deviations, be these positive or negative trends. Then in understanding these deviations, methods to recover from delay and indeed identify areas performing above contract requirements will be maximised.
- 35.4 The maintenance of any budget revisions will be strictly documented and managed in our budget maintenance system within our project controls procedures.
- 35.5 Full details of the GAPP process can be found in [Appendix 7](#).

## **36 Contract Change Management**

- 36.1 Change management process is essential to ensure all changes to the agreed scope of works are identified, assessed, and quantified in terms of time and money and on approval the implications incorporated into the Contract Budget Baseline (CDB).
- 36.2 The approved Project Baseline is developed by timeline distribution of the project estimate to provide the Planned Values (PV) or Budgeted Cost of Work Scheduled (BCWS). The Budget is distributed linearly across the coded activity programme based on WBS Start and Finish dates. The project Earned Value Analysis parameters are measured with respect to the Current Delivery Baseline.
- 36.3 The Change Management team are responsible for overseeing this process. They will track the development of ICE's, NCE's and EWN's and record them

in their tracking spreadsheet. This will form the basis for incorporation in the Earned Value Model and Current Budgets as part of the month end reporting process.

- 36.4 As part of the month end process, the Project Controls team will check for any approved Implemented Compensation Events (ICE's). If there are any cost implications, the Project Controls team will include them in the revised PV and the Contract Budget Baseline (in P6). If there are any time implications, the Planning manager will be notified, and the Contract Delivery Baseline will be updated accordingly.
- 36.5 A project audit log will be submitted every reporting period containing a list of all the CEs and the budget transfers that were accepted and implemented in the Budget.
- 36.6 Unresolved change, i.e. Early Warning Notices (EWN's) and Non-Compliance Events (NCE's) will be assessed and included in the Project Progress Programmes to facilitate cost and programme implication assessment of forecast implication tracked in the EAC projections. The occurrence of exceeding a Budget or delay to works is not substantiation to adjust a budget. A budget will only be adjusted through the use of a budget transfer form or an ICE. For further details please refer to the Change Management Plan.

### **37 Programme Change Cycle - ODP Review & Challenge AC design programmes**

- 37.1 The programme change cycle timeline is detailed in the programme cadence calendar (see [Appendix 5](#)).
- 37.2 The purpose of the programme change cycle is to help identify and mitigate against any programme variance earlier enough and to be pro-active and informative to the programme change control panel.
- 37.3 This information is designed to help inform decision making made by the Principal Project Managers, who own this process.
- 37.4 Programme submission
  - The PfA will be the only source of official date information to be used on the programme, thus ensuring everyone on the project uses a single source of truth, which will become paramount when the revised baseline is incorporated.
  - Programme submission pack will include;

Native xer of all programmes  
Pdf of all programmes  
Milestone tables  
All programme narratives (ODP, IDP's & AC)  
Change log  
Variance reports  
Design PBi EV dashboard

### **38 Planning and Scheduling**

- 38.1 All project programmes are in P6 format to allow for an overall Integrated Master Schedule (IMS) to be created. The PPMs have determined the level at which the planning activities need to be carried out for their specific project and this should be agreed with the Programme Manager. Tasks should be defined by discrete work packages and allocated to a Principle Project Managers (PPMs). They should clearly identify all distinct project phases, milestones, and deliverables.
- 38.2 Lessons learnt from previous projects should be reviewed and fed into the planning stage of the project.
- 38.3 The IMS will be prepared by the Operation Development Partner (ODP) in Primavera P6 and submitted to the Authority in accordance with clauses 31 and 32 of the contract.
- 38.4 The IMS is to include but not be limited to:
- Dates for document review and approvals
  - Statutory disconnection timescales
  - Completion of each phase
  - Works required to be completed by IDPs and SMEs
  - Test and inspection dates
  - Identify the critical path for the delivery of the Signalling commissioning's, OLE Energisations and Entry into Passenger Service (EIPS)
  - Submission of drawings for handover
  - Dates when the Operator is required to attend
  - Include the constraints as stated in Grant Agreement
  - Identification of ERDF key dates
  - Cost loading to support Earned Value reporting
  - Management and payment of utility service diversions
  - Acceptance of project designs and documentation
  - Assistance in management of statutory process
- 38.5 The IMS WBS will be structured to provide down to Level 6 activity detail which enables the appropriate analysis and assurance by senior

management, management, and project teams to ensure that the contract milestones will be met on-time.

- 38.6 The IMS will be made up of several detailed programmes, all of which are stored in the Enterprise Project Structure (EPS). The EPS is structured to facilitate this approach; with detailed design programmes for each route section, along with Infrastructure Development Partner (IDP) programmes and relevant operation programmes (rolling stock) vertically integrated into the IMS in this environment.
- 38.7 The IMS will be baseline cost loaded at Level 5 (post final target price agreement), it is intended not to resource load the programme. The cost breakdown in the programme will be able to be cross referenced with the cost capture software tool used for commercial purposes (either SAP or Candy).
- 38.8 The IMS will be re-baselined at the point of Asset Transfer and the agreement of a satisfactory Final Target Price.
- 38.9 The IMS will include activity ID coding as follows:
- Activity ID: CVL-Milestone Event-Route Section-Stage-Discipline-Number  
Activity ID example: CVL-ME1-R2P-F-SIG-XXXX
- 38.10 For quality control of the IMS and to evaluate that it has been well-built, the ODP will follow the Defence Contract Management Agency (DCMA) 14-point programme assessment and the standard targets (Fig. 1) that has become widely used and is incorporated into ERDF
- Check logic
  - Look for leads
  - Look for lags
  - Correct relationship types
  - Limit the use of hard constraints
  - Limit Total float
  - Avoid negative float
  - Avoid long durations
  - Check for invalid dates
  - Cost and resource loaded
  - Activity slippage
  - Critical Path Integrity
  - Critical Path Length Index
  - Baseline Execution Index

Check Schedule		Target
<input checked="" type="checkbox"/> Logic - Activities missing predecessors or successors	< 5 %	
<input checked="" type="checkbox"/> Negative Lags - Relationships with a lag duration of less than 0	< 1 %	
<input checked="" type="checkbox"/> Lags - Relationships with a positive lag duration	< 5 %	
<input checked="" type="checkbox"/> Long Lags - Relationships with a lag duration greater than 750hrs	< 5 %	
<input checked="" type="checkbox"/> Relationship Types - The majority of relationships should be Finish to Start	> 70 %	
<input checked="" type="checkbox"/> Hard Constraints - Constraints that prevent activities being moved	< 2 %	
<input checked="" type="checkbox"/> Soft Constraints - Constraints that do not prevent activities being moved	< 6 %	
<input checked="" type="checkbox"/> Large Float - Activities with total float greater than 1125hrs	< 1 %	
<input checked="" type="checkbox"/> Negative Float - Activities with a total float less than 0	< 1 %	
<input checked="" type="checkbox"/> Large Durations - Activities that have a remaining duration greater than 1500hrs	< 5 %	
<input checked="" type="checkbox"/> Invalid Progress Dates - Activities with invalid progress dates	< 1 %	
<input checked="" type="checkbox"/> Resource / Cost - Activities that do not have an expense or a resource assigned	< 1 %	
<input checked="" type="checkbox"/> Late Activities - Activities scheduled to finish later than the project baseline	< 5 %	
<input checked="" type="checkbox"/> BEI - Baseline Execution Index	> 0.95	

Save Check Schedule Cancel

Table 2 Assessment Programme

### 39 Submission

39.1 The IMS will include a Gantt chart showing dependencies. All elements of the programme are to be submitted electronically via Sypro and ProjectWise. The electronic copies are in:

- Oracle Primavera P6 xer format
- Adobe acrobat format (pdf) in no less than A3 size.

39.2 To be submitted with any initial programme submission, a statement around how the programme has been built and how the works are to be carried out and phased. Contained within should be identifiers of any interdependencies from and to others (including within the ODP).

39.3 For avoidance of doubt, the ODP shall provide a narrative to support the latest submitted programme detailing the following where applicable:

- Performance against latest accepted programme



- Confidence in delivery stating how the programme is to be achieved within the timescales proposed
- Changes to last submitted programme including impact on Total Float
- Impact of CE's
- Critical Path movement
- Logic changes
- Performance against deliverables in period
- Deliverables to be achieved in the next two periods
- Sub-contractors' performance
- Status of long lead items
- Procurement status
- Mitigation actions and Opportunities for early delivery/programme recovery
- Throughputs and quantity tracking performance

#### **40 Baseline Master Programme**

- 40.1 The contract programme for the works will be generated and maintained on Primavera P6. It will include the requirements of the Works Information and the Key Dates as shown in the Contract Data Parts 1 and 2.
- 40.2 The programme will cover the full scope of the Works, including design, consents, procurement, construction, testing, and commissioning. Some functions such as design, consents and procurement will only have summary or critical detail in the P6 programme, while the full detail will be captured in Excel trackers.
- 40.3 The programme will include the Work Breakdown Structure (WBS) as specified in the contract. It will be produced using a combination of the P6 WBS and Activity Codes.
- 40.4 The process for updating the Baseline with approved changes will be provided once established.

#### **41 Programme for Acceptance**

- 41.1 The programme will be developed with a "rolling-wave" process each month; meaning that detail will be added as planning develops. For example, works planned for the next few months will be fully detailed and later works will have less detail.
- 41.2 A programme will be submitted for acceptance each month in compliance with the reporting programme.

41.3 The Programme for Acceptance will include the following documents:

- P6 master programme in XER and PDF formats
- Summary programme in PDF format
- Programme Narrative/ Basis of Schedule
- Key Date tracker
- Various other trackers prepared by the functional teams

41.4 The summary programme will be generated by the P6 IMS programme but will be a high-level summary version.

41.5 The Programme Narrative will include commentary on programme development, progress in the period, change management, impact on Key Dates, the critical path, time risk allowances and calendars used.

41.6 The Key Date tracker will tabulate the period movements in the planned completion dates for the Contract Key Dates.

41.7 The P6 programme will be integrity checked prior to each submission.

## **42 Accepted Programme**

42.1 The current Accepted Programme will be the document by which progress of the Works is monitored. The Accepted Programme will also be used to identify and resolve programme problems, measure the impact of compensation events and delays, assist in earned value calculations and develop recovery plans.

42.2 Programme Narrative

- All programmes submitted for acceptance shall be accompanied by a Programme Narrative contained within the programme cover document. This will include an explanation of and variances and how they will be mitigated.

## **43 Weekly Work Plan**

43.1 A Three Week Look Ahead Programme will be submitted by the IDPs which will cover day to day site activities. The programme shall report actual work that has taken place in the previous week and planned work for the next three weeks including the current week. The Weekly Work Plan shall be consistent with the requirements of the Accepted Programme. The Weekly Work Plan shall be based on the confirmed availability of resources. Actual progress against planned for the previous week shall be indicated. The Weekly Work Plan shall show where targets are not being achieved using a

dashboard. The format of the Weekly Work Plan will be designed and agreed.

#### 43.2 Time Risk Allowance

- The activity durations in the programme are based on the information available and on experience gained in similar projects. The activity durations do not incorporate time risk allowance. To give confidence that the key dates can be met, time risk allowances are included as separate activities in the P6 bar chart. All TRA activities in the programme will be clearly described as such. The scope of each TRA activity will be described in either in the P6 activity name itself, or in the separate TRA tracker. TRA will be drawn down as the individual risks dissipate. It should be noted that TRA is contractors risk time and cannot be treated as float.

#### 43.3 Compensation Event Programmes

- Compensation event programmes shall be produced in P6 and submitted along with CE quotes where a time impact is involved. They will be based on the Accepted Programme current at the time of the event or PM Instruction and will clearly show the time impact of the CE. The process and programme submission times for these needs to be designed and developed. A template will be prepared information on the CE is provided at the right level of detail for integration into the Project Control functions.

#### 43.4 Other Programmes

- Other programmes will be produced on an ad-hoc basis to meet the specific needs of the project. These may include options programmes, as built versus planned programmes, sectional target programmes, construction sequence plans and more. These programmes will be generated to help manage the project, but they will not have any contractual significance. Therefore, they should not be interpreted as replacing or superseding the Accepted Programme.

#### 43.5 IDP Plans

- These are currently being developed based in the 4-week reporting cycle. This will be updated once confirmed.

### 44 Cost Management

- 44.1 Cost Management is undertaken by the commercial group through the finance team. The finance team will administer and oversee the

management of SAP as well as excel sheets as the project systems for capturing cost / ACWP.

- 44.2 Also refer to the Finance Procedure for details on the structures and process which standardise the procurement and finance functions across the Contract.
- 44.3 A key input from the Finance team to the monthly reporting process is the Defined Cost (Actual Cost Work Performed). The process for this is currently being developed and will be documented here when finalised. This will cover what the ACWP report includes and the process on any cost adjustments. However, the Finance procedures will cover in more detail.
- 44.4 PRISM will be the cost management software tool used to integrate the project schedules and cost estimates to develop time-phased budgets, forecasts, changes including as the budgets are let and measuring project performance. Invoicing elements will also be captured to record actuals. The elements of PRISM are detailed below.
- 44.5 The Cost Breakdown Structure (CBS) is based on the RMM.
- Discipline
  - Deliverable
  - Sub-Deliverable
- 44.6 The physical and contractual breakdown of works:
- Work Package
  - Route Section
  - Asset
- 44.7 Budget details will be the line items from CANDY that are grouped into route sections and assets, then broken down by RMM. This will allow each line item to be mapped to specific control accounts
- 44.8 A work package is identified as individual packages of work for each IDP.
- 44.9 The level at which Prism will be controlling and capturing is at control account.
- 44.10 The sub-deliverable will not be making up the control account, but the detail will be available in PRISM to audit against the original estimate (AFC) in CANDY.
- 44.11 A control account is a Project (Work Package) + WBS + CBS down to Deliverable (Route Section – Asset – Discipline – Deliverable).

## Prism Structure Concepts

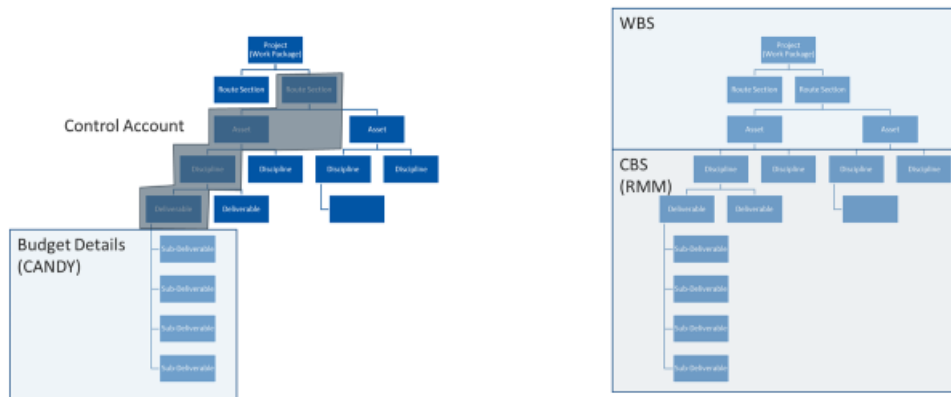


Diagram 7 PRISM structure concepts

### 45 Risk

- 45.1 Risk is managed through a dedicated risk management team. The Risk and Opportunities Management Plan (TRAN01-KAW-ZZ-CVL-GSP-Z-RK-000001) forms part of the CVL Transformation Project Management System.

### 46 Document Controls

- 46.1 Document Control forms part of the CVL Transformation Project Management System. The Document Control Strategy Procedure (TRAN01-KAW-ZZ-GSP-Z-DC-000002) describes the procedures for managing all documentation associated with the CVL Transformation.
- 46.2 All project-related files, including master work in progress files, must be stored on the TfW – Wales and Borders ODP datasource on ProjectWise. This includes documents pertaining to Project Controls and Programme. This Common Data Environment is the source of information that is used to collect, manage, and share amongst the project team. This tool gives the ability to work collaboratively with Wales and Borders project partners, external suppliers, and contractors by allowing controlled shared access within the system

### 47 Shared Drive File Structure

- 47.1 Programme Controls team are saving items in a CVL SharePoint site.








 Name ▾
 P6 Schedules (WIP)
 Process Documents (WIP)
 Reporting (WIP)
 PC Team Org Chart.pptx
 Programme Controls Team Tasks & Actions.xlsx
 Team Annual Leave Tracker April 20 - Dec 20.xlsx

Diagram 8 shows Planning & Project Controls Folder in SharePoint

[Return to Contents Table](#)

## 48 Appendices

### 48.1 Appendix 1 – Project Controls RACI

Item	Task	PPMs	Project Controls	Planning	Finance	Commercial	Risk
1	Facilitate monthly reporting to TfW (including data from IDP and InfraCo.)	A	R	C	C	C	C
2	Co-ordination of budget & programme management (WBS)	A	R	I	I	I	
3	Earned value analysis & project monitoring	A	R	I	I	I	
4	Implementation of the Project Controls Plan	A	R	C			
5	Ensuring Compliance with the Clients Project Controls requirements	A	R				
6	Establishment and Operation of Project Controls in accordance with the contract requirements	A	R	I	I	I	I
7	Provide staff and supervisors with training and guidance on the requirements for reporting and measuring of the works	A	R				
8	Preparation of the updated accepted programme and associated reporting	A	I	R		C	I
9	Maintaining the Programme for Acceptance (PFA)	A	I	R		I	
10	Early warning and change management processes	A	C	C		R	C
11	Maintaining and updating the project Risk / Opportunities register and reporting to Commercial Manager risk exposure for the project	A	I	I		I	R
12	Chair risk meetings, attendance at early warning meetings and readiness review meetings	A	I	I		I	R
13	Produce, review and update the Risk Management Plan	A	I	I		I	R
14	Assist the Project Manager in managing the project risk / opportunity register including the Project Managers project-wide risks	A	I	C		C	R
15	Provide guidance and training to staff and supervisors in regard to risk management	A	C				R
16	Responsible for producing quarterly the QCRA/QSRA report	A		C		C	R
17	Prepare and maintain value draw and EAC against level 9 on a monthly basis	A	C	C		R	
18	Preparation of the monthly costpack (SAP actuals, excel ledgers etc.)	A	I		R	I	
19	Establishment and management of integrated systems and processes. (Cost Management Systems, PowerBI)	A	R				
20	Maintain and manage the action tracker	A	R				
21	Support and facilitate the Lessons Learned process	A	R				
22	Contract administration	A		C		R	
23	Prepare and submit the application for payment (A/P)	A			R		
24	Produce and submit finance monthly reporting	A			R		
25	Tracking ACWP and performance indicators (SPI, CPI) paying attention to any deviation between the ETC/EAC and the BCWS	A	R				
26	Produce and maintain the interactive dashboards for internal management	A	R	I	I	I	I
27	Resource management	A	R	C	C	C	
	<b>Responsible</b> - Responsible for the successful completion of the task	R					
	<b>Accountable</b> - Supports the Responsible role in the completion of the task.	A					
	<b>Consulted</b> - Can provide valuable advice or consultation to contribute to the successful completion of the task	C					
	<b>Informed</b> - Informed about the task progress or the decisions in the task	I					

### 48.2 Appendix 2 – Design WBS for Amey Consulting

Stage A	Development. Output = Requirements & Options
Stage B	Options Development and Selection
Stage C	Preliminary Design
Stage D	Statutory Processes
Stage E	Detailed Design
Stage F	Construct, Commission, Handover
Stage G	Closeout



## Route Section Design Packages

### Stage C

Level 1	Route Section
Level 2	TfW Design Stage
Level 3	Discipline
Level 4*	Programme Deliverable Group
Level 5	Programme Deliverable
Level 6	Activity

\* This level may be used or not depending on the route section & discipline

### Stage E

Level 1	Route Section
Level 2	TfW Design Stage
Level 3	Work Package
Level 4	Discipline
Level 4*	Programme Deliverable Group
Level 5	Programme Deliverable
Level 6	Activity

\* This level may be used or not depending on the route section & discipline



## Routewide Design Packages

### Stage C

Level 1	Work Package
Level 2	TfW Design Stage
Level 3	Discipline
Level 4*	Programme Deliverable Group
Level 5	Programme Deliverable
Level 6	Activity

\* This level may be used or not depending on the route section & discipline

### Stage E

Level 1	Work Package
Level 2	TfW Design Stage
Level 3	Subsidiary Work Package
Level 4	Discipline
Level 4*	Programme Deliverable Group
Level 5	Programme Deliverable
Level 6	Activity

\* This level may be used or not depending on the route section & discipline

## 48.3 Appendix 3 – Principal WBS

### Level 0 – Project Level

CODE	DESCRIPTION
DM	Delivery Milestones
IM	Infrastructure Management
IC	Infrastructure Change Delivery

### Level 1 – Milestones

CODE	DESCRIPTION
ME0	Overheads/ Indirects etc.
ME1	Testing & Commissioning TAM (THT, R2P, ABD, MER & CTL)
ME2	OLE Energisation R2P & ABD
ME3	OLE Energisation R2Q & CTL
ME4	OLE Energisation MER & THT
ME5	Testing & Commissioning CAR (QSS, QSN. PEN & RHY)
ME6	OLE Energisation QSN (Queen St - Caerphilly) & CRY
ME7	Commissioning BAY (Tested in ME5)
ME8	OLE Energisation RHY
ME9	Commissioning Flourish Extension

### Level 2 – Route Section

CODE	DESCRIPTION
RSALL	All Route Sections
RS0TPS	Traction Power System
RS0ICC	CVL Integrated Control Centre
RS0TAF	Taff's Well Depot
RS0CAN	Canton Depot

RS0R2P	Radyr to Pontypridd
RS0FTN	FTN Network Delivery
RS1ABD	Aberdare Branch
RS1MER	Merthyr Branch
RS1QSS	Radyr to Cardiff Bay
RS2THT	Treherbert Branch
RS2QSN	Queen Street to Coryton
RS3CTL	City Line
RS4CRY	Coryton Line Electrification
RS5BAR	Barry Line
RS5RHY	Rhymney Valley
RS5PEN	Penarth Branch
RS5BAY	Flourish Extension

### Level 3 – Authority Plan of Work

CODE	DESCRIPTION
All	All Stages
A	Stage A Develop Output Requirements and Options
B	Stage B Options Development and Selection
C	Stage C Preliminary Design
D	Stage D Statutory Process
E	Stage E Detailed design
F	Stage F Construction, Test, Commission and Handover
G	Stage G Closeout

### Level 4 – Disciplines

CODE	DESCRIPTION
------	-------------



ALL	All Disciplines
RA	Regulatory Approvals
HS	Health and Safety
PM	Project Management
EM	Engineering Management
TOP	Topo Survey
ERG	Ergonomics
BDG	Built Environment
ENV	Environmental
CIV	Civils
EP	E&P
GEO	Geotechnical
HW	Highway
OLE	Electrification
PWY	Permanent Way
SIG	Signalling
TEL	Telecoms
TPS	Traction Power
COM	Commercial Management

#### Level 5 – Deliverable

CODE	DESCRIPTION
ACROAD	Access Road
ASBUIL	As Built
B&O	Bridge and Overbridge
CAB	Cable Install
C&P	Cables & Pipework



COMM	Commercial Closeout
COMP	Compounds
CONC	Concrete Foundations (not piled)
CCW	Construct Civil Works
CON&INS	Construction & Installation
CC	Control Centre
CSM	CSM
DEF	Defects
DEP	Depot
DVG	Devegetation
DRA	Drainage
E&P	E&P
E&B	Earthing and Bonding
FEN	Fencing
FOPA	Foot Path
H&S	H&S Files
HVC	HV Cabling
HVFC	HV Feeder Cabling
INST	Installation
INROAD	Internal Roadways
L&W	Landscape & Wetlands
LCR	Level Crossing
LSP	Line Speed
LVC	LV Cabling
MWIR	Main Wiring
MAF	Maintainer training
MAJ	Maintenance Facility



MAT	Materials / Fabrication Securement
NCOM	Network Commissioning
CAB-TE	Non Fee & SCC Cost Allocations
O&M	O&M Manual
OSE	On Site Electrical
OCP	Over-build Car Park
PLO	Passing Loops
PES	PES Section
PIL	Pile Installation
PLANT	Plant & Materials Warranties
P&B	Possession or Blockade
POW	Power
PCOM	Pre-Commission
PROC	PRELIMS
REG	Registration
REMO	Remodelling
RWALL	Retaining Wall
RISK	Risk
ROAD	Road
RALT	Road Alteration
ROG&EIS	ROGs & EIS
RRAP	RRAPs
TRRU	Running Tracks
SAM	Surveys and Monitoring
SAN	Sanding
SIT	Site Preparation   Ground Work
SNA	Snagging (Pre-handover)

SPC	Specials
SPS	SPS
SPT	SPTs
STA	STAFF
SCP	Staff Car Parking
SFB	Station Footbridge
SPF	Station Platform
STRF	Station Refurbishment
SHU	Steel Hop Ups
STU	Structural Steelwork
STR	Structures
SUB	Substation
SUR	Survey
S&P	Switches & Platforms
TEL	Telecoms
SCADA	Telecoms SCADA Connection
TCONS	Temporary Construction
T&C	Test & Commissioning
TRDO	Track Doubling
TRLO	Track Lowering
TRSL	Track Slue
UTD	Utilities Diversions
UTX	UTX
VOP	Variances of Prices
WALK	Walkways

## Work Pack

CODE	DESCRIPTION
0	Overheads/ Indirects etc.
1	OLE (exc RHY & CRY)
2	OLE RHY & CRY
3	Traction Power
4	Rail Controls System
5	Rail Control Systems (Lineside)
6	Permanent Way
7	Civils, Stations & Associated
8	Taffs Well Enabling
9	Canton Depot
10	V&F Framework
11	MDC, Logistics, RRAP's and compounds
12	Earthing and Bonding and Lineside Electrical
13	Ancillary Civils
14	Statutory Undertakings management
15	TFN works

#### Funding Code

CODE	DESCRIPTION
ERDF	European Regional Development Fund
OpCo	OpCo
RV MECH	RV Mech
NR	Network Rail
TfW	Transport for Wales
GWR	Great Western Railway



## 48.4 Appendix 4 – Activity Codes

### Craidd Alliance

Code Value	Description
CA1	CVL ICC Complete & Phase 1 TAM to Radyr Commissioning
CA2	Electrification Commissioning R2P, ABD & Canton ATFS
CA3	Electrification Commissioning CTL, QSS (Radyr to Queen Street)
CA4	Electrification Commissioning MER, THT
CA5	Phase 2 CAR Commissioning
CA6	Electrification Commissioning CRY & LIS
CA7	Electrification Commissioning RHY
CA8	Practical Completion of all ERDF funded works

### Disciplines

Code Value	Description
ALL	All Disciplines
RA	Regulatory Approvals
HS	Health and Safety
PM	Project Management
EM	Engineering Management
TOP	Topo Survey
ERG	Ergonomics
BDG	Built Environment
ENV	Environmental
CIV	Civils
EP	E&P
GEO	Geotechnical
HW	Highway
OLE	Electrification
PWY	Permanent Way
SIG	Signalling
TEL	Telecoms
TPS	Traction Power
COM	Commercial Management

### Funding Stream

Code Value	Description
ERDF	European Regional Development Fund
OpCo	OpCo

RV MECH	RV Mech
NR	Network Rail
TfW	Transport For Wales
GWR	Great Western Railway

## IDP Package

Code Value	Description
1	Package 1 - OLE Treherbert, Aberdare, Merthyr
2	Package 2 - OLE Rhymney
3	Package 3 - Power distribution
4	Package 4 - Signalling System
5	Package 5 - Signalling lineside
6a	Package 6a - Pway Complex
6b	Package 6b - Pway Non complex
7	Package 7 - All stations & Civils
8	Package 8 - Taffs Well Depot
9	Package 9 - Canton depot

## Milestone Event

Code Value	Description
ME1	Testing & Commissioning TAM (THT, R2P, ABD, MER & CTL)
ME2	OLE Energisation R2P & ABD
ME3	OLE Energisation R2Q & CTL
ME4	OLE Energisation MER & THT
ME5	Testing & Commissioning CAR (QSS, QSN. PEN & RHY)
ME6	OLE Energisation QSN (Queen St - Caerphilly) & CRY
ME7	Commissioning BAY (Tested in ME5)
ME8	OLE Energisation RHY
ME9	Commissioning Flourish Extension

## Phase

Code Value	Description
DISC	Discovery
DSGN	Design
PROC	Procurement
CONS	Construction / Installation
TCMM	Testing and Commissioning

CLOS	Close Out
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## Possession Marker

Code Value	Description
P	Possession only
B	Blockade

## 48.5 Appendix 5 – Cadence Calendar



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## 48.6 Appendix 6 – RMM WBS



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DisciplineCode.xlsx



SubDeliverableCode.xlsx

## 48.7 Appendix 7 – GAPP process



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**Appendix 29 to Schedule 3B**

CVL Transformation Proposal



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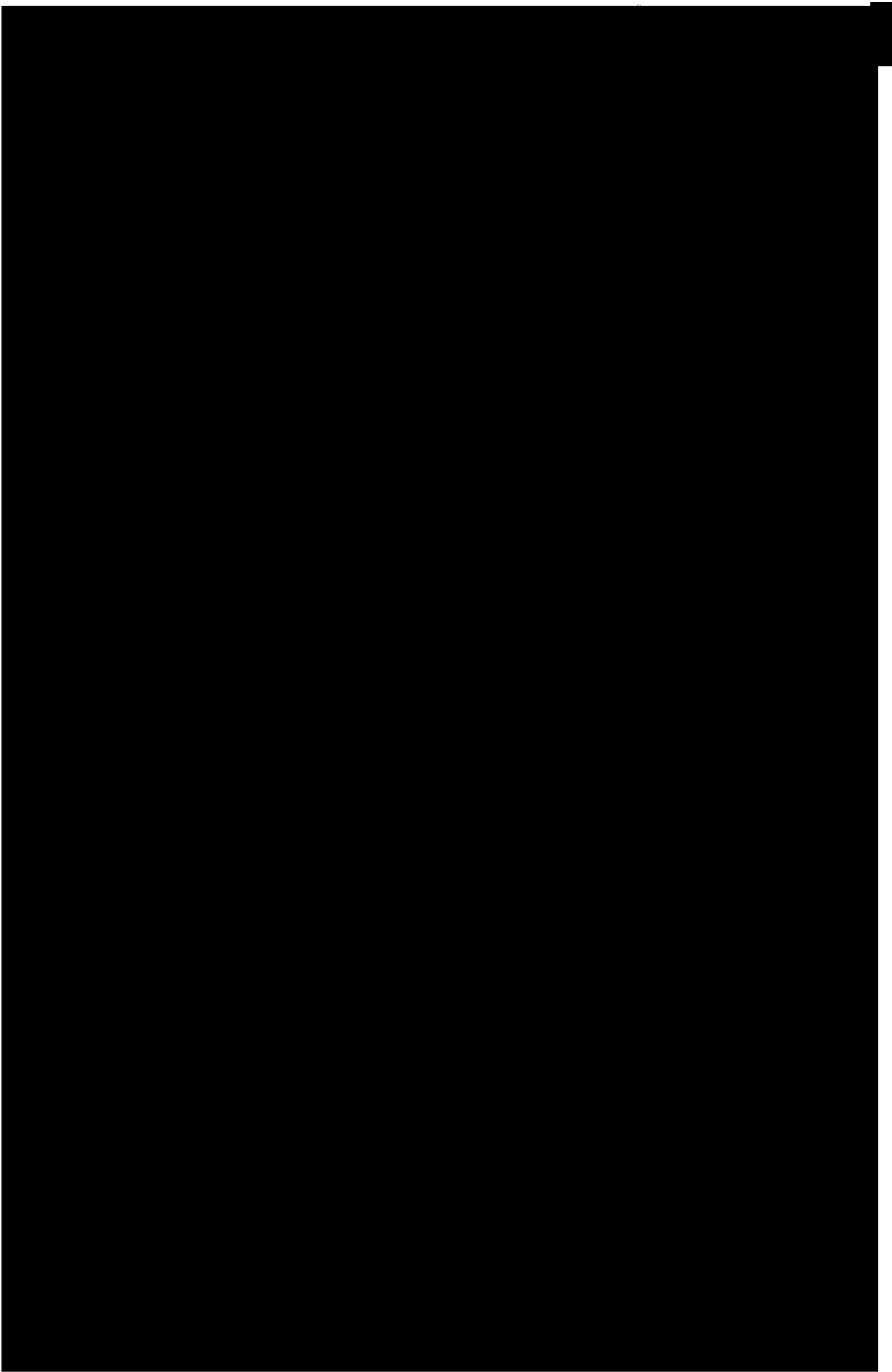
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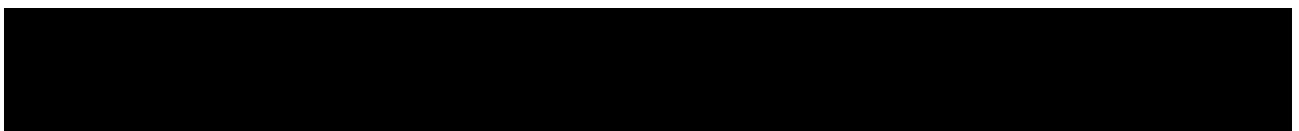






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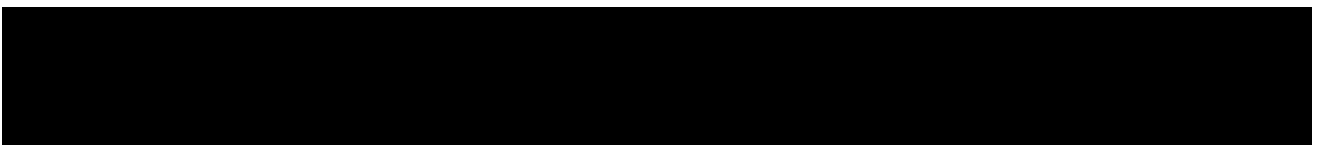
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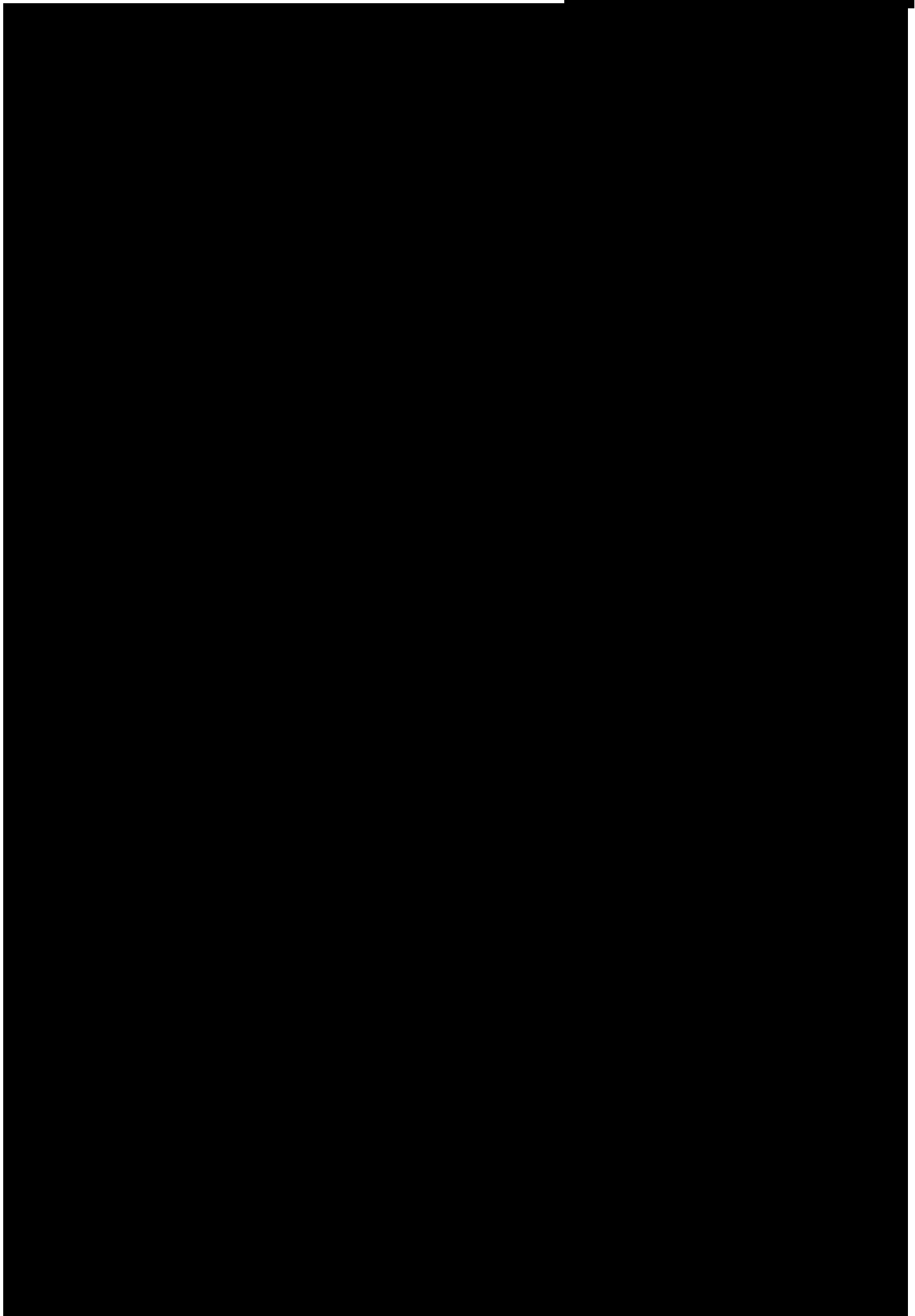
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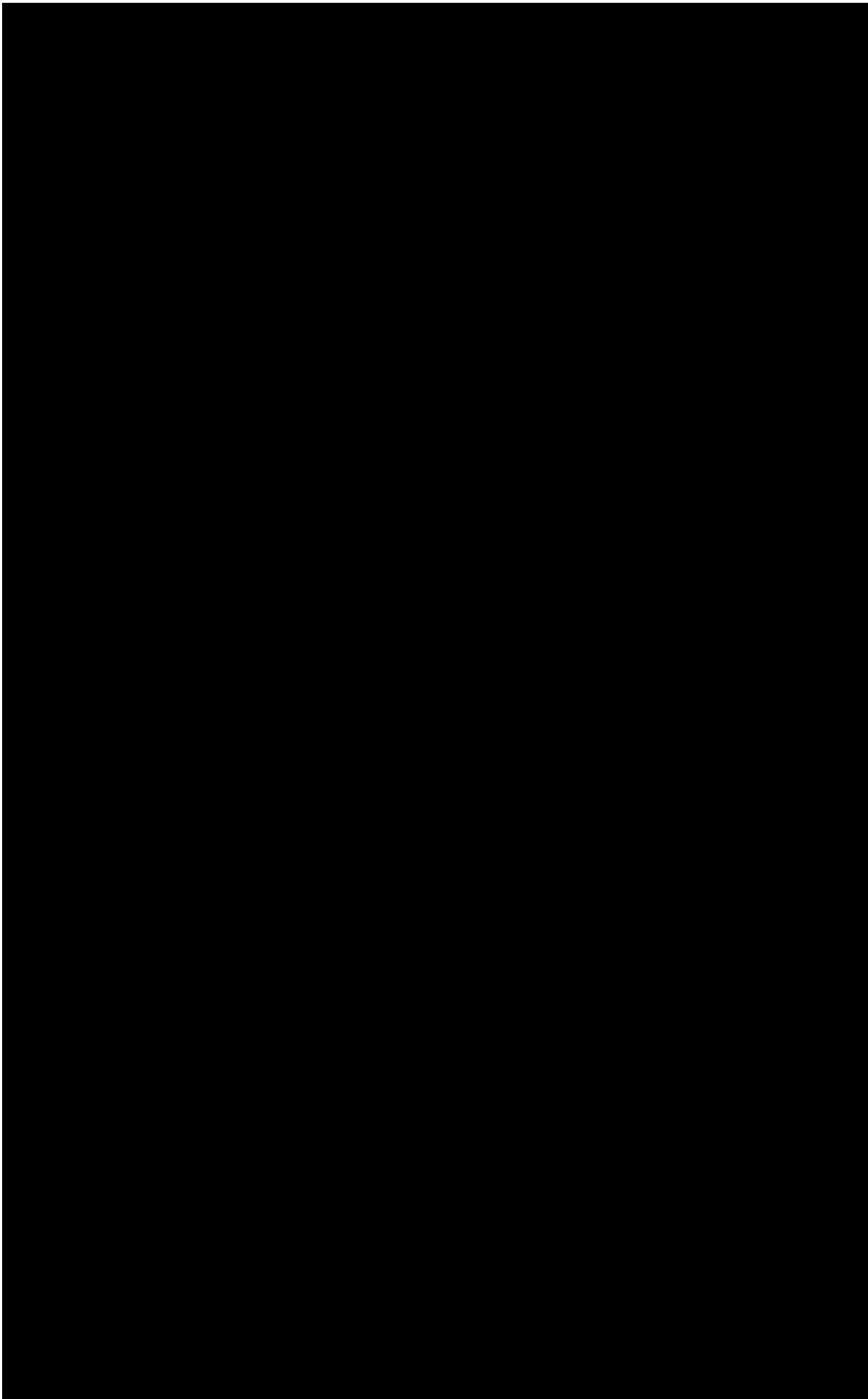
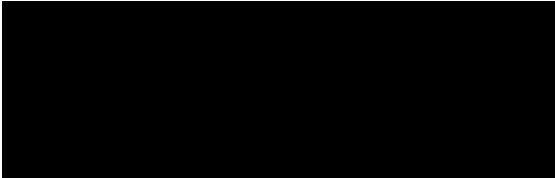
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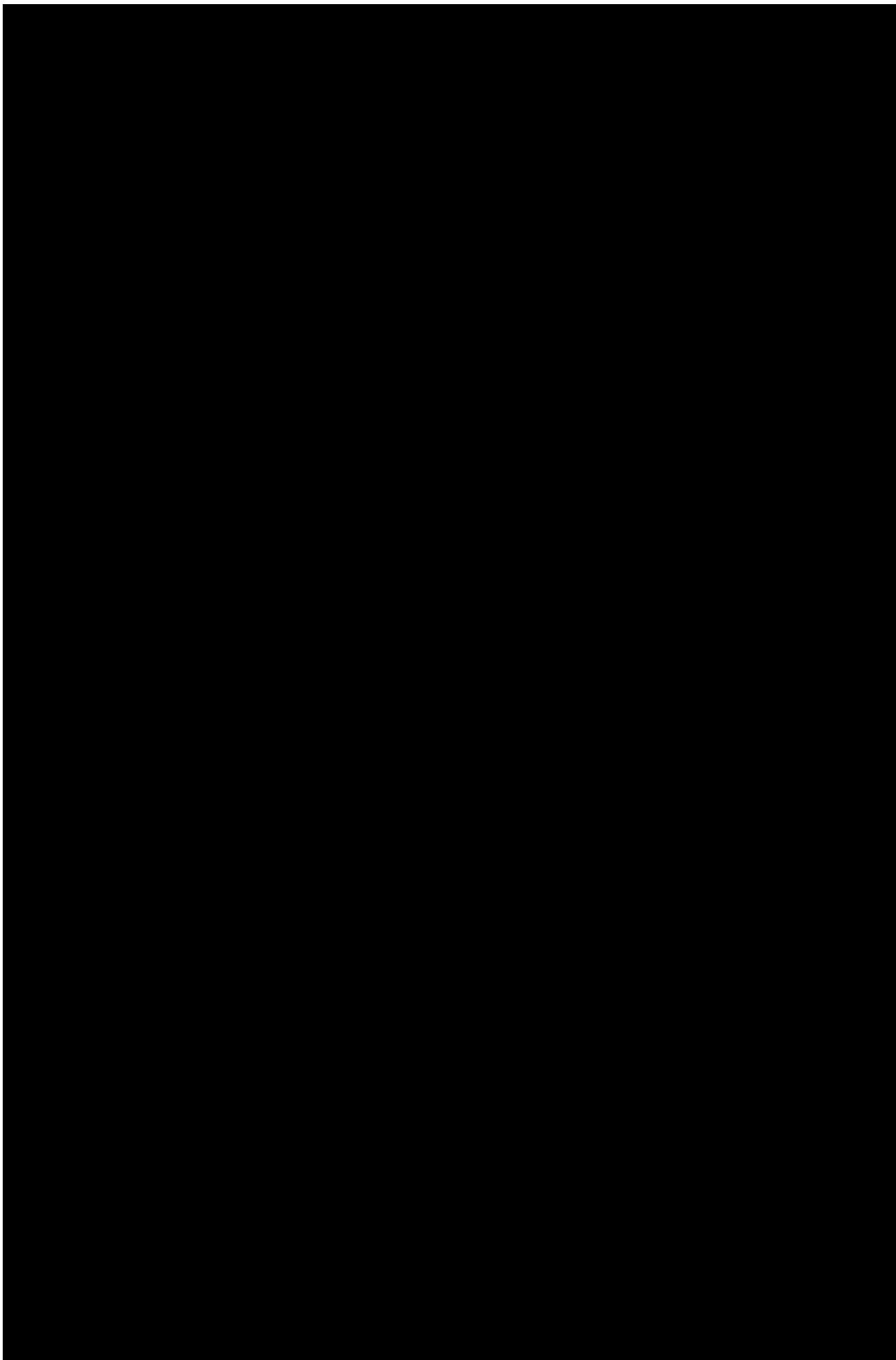
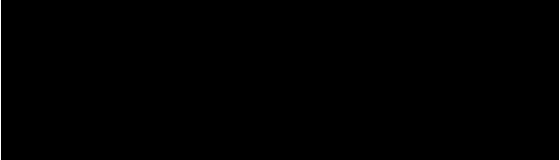
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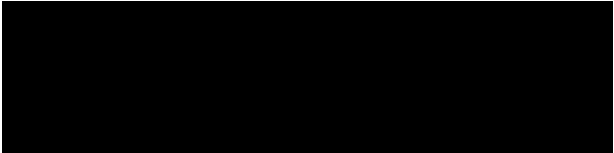
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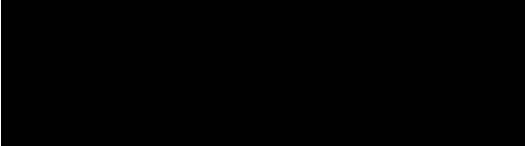
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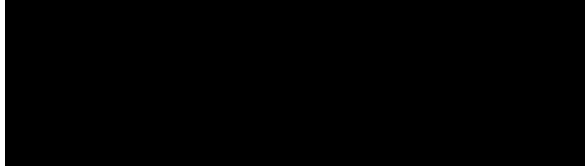
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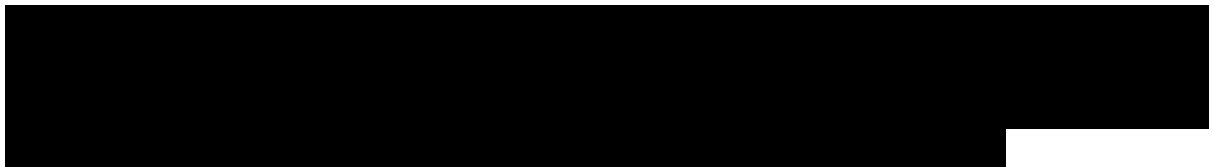
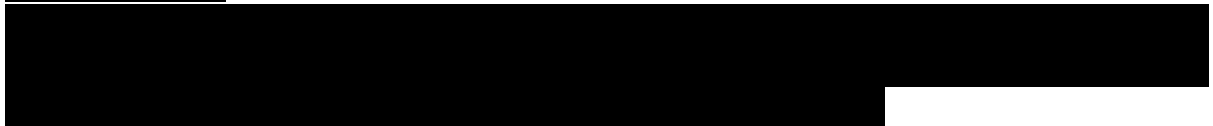
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Age Group	Male (%)	Female (%)
18-24	35	45
25-34	25	30
35-44	15	20
45-54	10	15
55-64	5	10
65-74	2	5
75+	1	2



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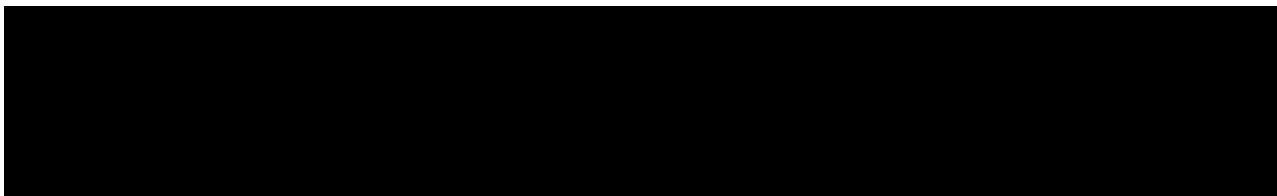
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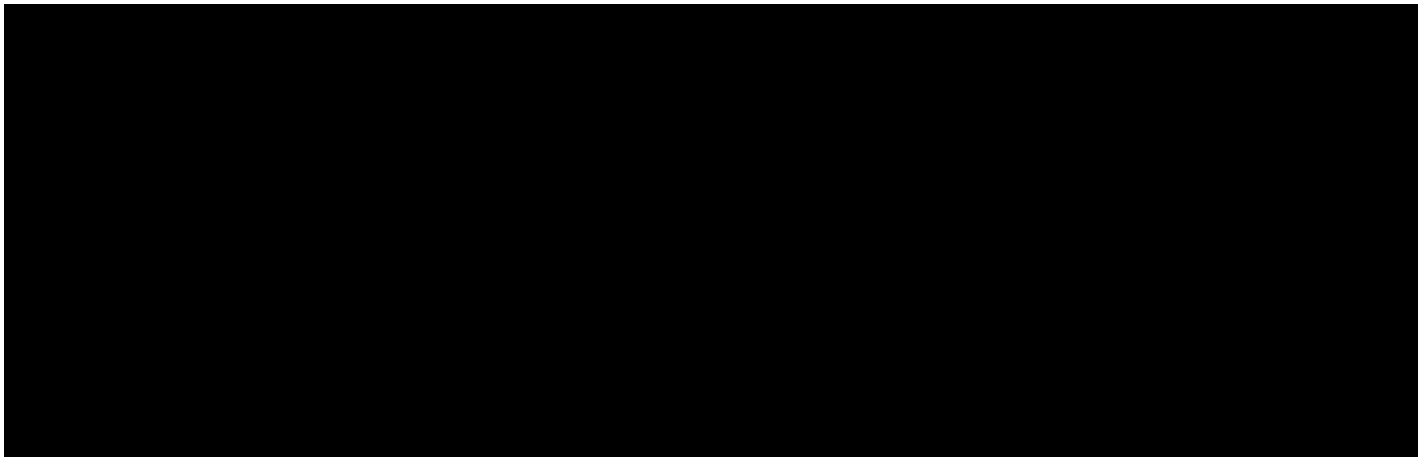
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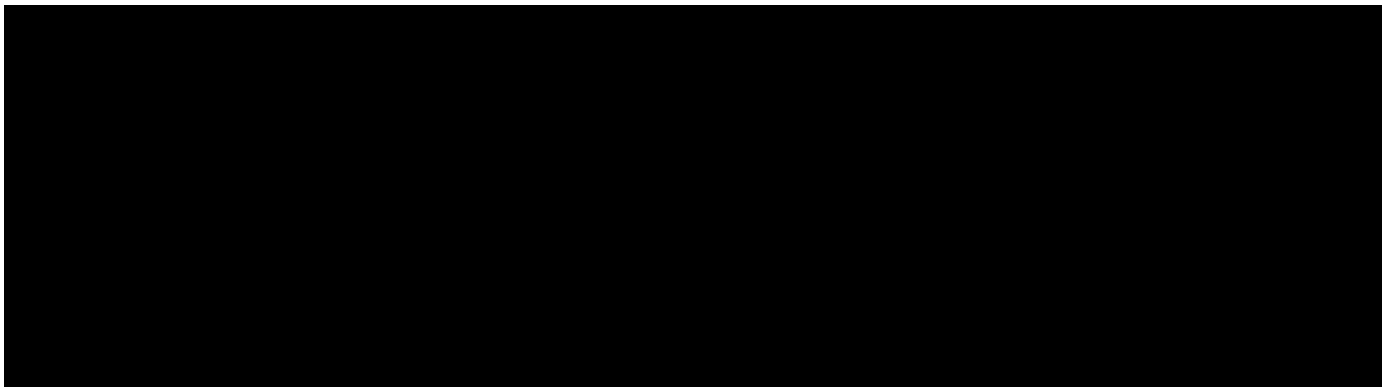
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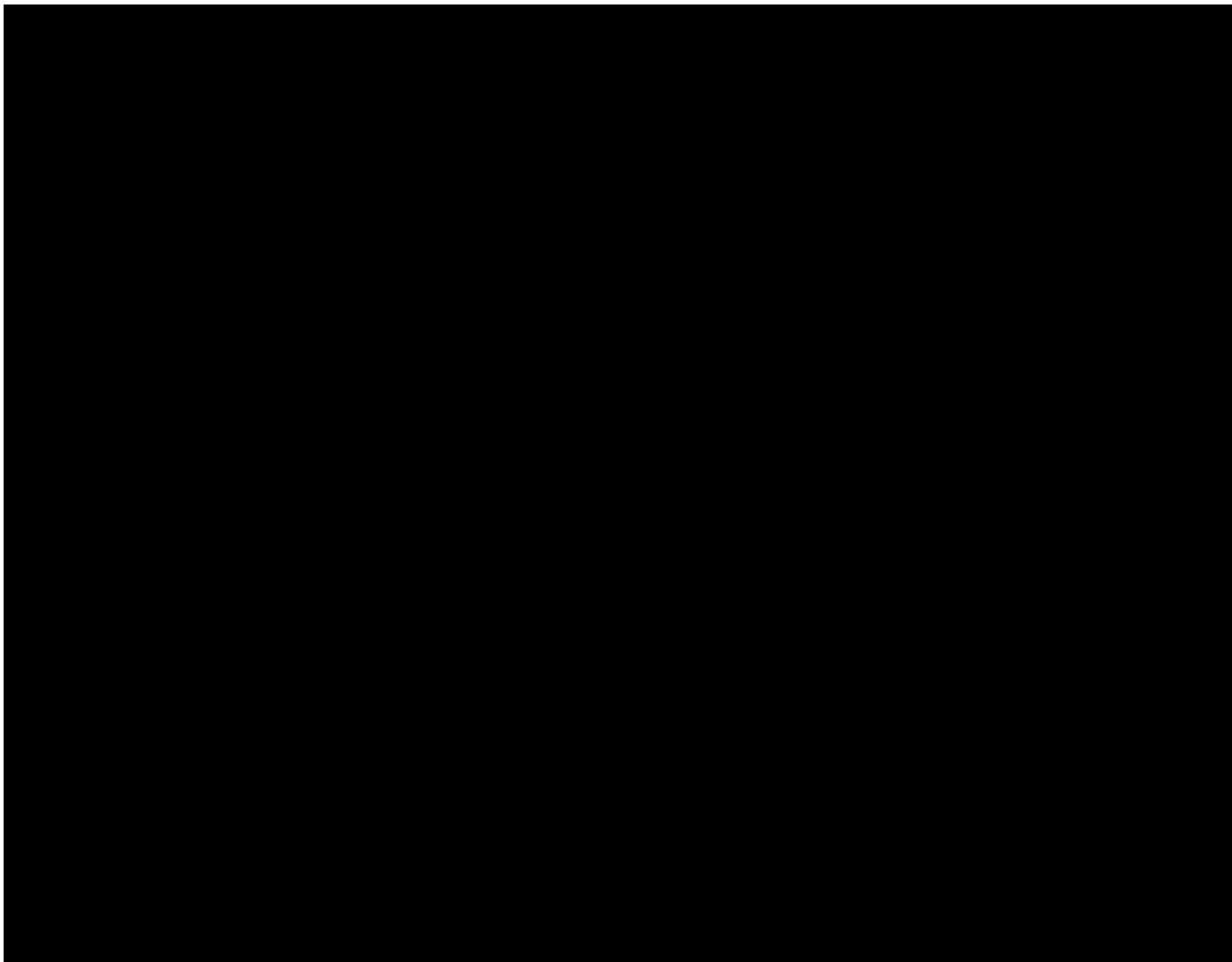
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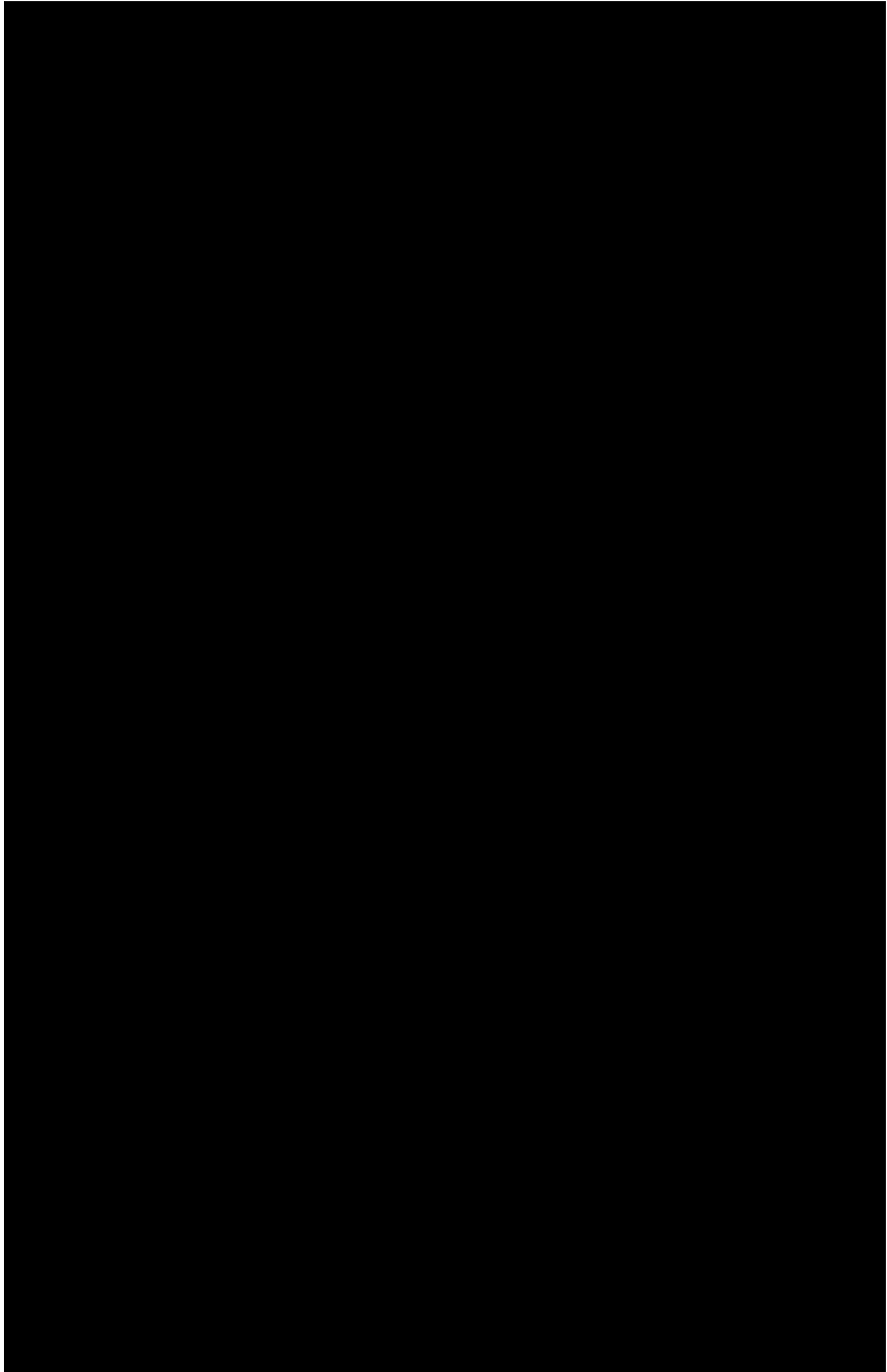
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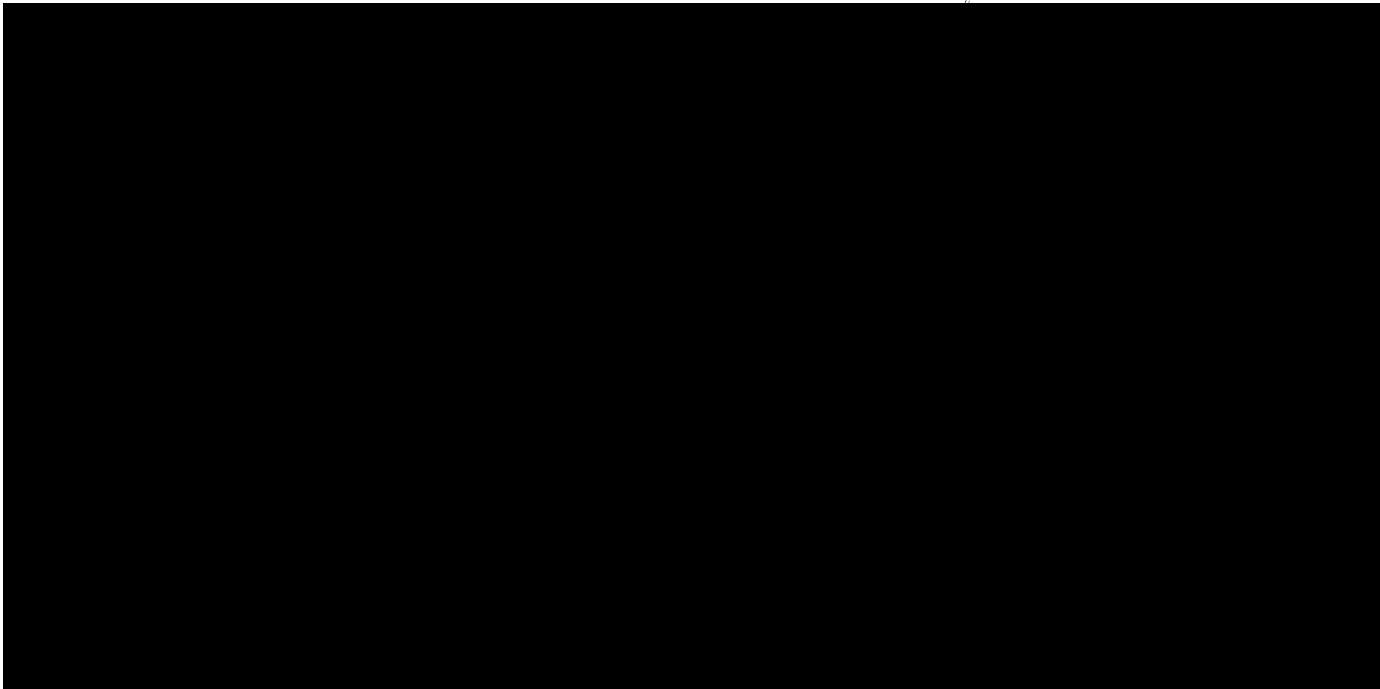
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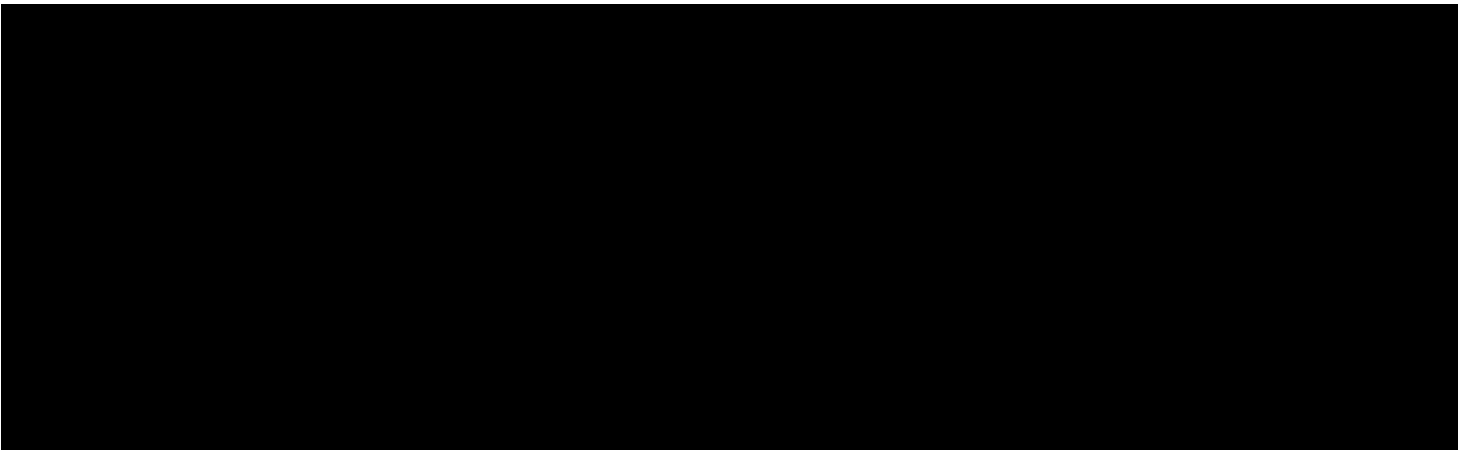
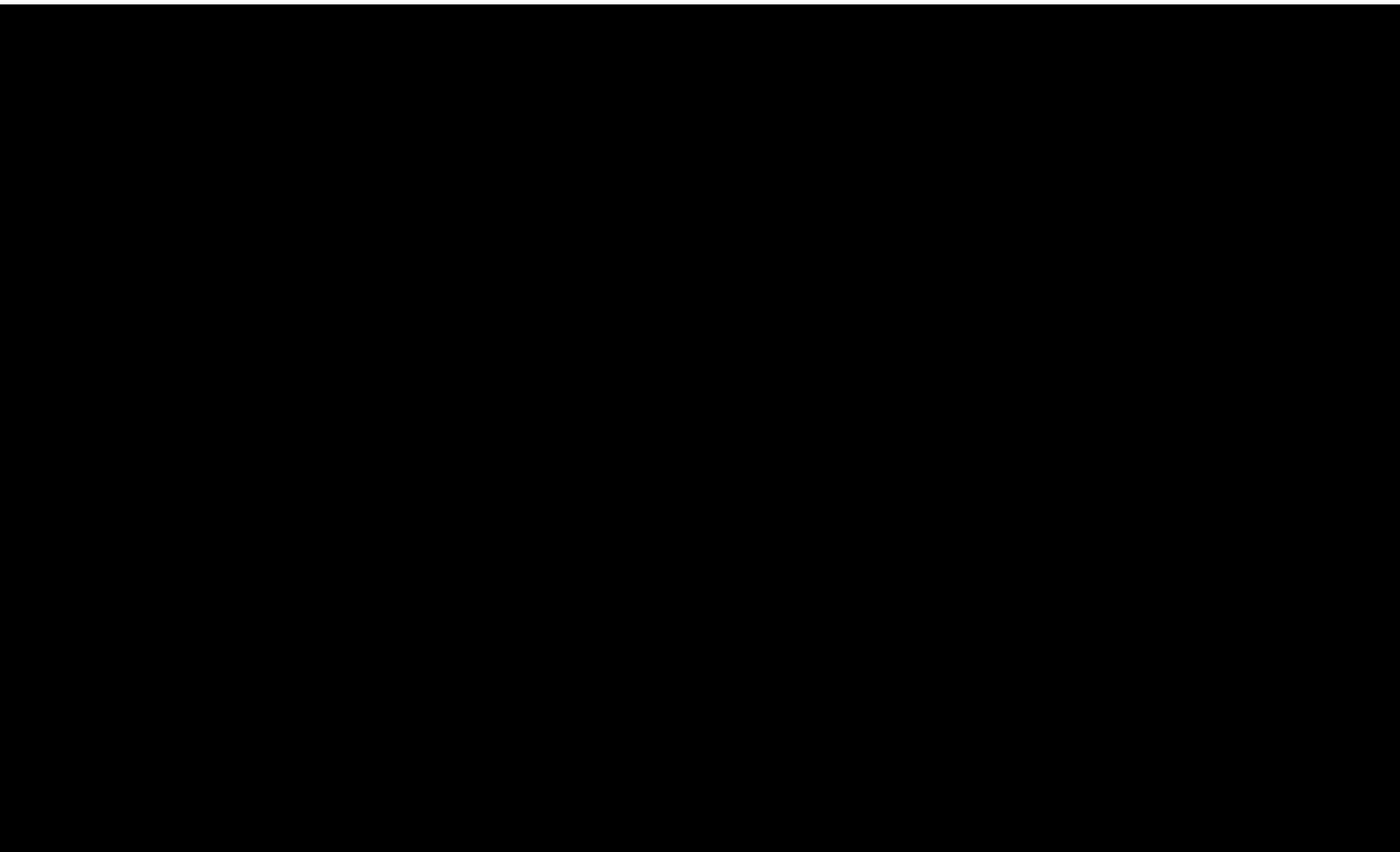
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## **Appendix 32**

### **Alliance Agreement**



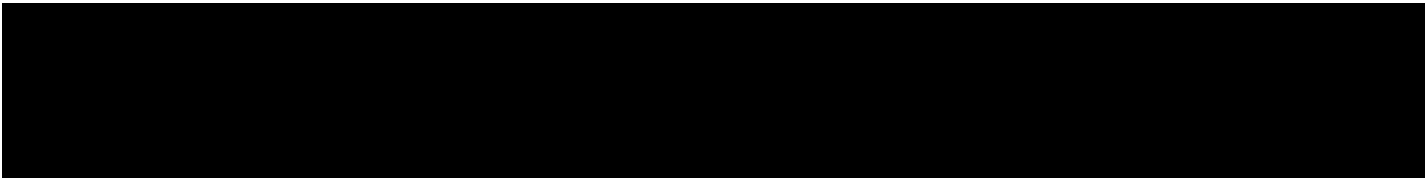


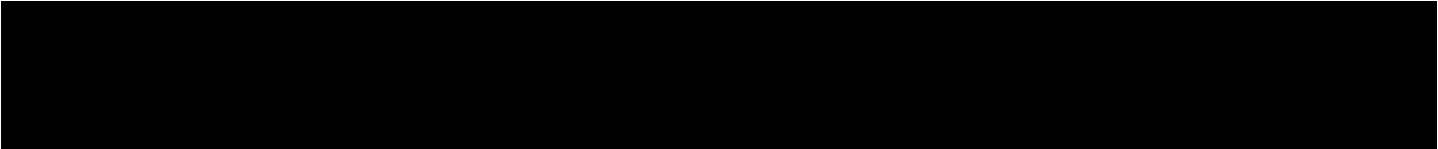
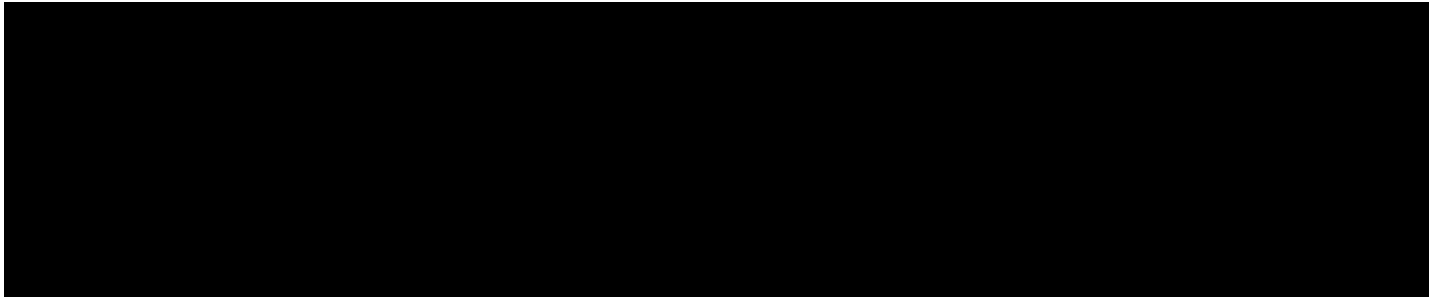
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**Schedule 4 – Not Used**

**Schedule 5 – Not Used**



**Schedule 6.1 - Rail Services Specific Obligations – NOT USED**

**Schedule 7.1 - Operational Performance – NOT USED**

**Schedule 7.2 – National Rail Passenger Surveys, Customer Report and CCI Scheme – NOT USED**

**Schedule 7.3 – Service Quality Regime – NOT USED**

**Schedule 7.4 – Ticketless Travel Regime – NOT USED**

## **Schedule 7.5 - CVL Restrictions of Use**

### **1 DEFINITIONS**

For the purposes of this Schedule 7.5 (CVL Restrictions of Use) only, the following words and expressions shall have the following meanings:

**“Applicable Timetable”** means, in respect of any day, that part of the Working Timetable in respect of that day which is required to be drawn up in accordance with Condition D2.1.1 of the CVL Network Code as at 22:00 hours on the day prior to that day;

**“Applicable Timetable Planning Rules”** means the Timetable Planning Rules in force in respect of the Routes (as from time to time amended or replaced) under Part D of the Network Code;

**“Corresponding Day”** means, in respect of any day (the “first day”):

- (a) a day which is contained in the same timetable period as the first day and on which the Rail Services scheduled in the New Working Timetable are the same as would have been scheduled on the first day but for Restrictions of Use reflected in the New Working Timetable for the first day; or
- (b) if no day is found under paragraph (a) above, then a day which is contained in the equivalent timetable period for the time of year, in the year immediately preceding the timetable period which includes the first day and on which the Rail Services scheduled in the New Working Timetable are the same as would have been scheduled on the first day but for Restrictions of Use reflected in the New Working Timetable for the first day; or

	(c) if no day is found under paragraph (a) or (b) above, such other day as the parties may agree
<b>“Corresponding Day Timetable”</b>	means, in relation to a Corresponding Day, the New Working Timetable or such other timetable as may be agreed between the parties;
<b>“D-26”</b>	D-X refers to x number of weeks before the Timetable Change Date on which the Working Timetable containing the first proposed Restriction of use will come into effect;
<b>“Default Interest Rate”</b>	is two (2) percent above the base lending rate of Barclays Bank PLC as varied from time to time;
<b>“Demand Factor”</b>	means the multiplication factor based on the day of the week and time of year as set out in paragraph 8.16;
<b>“Disrupted”</b>	means: <ul style="list-style-type: none"> <li>(a) cancelled;</li> <li>(b) diverted off the Route over which it was scheduled to run in the Corresponding Day Timetable; and</li> <li>(c) starting or finishing short in comparison with the service as timetabled in the Corresponding Day Timetable;</li> </ul>
<b>“Excess Generalised Journey Time” or “EGJT”</b>	means as calculated in accordance with paragraph 8.7;
<b>“Generalised Journey Time” or “GJT”</b>	means as calculated in accordance with paragraph 8.7;

<b>“New Working Timetable”</b>	means, in respect of any day, the version of the Working Timetable for that day provided by InfraCo;
<b>“Notification Factor”</b>	means as calculated in accordance with paragraph 8.10;
<b>“Over-run”</b>	occurs where there is a disrupted CVL Rail Service not in accordance with the Restriction of Use Plan which is expected to over-run and InfraCo is able to update the Working Timetable accordingly (i.e. at any time up to 22:00 the day before the Restriction of Use);
<b>“Payment Rate”</b>	shall be as set out in Appendix 2 of this Schedule 7.5;
<b>“Peak”</b>	means Services scheduled on any Weekday (excluding Public Holidays) (i) to arrive at Cardiff Central between 0630 and 0900 on a weekday; or depart Cardiff Central between 1600 and 1830 on a weekday; or arrive or depart Cardiff Central between 0900 and 1700 on a Saturday, and “Peak” shall be construed accordingly;
<b>“Possession Type Multiplication Factor”</b>	shall be calculated in accordance with paragraph 8.14;
<b>“Public Holiday”</b>	means any day other than Saturday or Sunday on which the banks in the City of London or Cardiff are not open for business;
<b>“Recovery Allowance”</b>	means an allowance for additional time incorporated in the New Working Timetable or the Applicable Timetable to allow a train to regain time lost during an earlier part of its journey;



**“Restriction of Use”**

means, in respect of any day, any restriction of use of all or any part of the Routes (other than one caused by a Recovery Allowance) which was contained in the Applicable Timetable Planning Rules relevant to that day notified to each Timetable Participant on or before D-26 which results in:

- (a) a difference between the Applicable Timetable on that day as compared with the New Working Timetable in respect of that day; and/or
- (b) a difference between the New Working Timetable on that day as compared with the Corresponding Day Timetable in respect of the Corresponding Day;

**“Restriction of Use Day”**

means any day on which an InfraCo Restriction of Use is taken or deemed to be taken;

**“Restriction of Use Plan”**

means the plan InfraCo is required to prepare for the Authority’s approval subject to paragraph 3 and that aligns with the long term asset management strategy of the Authority for the CVL;

**“Routes”**

means any route that forms part of the CVL;

**“Service Group”**

means any one or more (as the context may require) of the service groups described in this Schedule;

**“Suspension Notice”**

means any suspension of rail services by the Authority;

**“Timetable Change Date”**

shall have the meaning shown in Condition D2.1.3 of the CVL Network Code;

<b>“Timetable Participant”</b>	shall have the meaning ascribed to it in Part D of the CVL Network Code;
<b>“Type 1 Restriction of Use”</b>	means a single Restriction of Use to any part of a network for a period of less than 60 consecutive hours which does not fall within the definition of Type 2 Restriction of Use and Type 3 Restriction of Use;
<b>“Type 2 Restriction of Use”</b>	<p>means:</p> <ul style="list-style-type: none"> <li>(a) a single Restriction of Use of more than 60 consecutive hours (excluding any part of that Restriction of Use which occurs during a Public Holiday); and</li> <li>(b) which results in a Rail Service being Disrupted</li> </ul> <p>but excluding any Restriction of Use which falls within the definition of Type 3 Restriction of Use;</p>
<b>“Type 3 Restriction of Use”</b>	means a single Restriction of Use of more than 120 consecutive hours (including any part of that Restriction of Use which occurs during a Public Holiday);
<b>“TW-22”</b>	TW refers to the commencement of a Timetable Week (TW). So for example, TW-22 refers to the 22nd week prior to the start of a given Timetable Week;
<b>“Week”</b>	means a period commencing at 00:00:00 hours on any Saturday and ending at 23:59:59 hours on the next following Friday; and
<b>“Working Timetable”</b>	means as set out in Condition D2.1 and 2.1.6 of the CVL Network Code.

## **2 PURPOSE AND APPLICATION OF SCHEDULE**

2.1 This Schedule shall apply in respect of all Restrictions of Use on the CVL where the Infrastructure Manager role is undertaken by InfraCo.

2.2 This Schedule 7.5 sets out:

- (a) the Authority's requirements for the Restriction of Use Plan and the process by which InfraCo shall plan any Restriction of Use for any Infrastructure Manager Year;
- (b) the approval process for the Restriction of Use Plan;
- (c) the notification process for Restrictions of Use;
- (d) InfraCo's obligation to report to the Authority each Infrastructure Manager Year on the actual Restrictions of Use; and
- (e) the calculation for payments due by InfraCo to the Authority where there are any Over-runs.

2.3 The provisions of this Schedule shall be without prejudice to:

- (a) any other rights the Authority may have under this Infrastructure Agreement;
- (b) the establishment of any amended Timetable under Part H of the CVL Network Code; and
- (c) any rights InfraCo may have to challenge any decision of the Authority.

2.4 The Parties accept that a Restriction of Use shall only be treated as a Restriction of Use and subject to this Schedule to the extent that it involves a Restriction of Use of all or any part of the Routes which is not covered by a restriction under any Suspension Notice.

2.5 Any reference in this contract to the term "possession", whether on its own or in composite, should be construed as "Restriction of Use" as defined in this Schedule.

## **3 RESTRICTION OF USE PLAN: AUTHORITY REQUIREMENTS**

3.1 The Restriction of Use Plan shall, as a minimum, include:

- (a) the Type 1, Type 2 and Type 3 Restriction of Uses planned for that Infrastructure Manager Year;
- (b) the commencement date and schedule of each Restriction of Use;
- (c) the routes affected by each Restriction of Use;
- (d) not used;

- (e) not used; and
- (f) the identification of any reasonably predictable risks that might impact on the Restriction of Use Plan and set out InfraCo's proposed mitigation arrangements.

#### **4 RESTRICTION OF USE PLAN: APPROVAL PROCESS**

- 4.1 By no later than sixteen (16) weeks prior to the CVL Asset Transfer Date, and (subject to paragraph 4.5) each anniversary of the Infrastructure Manager Year thereafter, InfraCo shall provide for the Authority's approval a Restriction of Use Plan for that Infrastructure Manager Year. The initial Restriction of Use Plan shall cover the period after the CVL Asset Transfer Date and up to the next Infrastructure Manager Year anniversary.
- 4.2 The Authority may require InfraCo to provide further information in addition to the above criteria for the Restriction of Use Plan. InfraCo shall use all reasonable endeavours to update the Restriction of Use Plan and provide the additional information to the Authority within four (4) weeks of receiving a request from the Authority.
- 4.3 The Parties shall agree the Restriction of Use Plan no less than twelve (12) weeks before the CVL Asset Transfer Date or each anniversary of the Infrastructure Manager Year thereafter (for the relevant Infrastructure Manager Year).
- 4.4 If the Parties fail to reach an agreement within twenty eight (28) days, either party may refer the matter for resolution in accordance with the dispute resolution procedure set out in clause 11 of this Infrastructure Agreement.
- 4.5 Commencing on the date of termination of the ODP Grant Agreement, the Parties shall work together acting reasonably and in good faith, to agree and implement an accelerated process to produce the Restriction of Use Plan using the stages set out in paragraphs 4.1 to 4.4 but adopting shorter timescales in order to enable agreement of the Restriction of Use Plan in sufficient time to allow its implementation on the 1 April 2021.

#### **5 APPROVAL PROCESS FOR CHANGES TO THE RESTRICTION OF USE PLAN**

- 5.1 As soon as reasonably practicable, InfraCo shall inform the Authority with written notice of any proposed change to the Restriction of Use Plan including but not limited to where a planned allowance for journey time may be exceeded.
- 5.2 The Authority shall consider the proposal and may approve a proposed change(s) to the Restriction of Use Plan. Consent from the Authority is not to be unreasonably withheld.
- 5.3 In relation to any change to the Restriction of Use Plan, the Parties shall discuss and agree (acting reasonably) the extent to which such changes shall trigger the payment obligations under paragraph 8 below.

5.4 It is acknowledged for the purposes of this Schedule that:

- (a) a change to the Restriction of Use Plan requested by a third party (excluding IDPs) shall not trigger any payment pursuant to paragraph 8 below, to the extent that InfraCo was not aware of the required change at the time the ROU Plan was produced;
- (b) a change to the Restriction of Use Plan requested by an IDP shall not trigger any payment pursuant to paragraph 8 below, to the extent that (i) InfraCo was not aware of the required change at the time the ROU Plan was produced; and (ii) InfraCo had in all relevant respects complied with its responsibilities and obligations in relation to such such request.

## **6 NOTIFICATION PERIODS**

6.1 InfraCo shall use reasonable endeavours to provide the Authority with as much notice as reasonably possible of any Over-run or Restriction of Use. As a minimum, InfraCo shall ensure that at least twelve (12) weeks before each Restriction of Use set out in the Restriction of Use Plan commences:

- (a) any timetable affected by the relevant Restriction of Use has been updated accordingly; and
- (b) the Authority has been updated of such changes to the timetable.

## **7 REPORTING**

7.1 InfraCo shall report to the Authority every Reporting Period from the CVL Asset Transfer Date or each anniversary of the Infrastructure Manager Year thereafter on the following:

- (a) progress of current Restrictions of Use as set out in the Restrictions of Use Plan;
- (b) any issues that may cause an Over-run;
- (c) any mitigation factors that InfraCo is taking in relation to any possible Over-run; and
- (d) any divergences from the Restrictions of Use Plan.

7.2 InfraCo shall as soon as reasonably practicable after the end of each Infrastructure Manager Year report to the Authority on the following:

- (a) descriptions of each Restriction of Use taken;
- (b) the actual number of Restrictions of Use for the Infrastructure Manager Year; and

- (c) comparison of actual Restrictions of Use against the Restriction of Use Plan including a value for EGJT (calculated in accordance with paragraph 8.7).

## **8 CALCULATION OF PAYMENTS BY INFRACO TO THE AUTHORITY**

- 8.1 InfraCo shall pay the Authority in accordance with this paragraph 8 where there are any Over-runs and/or any change to the Restriction of Use Plan (subject to paragraph 5 above).

### **8.2 Calculation Formula**

Restriction of Use Payment =  $\text{Min}(0, \text{Total Agreed Plan Possession Payment} - \text{Total Actual Possession Payment}) \times (\text{RPI} + 0.04)$

Where:

- (a) Total Agreed Plan Possession Payment = the amount of total payment that would be due under the Restriction of Use Plan had the original agreed planned level of possessions been carried out
- (b) Total Agreed Plan Possession Payment =  $\sum \text{Daily Agreed Plan Possession Payment}$
- (c) Daily Agreed Plan Possession Payment =  $\text{Payment Rate} \times \text{EGJT} \times \text{NF} \times \text{PTMF} \times \text{DF}$
- (d) Total Actual Possession Payment = the amount of total payment that would be due as a result of the actual level of possessions carried out

$\text{Total Actual Possession Payment} = \sum \text{Daily Actual Possession Payment}$

- 8.3 The Daily Agreed Plan Possession Payment and the Daily Actual Possession Payment calculation shall be applied to each day in which the Actual Plan Restriction of Use is different from the Agreed Restriction of Use Plan.
- 8.4 The calculation shall be made on an annual basis starting with the CVL Asset Transfer Date and each anniversary of the Infrastructure Manager Year thereafter until the end of the Infrastructure Agreement Term.

Where:

- (a) EGJT is calculated in accordance with the formula set out in paragraph 8.7.
- (b) Notification Factor (“**NF**”) shall be determined as set out in paragraph 8.10.
- (c) Possession Type Multiplication Factor (“**PTMF**”) is set out below in paragraph 8.14.
- (d) Demand Factor (“**DF**”) shall be determined in accordance with paragraph 8.16.

8.5 The Restriction of Use Payment shall be subject to an annual cap of [REDACTED] (indexed) (the “**Possessions Payment Cap**”).

8.6 There shall be no bonus payment where the Total Actual Possession Payment is lower than the Total Agreed Planned Possession Payment.

8.7 Excess Generalised Journey Time Calculation

$$EGJT = GJT_p - GJT_n$$

Where:

EGJT = Excess Generalised Journey Time

$GJT_p$  = Generalised Journey Time during possession

$GJT_n$  = Generalised Journey Time during normal operation

8.8 Both  $GJT_p$  and  $GJT_n$  are calculated daily for each day of a possession, as the demand-weighted average GJT, where demand-weighted average GJT should take into account different levels of demand by time of day, direction and train service group. InfraCo shall calculate the EGJT by day type for the length of the Restriction of Use: Weekday, Saturday, Sunday and Bank Holiday. Both  $GJT_p$  and  $GJT_n$  shall be calculated across all flows for which the majority of the journey (as determined by portion of the mileage on the flow) is made on CVL Rail Services.

8.9 Both  $GJT_p$  and  $GJT_n$  are calculated according to the following formula:

$$GJT = (\text{Modal penalty} * \text{in-vehicle journey time}) + \text{Service interval frequency penalty} + \text{interchange penalty}$$

Where:

Modal penalty = 1 for rail services and 2 for non-rail (i.e. bus replacement) services.

interchange penalty includes both the PDFH-related value for time cost of an interchange and the time taken between services.

The in-vehicle journey time, Service interval frequency penalty and the interchange penalty should adhere to the requirements of the Passenger Demand Forecasting Handbook (“**PDFH**”) that is available within the year to which the calculation refers.

#### **8.10 Notification Factors**

#### **8.11 Early notification**

The Notification Factor in respect of a Restriction of Use in respect of any Service Group shall have the value specified for that Service Group in column C of Appendix 1 to this Schedule 7.5 if and to the extent that:

- (a) the Restriction of Use is reflected in the New Working Timetable; or
- (b)
  - (i) details of the Restriction of Use are notified to the Authority on or before D-26 for the timetable period in respect of the Restriction of Use Day but, at the request of the Authority (as accepted by InfraCo), are not reflected in the New Working Timetable; and
  - (ii) subject to paragraph 8.11(b)(iii), the Restriction of Use is reflected in the Working Timetable as entered into the train service database at 22:00 hours on the day which is twelve (12) Weeks before the Restriction of Use Day; or
  - (iii) where paragraph 8.11(b)(ii) does not apply because InfraCo has failed to revise the Access Proposal in accordance with Condition D3.4.9 of the CVL Network Code, the Restriction of Use is reflected in the Applicable Timetable in respect of the Restriction of Use Day.

#### **8.12 Notification by TW-22**

The NF in respect of a Restriction of Use in respect of any Service Group shall have the value specified for that Service Group in column D of Appendix 1 to this Schedule 7.5 if and to the extent that paragraph 8.11 does not apply, and:

- (a) details of the Restriction of Use are notified to the Authority by TW -22; and
- (b)
  - (i) the Restriction of Use is reflected in the Working Timetable as entered into the train service database at 22:00 hours on the day which is twelve (12) Weeks before the Restriction of Use Day; or
  - (ii) where paragraph 8.12(b)(i) does not apply because InfraCo has failed to revise the Access Proposal in accordance with Condition D3.4.9 of the CVL Network Code, the Restriction of Use is reflected in the Applicable Timetable in respect of the Restriction of Use Day.



### 8.13 **Late Notification**

The NF in respect of a Restriction of Use in respect of any Service Group shall have the value specified for that Service Group in column E of Appendix 1 to this Schedule 7.5 if and to the extent paragraphs 8.11 and 8.12 do not apply but the Restriction of Use is reflected in the Applicable Timetable, and includes where paragraph 8.11(b) or paragraph 8.12 would have been applicable but for a failure by InfraCo to fulfil the terms of paragraph 8.11(b)(i) or paragraph 8.12(b)(i) respectively, notwithstanding the revised Access Proposal in accordance with Condition D3.4.9 of the CVL Network Code.

### 8.14 **Possession Type Multiplication Factor**

8.15 The Possession Type Multiplication Factor shall correspond to the relevant Type of Restriction of Use: Type 1 Restriction of Use, Type 2 Restriction of Use and Type 3 Restriction of Use.

<b>Possession Type</b>	<b>Possession Type Multiplication Factor</b>
Type 1 Restriction of Use	1.0
Type 2 Restriction of Use	1.2
Type 3 Restriction of Use	1.5

### 8.16 **Demand Factor**

8.17 The Demand Factor shall be based on the day of the week that the Restriction of Use occurs:

<b>Day of the Week</b>	<b>Multiplication Factor</b>
Weekday	1.15
Saturday	0.80
Sunday	0.50
Bank Holiday	0.80

### 8.18 **Changes to Restrictions of Use**

8.19 Where a single Restriction of Use falls within the definition of one type of Restriction of Use and there is a change which means that no Restriction of Use occurs or that the

Restriction of Use occurs as another type of Restriction of Use, then that Restriction of Use shall be treated, for the purposes of the calculation and payment of compensation, as if it had always been the latter type of Restriction of Use (or, where applicable, as if it had not been a Restriction of Use).

- 8.20 A Restriction of Use shall be deemed to be taken if and to the extent that it results in any difference between timetables of the type referred to in the definition of “Restriction of Use” when notified, whether or not the restriction giving rise to that Restriction of Use was subsequently cancelled in whole or in part.

## **9 PAYMENT PROCEDURES**

- 9.1 InfraCo shall calculate the payments due to the Authority under this Schedule 7.5 annually, starting with the Start Date of the Infrastructure Manager Year and ending at the conclusion of the Infrastructure Agreement Term.

- 9.2 InfraCo shall send the calculation to the Authority within seven (7) Weekdays of the end of each Infrastructure Manager Year (“**Proposed Payment**”).

- 9.3 Following receipt of the Proposed Payment, the Authority may review and amend the calculation. The Parties shall negotiate to agree the Proposed Payment for no longer than fourteen (14) days.

- 9.4 Once the Authority is satisfied it shall give written approval of the Proposed Payment. InfraCo shall then pay the Authority the determined amount due within fourteen (14) days of the Authority’s written notice that the Proposed Payment is agreed.

### **9.5 Payments in the event of a dispute**

- 9.6 Where any amount under this Schedule 7.5 is in dispute:

- (a) the undisputed amount shall be paid in accordance with paragraph 9;
- (b) the disputed amount shall be paid within twenty eight (28) days after the dispute is resolved or determined to the extent that amount in dispute is adjudged or resolved to be payable; and
- (c) the disputed amount shall carry interest (incurred daily and compounded monthly) at the Default Interest Rate from the date which such amount would but for such dispute have been due to be paid until the date of payment.

**Appendix 1 to Schedule 7.5 – Notification Factors**

	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>
<b>Service Group Description</b>	<b>Service Group Code</b>	<b>Type</b>	<b>By D-26</b>	<b>By TW-22</b>	<b>After TW-22</b>

Cardiff Valleys	HL05	Off Peak	0.5	0.68	0.85
Cardiff Valleys	HL05	Peak	0.5	0.68	0.85

**Appendix 2 to Schedule 7.5 – Payment Rates**

Year		Year	Payment Rate
From	To		
14-Oct-18	31-Mar-19	Year 1	■
01-Apr-19	31-Mar-20	Year 2	■
01-Apr-20	31-Mar-21	Year 3	■
01-Apr-21	31-Mar-22	Year 4	■■■■■
01-Apr-22	31-Mar-23	Year 5	■■■■■
01-Apr-23	31-Mar-24	Year 6	■■■■■
01-Apr-24	31-Mar-25	Year 7	■■■■■
01-Apr-25	31-Mar-26	Year 8	■■■■■
01-Apr-26	31-Mar-27	Year 9	■■■■■
01-Apr-27	31-Mar-28	Year 10	■■■■■

The Parties agree that no payments shall be required to be made by InfraCo pursuant to this Schedule in relation to the period prior to 1 April 2021 and, without prejudice to clauses 6.10 to 6.14 of this Infrastructure Agreement, the Parties will (acting reasonably) discuss and agree the impact and consequences of the on-going COVID-19 pandemic on this regime for the period after 1 April 2021.

The Parties further agree to work together acting reasonably and in good faith to review the application and appropriate risk allocation in respect of EGJT in order to agree any appropriate changes thereto. The Parties acknowledge such agreement will be based on InfraCo being in a no better no worse position under this Infrastructure Agreement than it would have been were the ODP Grant Agreement to continue and Schedule 7.5 to have been applied.

**Schedule 8 - Payments**

**Schedule 8.1 – NOT USED**

**Schedule 8.2 - Profit Share Mechanism – NOT USED**

**Schedule 8.3 - Track Access Adjustments and Station Charge Adjustments – NOT USED**

**Schedule 8.4 - Revenue Support Adjustment – NOT USED**

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## Schedule 8.5 - Infrastructure Manager Services Payments

### **1 INFRASTRUCTURE MANAGER SERVICES PAYMENTS**

1.1 The Authority will pay to InfraCo the Infrastructure Manager Services Payment for each relevant Reporting Period.

1.2 The Infrastructure Manager Services Payment shall be an amount equal to:

$$\mathbf{TPOMP = PFixC + PFirmC + PEmerC + EXCR + SIEP - OPP - IMI + RC}$$

where:

TPOMP = The Infrastructure Manager Services Payment;

PFixC = The Fixed Charges for the corresponding Reporting Period;

PFirmC = The Firm Charges for the corresponding Reporting Period;

PEmerC = The Emerging Charges for the corresponding Reporting Period;

EXCR = Excluded Risk Charges for the corresponding Reporting Period;

RC = the restructuring costs as described in Appendix 4 for the corresponding Reporting Period (indexed for RPI);

SIEP = 

OPP = AOPP/13 (or any relevant number of Reporting Periods for any part Infrastructure Manager Year);

AOPP = Any financial underspend of InfraCo for the previous Infrastructure Manager Year in delivering its duties under Schedule 3A (Infrastructure Manager Services) of this Infrastructure Agreement. That is, any cost savings achieved by InfraCo in delivering the Infrastructure Manager Services for a cost less than the agreed costs set out in this Schedule 8.5;

IMI = Any income received by InfraCo in the performance of its role as the Infrastructure Manager, the provision of Infrastructure Manager Services, or income arising from the CVL Assets from third parties (excluding the Authority and Welsh Ministers) in the previous Reporting Period, provided that this shall not include:

- a) amounts received by InfraCo in respect of additional costs incurred by InfraCo in performing its obligations in connection with this Infrastructure Agreement or its role as Infrastructure Manager; and
- b) amounts received by InfraCo pursuant to Schedule 8 contained in any track access contract it has entered into; and

RPI = The quotient of the Retail Prices Index for the January which immediately precedes the commencement of the relevant IM Year divided by the Retail Prices Index for January 2017.

- 1.3 The Authority shall notify InfraCo of a final Reporting Period income adjustment in respect of OPP and IMI twenty one (21) days after the end of the Infrastructure Agreement Term adjustment shall be payable by InfraCo seven (7) days after such notification.
- 1.4 After the end of each Infrastructure Manager Year, following receipt of the Annual Management Accounts in accordance with Schedule 11 (InfraCo Performance Meetings and Management Information) the Authority shall calculate the difference between the amount determined from the Annual Management Accounts and the total of the IMI income adjustments relating to that Infrastructure Manager Year;
- (a) where the amount calculated from the Annual Management Accounts is greater than the total of the periodic IMI adjustments relating to that Infrastructure Manager Year InfraCo shall pay the difference to the Authority; and
- (b) where the amount calculated from the Annual Management Accounts is less than the total of the periodic IMI adjustments relating to that Infrastructure Manager Year, then the Authority will pay the difference to InfraCo.
- 1.5 The Parties acknowledge and agree that:
- (a) on and from the CVL Asset Transfer Date, the Infrastructure Manager Services Payment shall be reduced by the aggregate of:
- (i) the amount modelled to be paid for rent pursuant to the CVL Asset Lease in the 'infrastructure maintenance model' of the FTFM; and
- (ii) the stamp duty land tax modelled to be incurred in relation to such rent as set out in the 'infrastructure maintenance model' of the FTFM;
- (b) [REDACTED]
- (i) [REDACTED]
- (ii) [REDACTED]
- (c) [REDACTED]

- (i) [REDACTED]
  - (ii) [REDACTED]
  - (iii) [REDACTED]
  - (iv) [REDACTED]
  - (v) [REDACTED]
  - (vi) [REDACTED]
- [REDACTED]

- 1.6 Without prejudice to the timing of the payments stated in paragraph 1.5 above, the Parties acknowledge and agree that there shall be a Qualifying Change pursuant to the Infrastructure Agreement to update the 'infrastructure maintenance model' of the FTFM (and any related aspects of the Record of Assumptions) as required to reflect paragraph 1.5 above.
- 1.7 The Parties acknowledge and agree that in no circumstances shall OPP or IMI (as described in Schedule 8.5 of the Infrastructure Agreement) operate to directly or indirectly reduce the amounts payable by the Authority in paragraph 1.5 above.

- 1.8 To the extent not taken into account by the amounts described in paragraph 1.5 above, all consequences arising from or in connection with the matters set out in paragraph 1.5 above shall constitute a Qualifying Change for the purposes of the Infrastructure Agreement.

## 2 FIXED CHARGES

- 2.1 The Fixed Charges for the corresponding Reporting Period is calculated as follows:

$$\mathbf{PFixC} = \left( \frac{\mathbf{RPD}}{\mathbf{FYD}} \times \mathbf{AFixC} \right) + \mathbf{RA}$$

Where:

**RPD** = the number of days in that Reporting Period;

**FYD** = the number of days in the Infrastructure Manager Year in which that Reporting Period occurs being three hundred and sixty five (365), or if February 29 falls during that Infrastructure Manager Year, three hundred and sixty six (366) days for every Infrastructure Manager Year other than in respect of any Reporting Period:

- (a) Which commences during the Infrastructure Manager Year commencing on the Start Date, in which case FYD shall be the number of days during the period from 14 October 2018 to 31 March 2019 (inclusive);
- (b) Which commences between 1 April 2033 and 15 October 2033 (inclusive), in which case FYD shall be the number of days between such dates (inclusive);
- (c) Which commences between 16 October 2033 and 31 March 2034 (inclusive), in which case FYD shall be the number of days between such dates (inclusive); and
- (d) Which commences between 1 April 2035 and 13 October 2035 (inclusive), in which case FYD shall be the number of days between such dates (inclusive).

$$\mathbf{AFixC} = (\mathbf{AAOMF(Y_n)} + \mathbf{AAKMF(Y_n)} + \mathbf{AWSRIF(Y_n)} + \mathbf{AOverC(Y_n)} + \mathbf{AP(Y_n)} + \mathbf{AAS(Y_n)}) \times \mathbf{RPI}$$

where, for each Year ( $Y_n$ ), which equates to the actual year of the Agreement:

**AAOMF( $Y_n$ )** = Annual Asset Operational Management Fee for the respective Infrastructure Manager Year as set out in the Table A1 of Appendix 1;

**AAKMF( $Y_n$ )** = Annual Asset Knowledge Management Fee for the respective Infrastructure Manager Year as set out in the Table A2 of Appendix 1;

**AWSRIF(Y<sub>n</sub>)** = Annual Weather & Season Related Intervention Services (excluding Extreme Weather Events) Fee for the respective Infrastructure Manager Year as set out in the Table A3 of Appendix 1 to this Schedule 8.5;

**AOverC(Y<sub>n</sub>)** = The fixed Annual Infrastructure Manager Services Overheads for the respective Infrastructure Manager Year set out in Table A4 of Appendix 1 to this Schedule 8.5;

**AP(Y<sub>n</sub>)** = The fixed Annual Infrastructure Manager Services Profit for the respective Infrastructure Manager Year set out in Table A5 of Appendix 1 to this Schedule 8.5;

**AAS(Y<sub>n</sub>)** = Annual Amenities and Services Fee for the respective Infrastructure Manager Year as set out in the Table A6 of Appendix 1 to this Schedule 8.5;

**RA** = any entitlement to adjust any Fixed Charge following the Authority not approving a Planned Renewal pursuant to Appendix 5 (Renewals Process) of Schedule 3A.3; and

**RPI** = The quotient of the Retail Prices Index for the January which immediately precedes the commencement of the relevant Infrastructure Manager Year divided by the Retail Prices Index for January 2017.

- 2.2 At the relevant points set out in Schedule 3A (Infrastructure Manager Services) charges identified as Firm Charges within this Schedule 8.5 will be re-categorised as Fixed Charges. Where and at such point such Firm Charges are identified as Fixed Charges, the item will be included as an additional item within the calculation in paragraph 2.1 of this Schedule and the corresponding charge will be removed from the calculation in paragraph 3.1.

### 3 FIRM CHARGES

- 3.1 The Firm Charges for the corresponding Reporting Period is calculated as follows:

$$PFirmC = \left( \frac{RPD}{FYD} \times AFirmC \right) + DISCOF + RA$$

Where:

**RPD** = the number of days in that Reporting Period.

**FYD** = the number of days in the Infrastructure Manager Year in which that Reporting Period occurs being three hundred and sixty five (365), or if February 29 falls during that Infrastructure Manager Year, three hundred and sixty six (366) days for every Infrastructure Manager Year other than in respect of any Reporting Period:

- (a) Which commences during the Infrastructure Manager Year commencing on the Start Date, in which case FYD shall be the number of days during the period from 14 October 2018 to 31 March 2019 (inclusive);
- (b) Which commences between 1 April 2033 and 15 October 2033 (inclusive), in which case FYD shall be the number of days between such dates (inclusive);
- (c) Which commences between 16 October 2033 and 31 March 2034 (inclusive), in which case FYD shall be the number of days between such dates (inclusive); and
- (d) Which commences between 1 April 2035 and 13 October 2035 (inclusive), in which case FYD shall be the number of days between such dates (inclusive).

$$\mathbf{AFirmC} = (\mathbf{AFSF}(Y_n) + \mathbf{AFTF}(Y_n) + \mathbf{AFOLEF}(Y_n) + \mathbf{AFPF}(Y_n) + \mathbf{AFLCF}(Y_n) + \mathbf{AFOAF}(Y_n)) * \mathbf{RPI}$$

**AFSF( $Y_n$ )** = The Annual Firm Signalling and Control Systems and Passenger Information Systems Fee for the respective Infrastructure Manager Year as set out in Table B1 of Appendix 2;

**AFTF( $Y_n$ )** = The Annual Firm Track Fee for the respective Infrastructure Manager Year as set out in Table B2 of Appendix 2;

**AFOLEF( $Y_n$ )** = The Annual Firm Overhead Line Equipment Fee for the respective Infrastructure Manager Year as set out in Table B3 of Appendix 2;

**AFPF( $Y_n$ )** = The Annual Firm Power Distribution and Electricity and Power Fee for the respective Infrastructure Manager Year as set out in Table B4 of Appendix 2;

**AFLCF( $Y_n$ )** = The Annual Firm Level Crossings Fee for the respective Infrastructure Manager Year as set out in Table B5 of Appendix 2;

**AFOAF( $Y_n$ )** = The Annual Firm Telecoms Fee for the respective Infrastructure Manager Year as set out in Table B6 of Appendix 2;

**RA** = any entitlement to adjust any Fixed Charge following the Authority not approving a Planned Renewal pursuant to Appendix 5 (Renewals Process) of Schedule 3A.3;

**RPI** = is the quotient of the Retail Prices Index for the January which immediately precedes the commencement of the relevant Infrastructure Manager Year divided by the Retail Prices Index for January 2017; and

**DISCOF** = for Firm Charges, any entitlement to adjust the Firm Charge for a Material Discovery in accordance with Schedule 3A (Infrastructure Manager Services).

- 3.2 In accordance with the process set out in Schedule 3A (Infrastructure Manager Services) charges identified as Emerging Charges shall be re-categorised as Firm Charges. Where such Emerging Charges are converted into Firm Charges in accordance with Schedule 3A, the relevant item will be included as an additional item within the calculation in paragraph 3.1 of this Schedule 8.5 and removed from the calculation in paragraph 4.1.

#### 4 EMERGING CHARGES

- 4.1 The Emerging Charges for the corresponding Reporting Period is calculated as follows:

$$PEmerC = \left( \frac{RPD}{FYD} \times AEmerC \right) + DISCOE + RA$$

Where:

**RPD** = the number of days in that Reporting Period

**FYD** = the number of days in the Infrastructure Manager Year in which that Reporting Period occurs being three hundred and sixty five (365), or if February 29 falls during that Infrastructure Manager Year, three hundred and sixty six (366) days for every Infrastructure Manager Year other than in respect of any Reporting Period:

- (a) Which commences during the Infrastructure Manager Year commencing on the Start Date, in which case FYD shall be the number of days during the period from 14 October 2018 to 31 March 2019 (inclusive);
- (b) Which commences between 1 April 2033 and 15 October 2033 (inclusive), in which case FYD shall be the number of days between such dates (inclusive);
- (c) Which commences between 16 October 2033 and 31 March 2034 (inclusive), in which case FYD shall be the number of days between such dates (inclusive); and
- (d) Which commences between 1 April 2035 and 13 October 2035 (inclusive), in which case FYD shall be the number of days between such dates (inclusive).

$$AEmerC = (AFEF(Y_n) + AFStrF(Y_n) + AFBPF(Y_n) + AFOTF(Y_n) + AFOAF(Y_n) \times RPI)$$

**AFEF(Y<sub>n</sub>)** = The Annual Budget Earthworks Fee for the respective Infrastructure Manager Year as set out in Table C1 of Appendix 3;

**AFStrF(Y<sub>n</sub>)** = The Annual Budget Structures (including Tunnels) Fee for the respective Infrastructure Manager Year as set out in Table C2 of Appendix 3;

**AFBPF(Y<sub>n</sub>)** = The Annual Budget Property and Buildings (including Stations) Fee for the respective Infrastructure Manager Year as set out in Table C3 of Appendix 3;

**AFOTF( $Y_n$ )** = The Annual Budget Off Track and Drainage Fee for the respective Infrastructure Manager Year as set out in Table C4 of Appendix 3;

**AFOAF( $Y_n$ )** = The Annual Budget Other Asset Fee as set out in Table C5 of Appendix 3;

**DISCOE** = For Emerging Charges, any entitlement to adjust the Emerging Charges in accordance with Schedule 3A (Infrastructure Manager Services); and

**RA** = any entitlement to adjust any Fixed Charge following the Authority not approving a Planned Renewal pursuant to Appendix 5 (Renewals Process) of Schedule 3A.3.

## **5 EXCLUDED RISK CHARGES**

- 5.1 The charges for Excluded Risks within the Reporting Period shall be the costs of the provision of activities related to such Excluded Risks that have been incurred within the Reporting Period in excess of [REDACTED] such costs being the responsibility of InfraCo in accordance with Schedule 3A.

## **6 RENEWALS**

- 6.1 Renewals may be progressed as AKI Infrastructure Works according to the provisions of Schedule 3B (Infrastructure Works and Infrastructure Services).

## **7 PAYMENT OF INFRASTRUCTURE MANAGER SERVICES PAYMENT**

- 7.1 The Authority shall notify InfraCo, no less than seven (7) days prior to the end of the Reporting Period of the Infrastructure Manager Services Payments.
- 7.2 Each such notification shall set out in reasonable detail how the Infrastructure Manager Services Payment has been calculated.
- 7.3 The Payment Date for a Reporting Period shall be the last Weekday of that Reporting Period.
- 7.4 Each Infrastructure Manager Services Payment shall be payable by InfraCo or, as the case may be, the Authority in the amount notified by the Authority in accordance with paragraph 2.1 on the Payment Date of the Reporting Period to which it relates.
- 7.5 Each Infrastructure Manager Services Payment shall be made:
- (a) by automatic electronic funds transfer in pounds sterling to such bank account in the United Kingdom as the payee of such payment may have previously specified to the payer in writing; and
  - (b) so that cleared funds are received in that account on or before the due date for payment.



## **8 INTEREST**

8.1 If either Party fails to pay any amount to the other Party on its due date, it shall in addition pay interest on such amount at the Interest Rate, calculated on a daily basis, from the due date for payment to the date on which payment is made.

8.2 If the amount of any Infrastructure Manager Services Payment is agreed or determined to be incorrect and:

- (a) either Party has made a payment to the other Party which is greater than it would have made if the amount of the Infrastructure Manager Services Payment had been correct, then the recipient shall repay the excess within three (3) Weekdays of the agreement or determination; or
- (b) either Party has made a payment to the other Party which is less than it would have made if the amount of the Infrastructure Manager Services Payment had been correct, then the payer shall pay the amount of any shortfall to the payee within three (3) Weekdays of the agreement or determination,

together, in each case, with interest on the amount payable at the Interest Rate, calculated on a daily basis from the date on which the Infrastructure Manager Services Payment was paid until the date on which such excess amount or shortfall is paid.

## **9 DISPUTES UNDER SCHEDULE 8.5**

If either Party disputes the amount of an Infrastructure Manager Services Payment, the dispute shall, unless the Parties otherwise agree, be resolved in accordance with the provisions of clause 11 (*Dispute Resolution Procedure*) of the Infrastructure Agreement. Any such dispute shall not affect the obligation of either Party to pay the Infrastructure Manager Services Payment notified in accordance with this Schedule 8.5.

## **10 INDUSTRIAL ACTION**

The Authority, in its discretion, may at any time decide to reimburse or ameliorate net losses of InfraCo arising from Industrial Action (however caused and of whatever nature) in circumstances where InfraCo has demonstrated to the satisfaction of the Authority that it has taken all reasonable steps to avoid the Industrial Action and that, Industrial Action having nevertheless occurred, InfraCo has taken all reasonable steps to mitigate its effects.

## **11 NO DOUBLE RECOVERY**

InfraCo shall not be entitled to recover (by way of a Change or otherwise) more than once in respect of the same loss suffered by it.

## **12      FORCE MAJEURE AND PAYMENTS**

Following the occurrence of a Force Majeure Event, the payment of the Infrastructure Manager Services Payment shall continue unaffected.

### **Appendix 1 to Schedule 8.5 - Fixed Charge Tables**

The tables in this Appendix 1 are the base tables that were included in this Infrastructure Agreement as at 12 October 2018.

<b>Table A1 (Annual Asset Operational Management Fee)</b>			
<b>Year</b>	<b>From</b>	<b>To</b>	<b>Fixed Fee (£)</b>
1	14 October 2018	31 March 2019	1
2	1 April 2019	31 March 2020	██████
3	1 April 2020	31 March 2021	██████
4	1 April 2021	31 March 2022	██████
5	1 April 2022	31 March 2023	██████
6	1 April 2023	31 March 2024	██████
7	1 April 2024	31 March 2025	██████
8	1 April 2025	31 March 2026	██████
9	1 April 2026	31 March 2027	██████
10	1 April 2027	31 March 2028	██████
11	1 April 2028	31 March 2029	██████

<b>Table A2 (Annual Asset Knowledge Management Fee)</b>			
<b>Year</b>	<b>From</b>	<b>To</b>	<b>Fixed Fee (£)</b>
1	14 October 2018	31 March 2019	1
2	1 April 2019	31 March 2020	██████
3	1 April 2020	31 March 2021	██████
4	1 April 2021	31 March 2022	██████
5	1 April 2022	31 March 2023	██████
6	1 April 2023	31 March 2024	██████

7	1 April 2024	31 March 2025	██████
8	1 April 2025	31 March 2026	██████
9	1 April 2026	31 March 2027	██████
10	1 April 2027	31 March 2028	██████
11	1 April 2028	31 March 2029	██████

**Table A3 (Annual Weather & Season Related Interventions (excluding Extreme Weather Events) Fee)**

Year	From	To	Fixed Fee (£)
1	14 October 2018	31 March 2019	█
2	1 April 2019	31 March 2020	██████
3	1 April 2020	31 March 2021	██████
4	1 April 2021	31 March 2022	██████
5	1 April 2022	31 March 2023	██████
6	1 April 2023	31 March 2024	██████
7	1 April 2024	31 March 2025	██████
8	1 April 2025	31 March 2026	██████
9	1 April 2026	31 March 2027	██████
10	1 April 2027	31 March 2028	██████
11	1 April 2028	31 March 2029	██████

**Table A4 (Fixed Annual Infrastructure Manager Services Overheads)**

Year	From	To	Fixed Overheads (£)
1	14 October 2018	31 March 2019	█
2	1 April 2019	31 March 2020	██████

3	1 April 2020	31 March 2021	██████
4	1 April 2021	31 March 2022	██████
5	1 April 2022	31 March 2023	██████
6	1 April 2023	31 March 2024	██████
7	1 April 2024	31 March 2025	██████
8	1 April 2025	31 March 2026	██████
9	1 April 2026	31 March 2027	██████
10	1 April 2027	31 March 2028	██████
11	1 April 2028	31 March 2029	██████

Table A5 (Fixed Infrastructure Manager Services Annual Profit)			
Year	From	To	Fixed Profit (£)
1	14 October 2018	31 March 2019	█
2	1 April 2019	31 March 2020	██████
3	1 April 2020	31 March 2021	██████
4	1 April 2021	31 March 2022	██████
5	1 April 2022	31 March 2023	██████
6	1 April 2023	31 March 2024	██████
7	1 April 2024	31 March 2025	██████
8	1 April 2025	31 March 2026	██████
9	1 April 2026	31 March 2027	██████
10	1 April 2027	31 March 2028	██████
11	1 April 2028	31 March 2029	██████

Table A6 (Fixed Annual Amenities & Services Charge)
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<b>Year</b>	<b>From</b>	<b>To</b>	<b>Fixed Fee (£)</b>
1	14 October 2018	31 March 2019	1
2	1 April 2019	31 March 2020	██████
3	1 April 2020	31 March 2021	██████
4	1 April 2021	31 March 2022	██████
5	1 April 2022	31 March 2023	██████
6	1 April 2023	31 March 2024	██████
7	1 April 2024	31 March 2025	██████
8	1 April 2025	31 March 2026	██████
9	1 April 2026	31 March 2027	██████
10	1 April 2027	31 March 2028	██████
11	1 April 2028	31 March 2029	██████

**Appendix 2 to Schedule 8.5 - Firm Charge Tables**

<b>Table B1 (Annual Firm Signalling and control Systems and Passenger Information Systems Fee)</b>			
<b>Year</b>	<b>From</b>	<b>To</b>	<b>Firm Fee (£)</b>
1	14 October 2018	31 March 2019	1
2	1 April 2019	31 March 2020	██████
3	1 April 2020	31 March 2021	██████
4	1 April 2021	31 March 2022	██████
5	1 April 2022	31 March 2023	██████
6	1 April 2023	31 March 2024	██████
7	1 April 2024	31 March 2025	██████
8	1 April 2025	31 March 2026	██████
9	1 April 2026	31 March 2027	██████
10	1 April 2027	31 March 2028	██████
11	1 April 2028	31 March 2029	██████

<b>Table B2 (Annual Firm Track Fee)</b>			
<b>Year</b>	<b>From</b>	<b>To</b>	<b>Firm Fee (£)</b>
1	14 October 2018	31 March 2019	1
2	1 April 2019	31 March 2020	██████
3	1 April 2020	31 March 2021	██████
4	1 April 2021	31 March 2022	██████
5	1 April 2022	31 March 2023	██████
6	1 April 2023	31 March 2024	██████
7	1 April 2024	31 March 2025	██████

8	1 April 2025	31 March 2026	██████
9	1 April 2026	31 March 2027	██████
10	1 April 2027	31 March 2028	██████
11	1 April 2028	31 March 2029	██████

Table B3 (Annual Firm Overhead Line Equipment Fee)			
Year	From	To	Firm Fee (£)
1	14 October 2018	31 March 2019	█
2	1 April 2019	31 March 2020	██████
3	1 April 2020	31 March 2021	██████
4	1 April 2021	31 March 2022	██████
5	1 April 2022	31 March 2023	██████
6	1 April 2023	31 March 2024	██████
7	1 April 2024	31 March 2025	██████
9	1 April 2026	31 March 2027	██████
10	1 April 2027	31 March 2028	██████
11	1 April 2028	31 March 2029	██████

Table B4 (Annual Firm Power Distribution and Electricity and Power Fee)			
Year	From	To	Firm Fee (£)
1	14 October 2018	31 March 2019	█
2	1 April 2019	31 March 2020	██████
3	1 April 2020	31 March 2021	██████
4	1 April 2021	31 March 2022	██████



5	1 April 2022	31 March 2023	██████
6	1 April 2023	31 March 2024	██████
7	1 April 2024	31 March 2025	██████
8	1 April 2025	31 March 2026	██████
9	1 April 2026	31 March 2027	██████
10	1 April 2027	31 March 2028	██████
11	1 April 2028	31 March 2029	██████

**Table B5 (Annual Firm Level Crossings Fee)**

Year	From	To	Firm Fee (£)
1	14 October 2018	31 March 2019	█
2	1 April 2019	31 March 2020	██████
3	1 April 2020	31 March 2021	██████
4	1 April 2021	31 March 2022	██████
5	1 April 2022	31 March 2023	██████
6	1 April 2023	31 March 2024	██████
7	1 April 2024	31 March 2025	██████
8	1 April 2025	31 March 2026	██████
9	1 April 2026	31 March 2027	██████
10	1 April 2027	31 March 2028	██████
11	1 April 2028	31 March 2029	██████

**Table B6 (Annual Firm Telecoms Fee)**

Year	From	To	Firm Fee (£)
1	14 October 2018	31 March 2019	█

2	1 April 2019	31 March 2020	██████
3	1 April 2020	31 March 2021	██████
4	1 April 2021	31 March 2022	██████
5	1 April 2022	31 March 2023	██████
6	1 April 2023	31 March 2024	██████
7	1 April 2024	31 March 2025	██████
8	1 April 2025	31 March 2026	██████
9	1 April 2026	31 March 2027	██████
10	1 April 2027	31 March 2028	██████
11	1 April 2028	31 March 2029	██████

**Appendix 3 to Schedule 8.5 - Emerging Charges Tables**

<b>Table C1 (Annual Budget Earthworks Fee)</b>			
<b>Year</b>	<b>From</b>	<b>To</b>	<b>Budget Fee (£)</b>
1	14 October 2018	31 March 2019	█
2	1 April 2019	31 March 2020	████
3	1 April 2020	31 March 2021	████
4	1 April 2021	31 March 2022	████
5	1 April 2022	31 March 2023	████
6	1 April 2023	31 March 2024	████
7	1 April 2024	31 March 2025	████
8	1 April 2025	31 March 2026	████
9	1 April 2026	31 March 2027	████
10	1 April 2027	31 March 2028	████
11	1 April 2028	31 March 2029	████

<b>Table C2 (Annual Budget Structures (including Tunnels) Fee)</b>			
<b>Year</b>	<b>From</b>	<b>To</b>	<b>Budget Fee (£)</b>
1	14 October 2018	31 March 2019	█
2	1 April 2019	31 March 2020	████
3	1 April 2020	31 March 2021	████
4	1 April 2021	31 March 2022	████
5	1 April 2022	31 March 2023	████
6	1 April 2023	31 March 2024	████
7	1 April 2024	31 March 2025	████
8	1 April 2025	31 March 2026	████

9	1 April 2026	31 March 2027	██████
10	1 April 2027	31 March 2028	██████
11	1 April 2028	31 March 2029	██████

Table C3 (Annual Budget Property Buildings (including Stations) Fee)			
Year	From	To	Budget Fee (£)
1	14 October 2018	31 March 2019	█
2	1 April 2019	31 March 2020	██████
3	1 April 2020	31 March 2021	██████
4	1 April 2021	31 March 2022	██████
5	1 April 2022	31 March 2023	██████
6	1 April 2023	31 March 2024	██████
7	1 April 2024	31 March 2025	██████
8	1 April 2025	31 March 2026	██████
9	1 April 2026	31 March 2027	██████
10	1 April 2027	31 March 2028	██████
11	1 April 2028	31 March 2029	██████

Table C4 (Annual Budget Off Track and Drainage Fee)			
Year	From	To	Budget Fee (£)
1	14 October 2018	31 March 2019	█
2	1 April 2019	31 March 2020	██████
3	1 April 2020	31 March 2021	██████
4	1 April 2021	31 March 2022	██████
5	1 April 2022	31 March 2023	██████

6	1 April 2023	31 March 2024	██████
7	1 April 2024	31 March 2025	██████
8	1 April 2025	31 March 2026	██████
9	1 April 2026	31 March 2027	██████
10	1 April 2027	31 March 2028	██████
11	1 April 2028	31 March 2029	██████

Table C5 (Annual Budget Other Asset Fee)			
Year	From	To	Budget Fee (£)
1	14 October 2018	31 March 2019	█
2	1 April 2019	31 March 2020	██████
3	1 April 2020	31 March 2021	██████
4	1 April 2021	31 March 2022	██████
5	1 April 2022	31 March 2023	██████
6	1 April 2023	31 March 2024	██████
7	1 April 2024	31 March 2025	██████
8	1 April 2025	31 March 2026	██████
9	1 April 2026	31 March 2027	██████
10	1 April 2027	31 March 2028	██████
11	1 April 2028	31 March 2029	██████

#### Appendix 4 to Schedule 8.5 – Restructuring Cost

***[Note – the parties acknowledge that all figures to be included in this Appendix 4 are or will be in Jan 2017 prices.]***

**RC** as described in paragraph 1.2 of Appendix 4 shall be the aggregate of:

- (a) in respect of the first Reporting Period after the termination of the ODP Grant Agreement only:
  - (i) £[X] in respect of [*dependency*];
  - (ii) [*Drafting note: fixed one-off dependency costs to be added prior to the date of termination of the ODP Grant Agreement.*]
- (b) in respect of each Reporting Period after the termination of the ODP Grant Agreement, one thirteenth of:
  - (i) £[X] in respect of [*dependency*];
  - (ii) [*Drafting note: agreed fixed cost dependency costs to be added prior to the date of termination of the ODP Grant Agreement.*]
- (c) in respect of any costs and liabilities incurred by InfraCo in relation to any persons who transfer to InfraCo from OpCo pursuant to TUPE or otherwise to the extent that any such costs and liabilities are in addition to any costs and liabilities incurred by InfraCo prior to such transfer in respect of any such persons or the services or activities they carry out and provided that InfraCo shall use its reasonable endeavours to mitigate any such costs and liabilities;
- (d) the cost of professional indemnity insurance required to be procured by InfraCo in respect of the period following expiry or termination (other than as an Event of Default) of the Infrastructure Agreement and this provision shall survive expiry or termination of this Infrastructure Agreement;
- (e) in respect of any costs incurred by InfraCo arising from the Authority procuring the transfer of any insurance policies held by OpCo to the TfWRL (and any future change to the insurance programme shall be deemed to be a Qualifying Change to the extent it impacts InfraCo's cost or risk);
- (f) in respect of any costs incurred by InfraCo in relation to any insurance policy it is required to take out to the extent it would otherwise have been obtained, maintained and paid for by OpCo prior to the termination of the ODP Grant Agreement;
- (g) the Authority shall pay for all additional costs above those included in the FTFM incurred by InfraCo in connection with the procurement and maintenance of the performance

bond required to be put in place under Schedule 3B and for all costs of the procurement and maintenance of the Performance Bond in accordance with Schedule 12;

- (h) in respect of each Reporting Period after the termination of the ODP Grant Agreement in which applicable costs are incurred, the costs of undertaking the activities set out in Appendix 5 (Dependencies); *[Note: applies to dependencies where it is variable cost]*
- (i) in the case of each of (a) to (h) above, plus █████ profit. The Parties acknowledge that the 4% profit is considered to be representative of the profit that OpCo was receiving in respect of such costs applies to (a) to (h) only and the agreement to apply profit at this amount does not set a precedent regarding any other payments under this Infrastructure Agreement.
- (j) in respect of each Reporting Period in IM Years 6 to 9 (inclusive), an amount to reflect the deferred realisation of the operational and asset management efficiencies (related to row 25 of the A-Ops summary sheet of the FTFM and in row 32 of the B-AM summary sheet of the FTFM) of one-thirteenth of █████ (being █████ for operational efficiencies and █████ for asset management efficiencies)
- (k) risks contingency:
  - (i) in respect of the first Reporting Period after the termination of the ODP Grant Agreement only █████ in respect of agreed one-off risks contingency; and
  - (ii) in respect of each Reporting Period after termination of the ODP Grant Agreement, one thirteenth of █████ in respect of agreed additional risks contingency;

## **Appendix 5 to Schedule 8.5 – Dependencies**

[Note: The Parties shall agree the list of activities to be included in this Appendix 5 which are priced on a variable cost + basis (rather than fixed) prior to the date of termination of the ODP Grant Agreement.]



**Schedule 8.6 – Grant Funding Arrangements – Not Used**

## **Schedule 9 – Changes and Variations**

### **Schedule 9.1 – Financial and Other Consequences of Change**

#### **1 PURPOSE AND APPLICATION OF SCHEDULE**

1.1 This Schedule 9.1 sets out:

- (a) Not used;
- (b) the circumstances in which the occurrence of a Change will result in an adjustment to the Infrastructure Manager Services Payments in Schedule 8.5 (Infrastructure Manager Services Payments); and
- (c) the process by which adjustments to the Infrastructure Manager Services Payments will be determined and effected.

1.2 Not used.

1.3 Subject to paragraph 1.4, the Parties acknowledge and agree that any:

- (a) Variations (as defined in Schedule 3B (Infrastructure Services and AKI Infrastructure Works)); and/or
- (b) Authority approved design changes under Schedule 3B (Infrastructure Services and AKI Infrastructure Works),

shall be dealt with exclusively in accordance with paragraph 8A of Appendix 1 of Part B of Appendix 5 of Schedule 3B (Infrastructure Services and Infrastructure Works) (as applicable) of this Infrastructure Agreement provided always that where any:

- (c) Variations (as defined in Schedule 3B (Infrastructure Services and AKI Infrastructure Works)); and/or
- (d) Authority approved design changes under Schedule 3B (Infrastructure Services and AKI Infrastructure Works) and/or
- (e) compensation events pursuant to Clause 60 of Appendix 5 of Schedule 3B (Infrastructure Services and AKI Infrastructure Works),

which are forecast to have a net aggregate impact on the overall cost of rail service operations on the Core Valley Lines or Infrastructure Manager Services Payments in excess of the relevant Threshold Amount such Variations, Authority approved design changes and/or compensation events (as applicable) shall be deemed to be a Qualifying Change and the impact of such Variations, Authority approved design changes and/or compensation events (as applicable) on the Infrastructure Manager Services Payment shall be dealt with in accordance with this Schedule 9 (Changes and Variation).

1.4 Where:

- (a) any Qualifying Change is deemed to arise pursuant to paragraph 1.3; and
- (b) such Qualifying Change resulted directly or indirectly from an error or omission in the Concept Design,

the Infrastructure Manager Services Payment Excess Impact Amount shall (unless the Authority in its sole discretion determines otherwise) be the responsibility of InfraCo and the Authority shall not compensate InfraCo for any such excess amounts through any adjustments to the Infrastructure Manager Services Payment or otherwise.

For the purposes of paragraph 1.4 the “Infrastructure Manager Services Payment **Excess Impact Amount**” is [REDACTED], and the Parties acknowledge and agree that InfraCo’s total liability is [REDACTED] in respect of all such relevant Qualifying Changes.

1.5 The Parties acknowledge and agree that, for the purposes of agreeing adjustments to the Infrastructure Manager Services Payment following the occurrence of a Change, an Infrastructure Manager In-Life Reporting Template (developed in accordance with paragraph 1.7(b)) shall be used to assist in agreeing or determining any required adjustment to Infrastructure Manager Services Payments in accordance with this Schedule 9 (Changes and Variations).

1.6 Within six (6) months of the date of this Infrastructure Agreement, InfraCo shall provide a:

- (a) Not used.
- (b) draft Infrastructure Manager In-Life Reporting Template to the Authority for review, such template shall comprise, as a minimum, the following information:
  - (i) the Management Accounts for Infrastructure Manager Services;
  - (ii) income by category;
  - (iii) operations costs by function;
  - (iv) asset management costs by CVL asset class;
  - (v) general management costs by function;
  - (vi) other costs;
  - (vii) efficiency data; and
  - (viii) other performance metrics.

- 1.7 Following receipt of the draft Infrastructure Manager In-Life Reporting Template the Authority shall as soon as reasonably practicable either:
- (a) approve the format and content of the draft Infrastructure Manager In-Life Reporting Template; or
  - (b) (acting reasonably) require amendments to the content or format of the draft Infrastructure Manager In-Life Reporting Template which InfraCo shall effect and, following which, the draft Infrastructure Manager In-Life Reporting Template shall be approved or determined by the Authority.
- 1.8 Notwithstanding InfraCo's obligation to provide management information in Schedule 11 (InfraCo Performance Meetings and Management Information), for the purposes of assessing any required adjustments to the Infrastructure Manager Services Payment in the event of a Change InfraCo shall provide the Authority with an updated Infrastructure Manager In-Life Reporting Template at least once in every three (3) Reporting Periods.
- 1.9 This Schedule 9.1 shall apply in relation to a Change where:
- (a) there are good reasons for considering that Change will be a Qualifying Change or, with other Changes, part of an Aggregated Qualifying Change; and
  - (b) the required notice(s) has/have been given in accordance with paragraph 1.11 (or the Parties have agreed that this Schedule 9.1 will apply and there should be an adjustment to the Infrastructure Manager Services Payment even though the required notices have not been given).
- 1.10 The notice requirements are that:
- (a) subject to paragraph 1.11(b), a Party must have notified the other that it considers that the Change will be a Qualifying Change:
    - (i) within 3 (three) months of the notification or agreement of that Change if it is a Variation pursuant to paragraph 1.1 of Schedule 9.3 (Variations to the Infrastructure Agreement and Incentivising Beneficial Changes) or any other type of Change; and
  - (b) in the case of an Aggregated Qualifying Change, a Party must have notified the other:
    - (i) after an individual Change occurs, within the time limits stated in paragraphs 1.11(a)(i), that it reserves the right to count that Change towards an Aggregated Qualifying Change; and
    - (ii) within three (3) months of the occurrence of the last Change which that Party considers will trigger a Qualifying Change, that the Party requires

an adjustment to the Infrastructure Manager Services Payments in respect of the Changes comprised in that Aggregated Qualifying Change. The notice must identify each of the Changes included in the Aggregated Qualifying Change.

- 1.11 References in the remainder of this Schedule 9.1 and in Schedule 9.2 (Identity of the Final Tender Financial Model) to a “**Change**” are to a Change in respect of which the requirements in paragraph 1.10 have been satisfied.

**2 NOT USED**

**3 HOW ANY ADJUSTMENTS TO INFRASTRUCTURE MANAGER SERVICES PAYMENTS WILL BE ESTABLISHED**

- 3.1 The adjustments, if any, to the Infrastructure Manager Services Payments to be made in respect of any Change shall be established in accordance with Appendix 2 (Agreement or Determination of Adjusted Infrastructure Manager Services Payments) to this Schedule 9.1.

**4 NOT USED**

**5 NOT USED**

**6 INFORMATION**

InfraCo shall promptly, having regard to the other timescales anticipated in this Schedule 9.1, provide to the Authority such information as the Authority may request for the purpose of enabling the Authority to exercise its rights and comply with its obligations pursuant to this Schedule 9.1.

**7 NOT USED**

**8 FUTURE CHANGES TO DELIVERY MODEL**

- 8.1 The Parties agree that:

- (a) any changes to the delivery model where passenger rail services on the CVL are no longer operated by Transport for Wales Rail Limited shall be deemed a Qualifying Change; or
- (b) any significant structural changes to the delivery model which materially impact on the performance or compensation regimes or benchmarks used by InfraCo in its in Track Access Agreements on the CVL or the Infrastructure Manager Agreement between InfraCo and Network Rail (to the extent that the Authority provides consent to any changes to the form of such agreement after termination of the ODP Grant Agreement) shall be deemed a Change,

where InfraCo is able to evidence to the Authority (acting reasonably) that such change has impacted, or will have an impact, on InfraCo's costs or risk allocation under this Infrastructure Agreement and that InfraCo shall use reasonable endeavours to mitigate such costs through any consultation process in relation to such Changes in which it participates. To the extent that the Change results in any net cost savings InfraCo shall pass on such cost savings to the Authority.

## Appendix 1 to Schedule 9.1

### 1 DEFINITION OF THRESHOLD AMOUNT

“**Threshold Amount**” means:

- (a) Not used.
- (b) in respect of adjustments to the Infrastructure Manager Service Payments, £60,000 (sixty thousand pounds sterling) subject to indexation as follows:

[REDACTED] x RPI	
Where:	
<b>RPI</b>	is the quotient of the Retail Prices Index for the January which immediately precedes the commencement of the relevant IM Year divided by the Retail Prices Index for January 2017.

**Appendix 2 to Schedule 9.1**

**1 AGREEMENT OR DETERMINATION OF ADJUSTED INFRASTRUCTURE MANAGER SERVICES PAYMENTS**

1.1 The adjustments, if any, to the Infrastructure Manager Services Payments to be made in respect of any Change shall be established by InfraCo providing to the Authority an assessment of the Change and the proposed resulting adjustment to Infrastructure Manager Services Payments ("**Qualifying Change Proposal**") such proposal shall comprise:

(a) a proposed adjustment to the Infrastructure Manager Services Payment required to take account of the Change;

(i) on the basis of the general adjustments and/or assumptions referred to in paragraph 2 (General Adjustments/Assumptions);

(ii) on the basis of the assumptions in the Record of Assumptions as added to and/or amended (if at all) in accordance with paragraph 3 (Assumptions in the Record of Assumptions) provided that if there is any inconsistency between the assumptions in the Record of Assumptions and any other of the requirements of this paragraph 1, those other requirements shall prevail, unless the Authority (acting reasonably) otherwise elects;

(iii) on the basis of the updated Infrastructure Manager In-Life Reporting Template;

(iv) so as to provide for profit in accordance with paragraph 5 (Revised Profit); and

(v) so as to give effect to the provisions of paragraph 6 (Indexation) in relation to indexation;

(b) all supporting information and assumptions upon which the proposed adjustment to the Infrastructure Manager Services Payment has been made with reference (where applicable) to:

(i) the Infrastructure Manager In-Life Reporting Template;

(ii) evidence that the Qualifying Change Proposal uses as its basis a level of risk allocation between the Parties which is equivalent to the level of risk allocation assumed between the Parties under this Infrastructure Agreement prior to the relevant Change;



- (iii) not used;
    - (iv) any relevant element of the Final Tender Financial Model, Record of Assumptions and Service Improvement Plan; or
    - (v) any other information necessary to support or evidence the Qualifying Change Proposal.
  - (c) The Authority may require InfraCo to assess whether the Change that is the subject of the Qualifying Change Proposal has any impact, and, if so, the extent of that impact, on the following:
    - (i) Principal Infrastructure Services including the design for the CVL Transformation;
    - (ii) AKI Infrastructure Works; and / or
    - (iii) Additional Infrastructure Services,

including any capital expenditure that is required or no longer required as a result of the Change, provided always that any required consequential Variation (as defined in Schedule 3) shall be dealt with in accordance with Appendix 19 of Schedule 3B subject to paragraph 1.3 of this Schedule 9.
  - (d) Where required by the Authority in paragraph 1.1 (c) of this Appendix 2 to Schedule 9.1, InfraCo shall analyse within the Qualifying Change Proposal a full range of opportunities across InfraCo Services to effect the Change. InfraCo shall recommend the option that delivers the best value to the Authority in aggregate considering the impact on all aspects of InfraCo Services and the affordability by the Authority of such Change.
- 1.2 As soon as reasonable after the receipt of InfraCo's Qualifying Change Proposal, the Parties shall agree or the Authority shall reasonably determine the Qualifying Change Proposal provided always that it shall not be reasonable for the Authority to make a determination that is contrary to the principles for adjusting the Infrastructure Manager Services Payment as set out in this Schedule 9.
- 1.3 Any determination by the Authority pursuant to paragraph 1.2 shall be final and binding on the Parties, except in the case of manifest error by the Authority or the Authority not acting reasonably in making a determination pursuant to paragraph 1.2 of this Appendix 2 to Schedule 9.1 whereby InfraCo shall have the right to dispute the Authority's determination in accordance with the dispute resolution procedure set out in clause 11 of this Infrastructure Agreement.

## **2 GENERAL ADJUSTMENTS/ASSUMPTIONS**

2.1 Adjustments to the Infrastructure Manager Services Payments are to be agreed between the Parties or reasonably determined by the Authority on the basis that:

- (a) any increase in costs relating to a Change; and/or
- (b) any reduction in revenues relating to a Change,

that is attributable to any activities, actions or omissions of InfraCo which are not permitted under, or would otherwise constitute a contravention of, the terms of the Infrastructure Agreement, is to be disregarded.

2.2 Adjustments to the Infrastructure Manager Services Payments are also to be agreed between the Parties or reasonably determined by the Authority on the basis that:

- (a) InfraCo will use all reasonable endeavours to:
  - (i) reduce any costs that may arise or income that may be foregone; and
  - (ii) increase any revenue that may arise and avoid any cost that may be avoided,

as a consequence of a Change; and

- (b) any requirement for borrowing in respect of Capital Expenditure by InfraCo is dealt with in accordance with paragraph 3 of Schedule 9.3 (Variations to the Infrastructure Agreement and Incentivising Beneficial Changes).

2.3 Where and as directed to do so by the Authority (acting reasonably) InfraCo shall undertake one or more competitive tendering exercises for the purposes of ascertaining the likely level of any costs relating to a Change.

## **3 ASSUMPTIONS IN THE RECORD OF ASSUMPTIONS**

3.1 The Parties shall (unless to do so would be contrary to paragraph 2) agree or the Authority shall reasonably determine adjustments to the Infrastructure Manager Services Payments that are in accordance with the assumptions that are contained in the Record of Assumptions, as added to or modified pursuant to paragraph 3.2 or paragraph 3.3.

3.2 Where the Authority reasonably considers that the assumptions contained in the Record of Assumptions are ambiguous or that additional assumptions are required in relation to circumstances not dealt with by the assumptions in the Record of Assumptions, the Parties shall agree or the Authority shall reasonably determine the assumptions or additional assumptions to be utilised for this purpose.

3.3 Where the Authority reasonably considers that:

- (a) a Change is likely to result in an increase in either or both of the costs of InfraCo and the revenues of InfraCo; and
- (b) an assumption relevant to the Change contained in the Record of Assumptions does not accord with what would be achievable by, or experienced by, an economic and efficient InfraCo,

then the Parties shall agree or the Authority shall reasonably determine a modification to the assumption so that, as modified, it does accord with what would be achievable by, or experienced by, an economic and efficient InfraCo.

#### **4 NOT USED**

#### **5 REVISED PROFIT**

Where a Change is forecast to result in additional revenue or income, the Parties shall agree or the Authority shall reasonably determine adjustments in relation to profit that provide for any amount of profit in any IM Year such that the increase in the amount of profit is equal to ■■■ of such additional revenue or income.

#### **6 INDEXATION**

In agreeing or determining adjustments to the Infrastructure Manager Services Payments, the Parties shall apply the following principles in connection with indexation. For each relevant item of data in the Infrastructure Manager In-Life Reporting Template in respect of which an adjustment to the Infrastructure Manager Services Payment is agreed or determined to be required:

- 6.1 the Parties shall agree or the Authority shall reasonably determine, having regard to the particular facts of the Change, the base date at which that item is priced; and
- 6.2 that item shall be deflated by reference to the original base date and index (if any) relevant to that item in the Infrastructure Manager In-Life Reporting Template.

**Schedule 9.2 – Identity of the Final Tender Financial Model**

**Schedule 9.3 - Variations to the Infrastructure Agreement and Incentivising Beneficial Changes**

**1 VARIATIONS**

1.1 The terms of the Infrastructure Agreement may be varied as follows but not otherwise:

(a) by the Authority (as contemplated in the Invitation to Submit Final Tender insofar as it relates to Infrastructure Manager Services) in relation to:

(i) any aspect of InfraCo Services (including the Authority carrying out the delivery of advertising); and/or

(ii) any provision of the Infrastructure Agreement other than those provisions specified in paragraph 1.2,

by service of a notice on InfraCo referring to this paragraph 1.1(a) and setting out the variation to the terms of the Infrastructure Agreement; and

(b) in relation to any other provision of the Infrastructure Agreement, by agreement in writing between the Parties to that effect,

(each a “**Variation**”).

1.2 Without prejudice to the Authority's rights under paragraph 1.1(a), the terms of each of:

(a) clauses 5 (Duration of the Infrastructure Agreement), 7 (Assignment), 10 (Cumulative Rights and Remedies), 11 (Dispute Resolution), 12 (Notices), 13 (Set-Off) and 14 (Miscellaneous Provisions) of this Infrastructure Agreement;

(b) Schedules 8 (Payments), 9 (Changes and Variations), 10 (Remedies, Events of Default and Termination Events), 12 (Financial Covenants and Bonds) and 14 (Preservation of Assets) of this Infrastructure Agreement; and

(c) the definitions set out at clause 3 (Definitions) of this Infrastructure Agreement insofar as such affect the respective rights and obligations of the Authority and InfraCo pursuant to the provisions referred to at (a) and (b) above,

shall not be varied at any time other than in accordance with the terms of the Infrastructure Agreement or with the agreement of the Parties.

1.3 The Authority shall, to the extent reasonably practicable, allow InfraCo a reasonable opportunity to make representations to the Authority concerning any Variation to be made in accordance with paragraph 1.1(a), prior to making any such Variation.

1.4 The Authority may:

- (a) issue, revise and withdraw from time to time procedures that it requires to be followed for the purposes of orderly consideration of Variations. This will include for the purpose of establishing in relation to any Change whether it is a Qualifying Change; and
  - (b) require InfraCo to provide any information that the Authority reasonably requires for this purpose (including in relation to prospective change to profit, costs and revenue as a consequence of proceeding with the Variation).
- 1.5 Procedures issued pursuant to paragraph 1.4 may provide for any number of Changes to be grouped together as a single Change for the purposes of agreeing or determining adjustments to the Infrastructure Manager Services Payments.
- 1.6 Procedures issued pursuant to paragraph 1.4 shall have contractual effect between the Parties in accordance with their terms.
- 1.7 InfraCo may notify the Authority of any proposal for a Variation by notice setting out the proposed method of implementing such Variation including:
- (a) the timescale for doing so;
  - (b) the effect (if any) on the timing of the performance of its other obligations under the Infrastructure Agreement;
  - (c) the impact of effecting the proposed Variation on the provision of InfraCo Services and InfraCo's proposals as to how to minimise such impact; and
  - (d) the financial consequences of implementing the Variation proposed by InfraCo in terms of any adjustments to the Infrastructure Manager Services Payments InfraCo considers the Variation would require.

## 2 PROTECTED PROPOSALS

- 2.1 Where InfraCo proposes a Variation in sufficient detail for it to be apparent that its implementation is likely to result in an increase in the overall profitability of InfraCo through costs saving measures (a “**Protected Proposal**”), the Authority may not proceed with the Protected Proposal or seek to implement the substance of it by proposing a Variation of its own without complying with the provisions of paragraph 2 (General Adjustments/Assumptions).
- 2.2 InfraCo and the Authority acknowledge that InfraCo may during the Infrastructure Services Term identify actions that could be taken by InfraCo to achieve savings and improved financial performance and that such actions may if implemented give rise to a Change under the terms of this Infrastructure Agreement which, if it is a Qualifying Change, will give a financial benefit to the Authority. It is further acknowledged that it is

appropriate for InfraCo to seek to identify such actions for the purposes of improving the cost effective delivery of railway passenger services.

2.3 To incentivise InfraCo to seek to identify such actions it is agreed that InfraCo may approach the Authority with a proposal to take an action that would constitute a Change on the basis that if such a Change occurred and was a Qualifying Change in agreeing or determining an adjustment to the Infrastructure Manager Services Payment the Parties or the Authority would effect such change (if any) to the amount attributable to profit as they agree or the Authority reasonably determines:

- (a) fairly rewards InfraCo for proposing the Change; and
- (b) reasonably incentivises InfraCo to propose further Changes that achieve savings and/or improved financial performance by sharing with InfraCo a reasonable amount of the additional profit that is expected to arise from implementing the relevant Change.

2.4 The Authority shall have an unfettered discretion as to whether or not to agree such a proposal but if it does so agree and a Qualifying Change in consequence occurs then in agreeing or determining the adjusted Infrastructure Manager Services Payments the provisions referred to in paragraph 2.3 above shall apply.

### **3 CAPITAL EXPENDITURE**

#### **3.1 Capital Expenditure Threshold**

InfraCo shall notify the Authority promptly if it reasonably expects that a Change to which paragraph 1 or 2 relates would require it to incur, singly or in aggregate with other Changes from time to time, Capital Expenditure in excess of [REDACTED] of its annual Turnover as disclosed by its latest available Annual Audited Accounts and, when so notified, the Authority shall either:

- (a) withdraw (or direct InfraCo to withdraw) the Change;
- (b) undertake to meet the excess through additional funding as and when such Capital Expenditure is incurred; or
- (c) direct InfraCo to use all reasonable endeavours to borrow or otherwise raise the money required to fund any Change on commercial terms and at rates which are consistent with market conditions at the time, unless borrowing or otherwise raising such money would result in InfraCo failing to comply with the financial covenants contained in Schedule 12 (Financial Covenants and Bonds).

### 3.2 **InfraCo to Seek Finance**

If the Authority elects to require InfraCo to use all reasonable endeavours as described in paragraph 3.1(c) then InfraCo shall:

- (a) seek finance from a representative range of lending institutions and other financial institutions including those which at that time provide finance to InfraCo, the Guarantor and the Parent;
- (b) if it is unable to raise funding, provide the Authority with all information the Authority may reasonably require in relation to the efforts made by InfraCo and the reasons for a failure to raise additional finance;
- (c) so far as it is able (having used all reasonable efforts to do so), InfraCo shall provide to the Authority letters from lenders and financiers it has approached for finance stating their reasons for refusing to provide it and if the Authority so requires, arrange and attend meetings with them for the Authority to discuss those reasons; and
- (d) if funding is not available, or is not available on terms that the Authority considers to be commercial terms or at rates which are consistent with market conditions at that time the Authority may:
  - (i) withdraw the Change; or
  - (ii) undertake to fund the Capital Expenditure as and when such Capital Expenditure is incurred.

### 3.3 **Treatment of Borrowings in Adjustments to the Infrastructure Manager Services Payments**

In calculating the adjustment to the Infrastructure Manager Services Payments for the purposes of any Change referred to in this paragraph 3, InfraCo shall account for the Capital Expenditure in accordance with GAAP, taking into account the basis on which such Capital Expenditure has been financed.

### 3.4 **Meaning of Capital Expenditure**

The expression “**Capital Expenditure**” when used in this Schedule 9.3 refers to the nature of the expenditure incurred by InfraCo and, accordingly, does not include expenditure incurred under operating leases.

## 4 **NOT USED**



## **Schedule 10 - Remedies, Events of Default and Termination Events**

### **Schedule 10.1 - Procedure for remedying a Contravention of the Infrastructure Agreement**

#### **1 CONTRAVENTIONS OF THE INFRASTRUCTURE AGREEMENT**

- 1.1 InfraCo shall notify the Authority, so far as possible before it may occur and in any event as soon as reasonably practicable thereafter, of any contravention by InfraCo of any provision of the Infrastructure Agreement. This includes where InfraCo is under an obligation to use all reasonable endeavours to achieve a particular result by a particular time, where such result is not achieved by such time (although, notwithstanding the obligation to notify and to produce a Remedial Plan, such failure to achieve shall be considered a contravention only if and to the extent InfraCo has failed to use all reasonable endeavours).
- 1.2 InfraCo shall deliver to the Authority, or procure the delivery to the Authority of, such information, records or documents as the Authority may request within such period as the Authority may reasonably require for the purpose of determining the existence, likelihood, nature or scope of any contravention of, an Event of Default or Termination Event under, the Infrastructure Agreement.

#### **2 REMEDIES FOR CONTRAVENTIONS OF THE INFRASTRUCTURE AGREEMENT**

If the Authority is satisfied that InfraCo is contravening or is likely to contravene any term of the Infrastructure Agreement, the Authority may serve a notice on InfraCo requiring it to propose such steps as InfraCo considers appropriate for the purpose of securing or facilitating compliance with the term in question (a **"Remedial Plan Notice"**).

#### **3 REMEDIAL PLAN NOTICES**

- 3.1 Each Remedial Plan Notice shall specify the following:
- (a) the term or terms of the Infrastructure Agreement that InfraCo is contravening or is likely to contravene (each a **"Relevant Term"**); and
  - (b) the time period (**"Remedial Plan Period"**) within which the Authority requires InfraCo to provide an appropriate plan for the purpose of facilitating or securing compliance with such Relevant Term (a **"Remedial Plan"**). Where not specified within the Remedial Plan Notice or where a Remedial Plan is submitted by InfraCo in advance of any Remedial Plan Notice, the Remedial Plan Period shall be seven (7) Weekdays.

## **4 REMEDIAL PLANS**

- 4.1 If the Authority issues a Remedial Plan Notice or a Warning Notice, or where InfraCo is aware that it is contravening or is likely to contravene any provision of the Infrastructure Agreement and where such contravention or likelihood of contravention is reasonably considered by InfraCo to be material, InfraCo shall submit a Remedial Plan to the Authority within the Remedial Plan Period for agreement with the Authority.
- 4.2 The Authority shall not withhold its approval of a Remedial Plan unreasonably and shall notify InfraCo if it accepts or rejects the Remedial Plan within five (5) Weekdays of receipt of the Remedial Plan from InfraCo or such other period as the Parties may agree. If the Authority does not approve the Remedial Plan it shall inform InfraCo of its reasons and InfraCo shall take such reasons into account in the preparation of an amended Remedial Plan, which shall be resubmitted to the Authority within five (5) Weekdays of the rejection of the first Remedial Plan by the Authority.
- 4.3 Each Remedial Plan shall set out:
- (a) the Relevant Term which has caused such Remedial Plan to be required;
  - (b) an explanation of the reasons for the contravention or likely contravention of the Relevant Term;
  - (c) the steps proposed for the purposes of securing or facilitating compliance with the Relevant Term; and
  - (d) the time period within which InfraCo proposes to implement those steps.

## **5 REMEDIAL AGREEMENTS**

- 5.1 If the Authority is satisfied that the matters within such Remedial Plan referred to in paragraphs 4.3(c) and (d) are appropriate (with or without further modification as the Parties may agree) the Authority may require InfraCo to enter into a supplemental agreement (the "**Remedial Agreement**") with the Authority to implement those matters.
- 5.2 It is a term of the Infrastructure Agreement that InfraCo (at its own cost) complies with each Remedial Agreement in accordance with its terms.
- 5.3 Without prejudice to the other rights or remedies of the Authority under this Infrastructure Agreement, in the event of a material failure by InfraCo to comply with the Remedial Agreement the Authority may issue a Warning Notice to InfraCo concerning such failure.

## **6 EFFECT OF FORCE MAJEURE EVENT ON A REMEDIAL AGREEMENT**

- 6.1 Without prejudice to the operation of paragraph 2.1 of Schedule 10.2 (Events of Default and Termination Events), the following provisions shall apply in relation to Force Majeure

Events affecting InfraCo's performance of their obligations pursuant to a Remedial Agreement:

- (a) InfraCo shall give written notice to the Authority promptly after InfraCo becomes aware (and in any event within twenty four (24) hours after becoming aware) of the occurrence or likely occurrence of a Force Majeure Event which will or is likely to affect InfraCo's ability to comply with a Remedial Agreement within the period specified therein;
- (b) each notice submitted in accordance with paragraph 6.1(a) shall state the extent or likely extent of the relevant Force Majeure Event and in the case of a Force Majeure Event which has not occurred at such time, the reasons why InfraCo considers it likely to occur;
- (c) InfraCo shall use, and shall continue to use, all reasonable endeavours to avoid or reduce the effect or likely effect of any Force Majeure Event on its ability to comply with any Remedial Agreement; and
- (d) subject to InfraCo having complied with its obligations under paragraphs 6.1(a) to 6.1(c) (inclusive) InfraCo shall be entitled to a reasonable extension of the remedial period applicable to a Remedial Agreement in order to take account of the effect of a Force Majeure Event which has occurred on InfraCo's ability to comply with that Remedial Agreement.

## **7 MONITORING BY THE AUTHORITY**

- 7.1 Following the occurrence of a contravention of the Infrastructure Agreement, the Authority may at its option (but shall not be obliged to) commence or increase the level and/or frequency of monitoring (whether by inspection, audit or otherwise) of InfraCo's performance of any relevant obligations until such time as InfraCo demonstrates, to the Authority's reasonable satisfaction, that it is capable of performing and will perform such obligations as required by the Infrastructure Agreement.
- 7.2 InfraCo shall co-operate fully with the Authority in relation to the monitoring referred to in paragraph 7.1.
- 7.3 The results of such monitoring will be reviewed at each InfraCo Performance Meeting held pursuant to Schedule 11.1 (InfraCo Performance Meetings).
- 7.4 InfraCo shall compensate the Authority for all reasonable costs incurred by the Authority in carrying out such monitoring.

## **8 WARNING NOTICES**

- 8.1 Without prejudice to the other rights or remedies of the Authority:

- (a) If InfraCo contravenes, to an extent, which is reasonably considered by the Authority to be material, any one or more of its obligations under this Infrastructure Agreement;
- (b) if InfraCo has failed to provide a Remedial Plan following the issue of a Remedial Plan Notice within the Remedial Plan Period;
- (c) if InfraCo has materially failed to comply with any Remedial Agreement; or
- (d) on the occurrence of an Event of Default;

then the Authority may, but is not obliged to, give a written notice to InfraCo setting out the matter or matters giving rise to such notice (a "**Warning Notice**"). Any such notice shall state on its face that it is a Warning Notice and InfraCo shall be required to submit a Remedial Plan in accordance with paragraph 4 (Remedial Plan) of this Schedule 10.

- 8.2 The Authority may at its sole discretion withdraw a Warning Notice where InfraCo has complied with the relevant Remedial Plan or, where relevant, Remedial Agreement or, where no such Remedial Plan or Remedial Agreement has been agreed, where the Authority is satisfied that InfraCo has demonstrated that the contravention is no longer subsisting and InfraCo is performing (or capable of performing) its obligations under the Infrastructure Agreement. In the event of a Warning Notice being withdrawn such Warning Notice shall be disregarded from the date of such withdrawal and shall not count towards the number of Warning Notices issued for the purposes of paragraph Schedule 10.2 Paragraph 1.16 (Issue of Warning Notices).

## **Schedule 10.2 - Events of Default and Termination Events**

### **1 DEFINITION OF EVENTS OF DEFAULT**

Each of the following is an **"Event of Default"**:

#### **1.1 Insolvency**

- (a) **Administration:** Any step being taken by any person with a view to the appointment of an administrator to InfraCo;
- (b) **Insolvency:** Any of InfraCo stopping or suspending or threatening to stop or suspend payment of all or, in the reasonable opinion of the Authority, a material part of (or of a particular type of) its debts, or being unable to pay its debts, or being deemed unable to pay its debts under Section 123(1) or (2) of the Insolvency Act 1986 except that in the interpretation of this paragraph the words "it is proved to the satisfaction of the court that" in sub-section (1)(e) and sub-section (2) of Section 123 shall be deemed to be deleted;
- (c) **Arrangements with Creditors:** The directors of InfraCo making any proposal under Section 1 of the Insolvency Act 1986, or any of InfraCo proposing or making any agreement for the deferral, rescheduling or other readjustment (or proposing or making a general assignment or an arrangement or composition with or for the benefit of creditors) of all or, in the reasonable opinion of the Authority, a material part of (or of a particular type of) its debts, or a moratorium being agreed or declared in respect of or affecting all or, in the reasonable opinion of the Authority, a material part of (or of a particular type of) its debts;
- (d) **Security Enforceable:** Any expropriation, attachment, sequestration, execution or other enforcement action or other similar process affecting any property of InfraCo or the whole or a substantial part of the assets or undertaking of InfraCo including the appointment of a receiver, administrative receiver, manager or similar person to enforce that security;
- (e) **Stopping Business/Winding-Up:** Any step being taken by InfraCo with a view to its winding-up or any person presenting a winding-up petition or any of InfraCo ceasing or threatening to cease to carry on all or, in the reasonable opinion of the Authority, a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the Authority before that step is taken;
- (f) **Railway Administration Order:** A railway administration order being made in relation to InfraCo under Sections 60 to 62 of the Act; and

- (g) **Analogous Events:** Any event occurring which, under the Law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed in this paragraph 1.1.

**1.2 Non-payment**

InfraCo failing to pay to the Authority any amount due under the Infrastructure Agreement within twenty eight (28) days of the due date for such payment.

**1.3 Change of Control**

A Change of Control other than in accordance with the prior consent of the Authority pursuant to clause 8 (Change of Control).

**1.4 Revocation of Licence**

Revocation of any Licence required to be held by InfraCo in order to comply with its obligations under the Infrastructure Agreement.

**1.5 Safety Authorisation**

The Safety Authorisation of InfraCo being withdrawn or terminated.

**1.6 Not Used.**

**1.7 Non-compliance with Remedial Agreements and Orders under the Act**

- (a) Non-compliance by InfraCo with a Remedial Agreement, where such non-compliance is reasonably considered by the Authority to be material.

- (b) Non-compliance by InfraCo with:

- (i) a provisional order;
- (ii) a final order;
- (iii) a penalty; or
- (iv) any other order made relating to contravention of either a relevant condition or requirement (as defined in Section 55 of the Act) or another order,

in each case made by the Authority under the Act.

- (c) Non-compliance by InfraCo with any enforcement notice issued to it by the Authority pursuant to Section 120 of the Act.

**1.8 Not Used**

**1.9 Breach of Law**

- (a) Not Used;
- (b) InfraCo or any of the directors or senior managers of InfraCo being convicted of manslaughter, fraud or any other indictable criminal offence in each case relating directly to the provision and operation of InfraCo Services; or
- (c) InfraCo being, in the reasonable opinion of the Authority, in material non-compliance with a prohibition or enforcement order (or the equivalent thereof) issued by the ORR pursuant to its safety functions. If InfraCo makes an appeal against such prohibition or enforcement order (or such equivalent thereof) in accordance with its terms, no Event of Default shall have occurred under this paragraph 1.9(c) until such appeal has been determined to be unsuccessful.

**1.10 Contravention of Other Obligations**

The occurrence of the following:

- (a) InfraCo contravening to an extent which is reasonably considered by the Authority to be material any one or more of its obligations under the Infrastructure Agreement (other than such non-performance or non-compliance as may constitute an Event of Default under the provisions of this Schedule 10.2 other than this paragraph 1.10);
- (b) the service by the Authority on InfraCo of a written notice specifying:
  - (i) such contravention; and
  - (ii) to the extent the contravention is capable of being remedied, the reasonable period within which InfraCo is required to so remedy; and
- (c) InfraCo:
  - (i) contravening such obligation or obligations again to an extent which is reasonably considered by the Authority to be material; or
  - (ii) permitting the contravention to continue; or
  - (iii) if the contravention is capable of remedy, failing to remedy such contravention within such period as the Authority has specified in the notice served pursuant to paragraph 1.10(b)(ii).

**1.11 Performance Bond**

- (a) The Performance Bond ceasing to be a legal, valid and binding obligation on the relevant Bond Provider (other than in accordance with its terms) or it otherwise becoming unlawful or impossible for such Bond Provider to perform its obligations thereunder; or
- (b) A failure by InfraCo to procure the provision to the Authority of a Performance Bond which individually or in aggregate fulfils the requirements of Schedule 12 (Financial Covenants and bonds);

**1.12 Not used**

**1.13 Key Contracts**

Termination of any Key Contract, or the failure by InfraCo to take all reasonable steps to enter into an appropriate replacement contract prior to the scheduled expiry date of any Key Contract, except where requested by the Authority or to the extent that InfraCo has demonstrated to the reasonable satisfaction of the Authority that for the duration of the Infrastructure Agreement Term:

- (a) it is no longer necessary for it to be party to such Key Contract; or
- (b) it has made adequate alternative arrangements in order to be able to continue to provide and operate InfraCo Services.

**1.14 Not used**

**1.15 Not used**

**1.16 Issue of Warning Notices**

- (a) three (3) Warning Notices are issued by the Authority in any thirteen (13) Reporting Periods; or
- (b) two (2) Warning Notices are issued by the Authority in any three (3) consecutive Reporting Periods.

**1.17 Infrastructure Manager**

Failure to maintain the policies, processes, agreements and consents for regulatory approval or safety certification with ORR following the CVL Asset Transfer or to develop further policies and processes or enter into any such further agreements or consents that ORR may require for regulatory approval or safety certification from time to time.

**1.18 Not used**

**1.19 Possessions Payment Cap**



Where a Possessions Payment Cap is reached or exceeded as set out in paragraph 7.2 of Schedule 7.5.

## **2 DEFINITION OF TERMINATION EVENTS**

Each of the following is a "**Termination Event**":

- 2.1 not used;
- 2.2 the warranty given by InfraCo pursuant to paragraph 6.1 (Tax Compliance) of Schedule 12 (Financial Covenants and Bonds) is materially untrue; or
- 2.3 InfraCo commits a material breach of its obligation to notify the Authority of any Occasion of Tax Non-Compliance in respect of any Affected Party (as defined in paragraph 6.3 of Schedule 12 (Financial Covenants and Bonds)) as required by paragraph 6.2(a) of Schedule 12 (Financial Covenants and Bonds); or
- 2.4 InfraCo fails to provide details of proposed mitigating factors as required by paragraph 6.2(b) of Schedule 12 (Financial Covenants and Bonds) which in the reasonable opinion of the Authority, are acceptable.
- 2.5 Not used.

## **3 CONSEQUENCES OF EVENTS OF DEFAULT**

The occurrence of an Event of Default shall constitute a contravention of the Infrastructure Agreement by InfraCo. On the occurrence of an Event of Default, the provisions of Schedule 10.1 (Procedure for remedying a Contravention of the Infrastructure Agreement) shall apply.

## **4 NOTIFICATION OF EVENT OF DEFAULT**

InfraCo shall notify the Authority as soon as reasonably practicable on, and in any event within twenty four (24) hours of, it becoming aware of the occurrence of an Event of Default or an event which is likely to result in the occurrence of an Event of Default. InfraCo shall take such action or steps as the Authority may require to remedy any Event of Default or potential Event of Default.

## **5 TERMINATION NOTICES**

- 5.1 On and at any time after the occurrence of:
  - (a) (subject to paragraphs 5.2 and 5.3) an Event of Default which:
    - (i) is unremedied or continuing; and
    - (ii) the Authority considers to be material; or

- (b) not used; or
- (c) a Termination Event specified in paragraphs 2.2, 2.3 or 2.4 of this Schedule 10.2,  
the Authority may at its sole discretion serve a Termination Notice on InfraCo;
- (d) a Termination Notice, which shall terminate the Infrastructure Agreement with such termination taking effect from the date specified in any such Termination Notice.

5.2 The Authority may not serve a Termination Notice in respect of an Event of Default in relation to which a Remedial Plan Notice has been issued until the Remedial Plan Period has expired.

5.3 The Authority may not serve a Termination Notice in respect of an Event of Default for which InfraCo is implementing a Remedial Agreement in accordance with its terms.

**6 NOT USED**

**7 NOT USED**

**8 NOT USED**

**9 CONSEQUENCES OF TERMINATION OR EXPIRY**

9.1 Upon termination of the Infrastructure Agreement (whether through default or effluxion of time or otherwise) the obligations of the Parties shall cease except for:

- (a) any obligations arising as a result of any antecedent contravention of the Infrastructure Agreement;
- (b) any obligations which are expressed to continue in accordance with the terms of the Infrastructure Agreement; and
- (c) any other obligations which give effect to such termination or to the consequences of such termination or which otherwise apply (expressly or impliedly) on or after such termination.

9.2 Nothing in this paragraph 9 shall prevent the Authority from bringing an action against InfraCo in connection with the termination of the Infrastructure Agreement prior to the expiry of the Infrastructure Agreement Term.

**Appendix 1 to Schedule 10.2 – Agreed Form of Deed of Novation – Not used**

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### **Schedule 10.3 - Force Majeure and Business Continuity**

#### **1 DEFINITION OF FORCE MAJEURE EVENTS**

1.1 The following events shall constitute "**Force Majeure Events**", subject to the conditions specified in paragraph 2 being satisfied:

- (a) Not used.
- (b) Not used.
- (c) Not used.
- (d) Not used.
- (e) act of God, war damage, enemy action, terrorism or suspected terrorism, riot, civil commotion or rebellion (together "**Emergency Events**") or the act of any government instrumentality (including the ORR but excluding the Authority) in so far as the act of government instrumentality directly relates to any of the Emergency Events, provided that there shall be no Force Majeure Event under this paragraph 1.1(e) by reason of:
  - (i) the suicide or attempted suicide of any person that does not constitute an act of terrorism;
  - (ii) the activities of the police, fire service, ambulance service or other equivalent emergency service that are not in response to acts of terrorism or suspected terrorism; or
  - (iii) an act of God which results in InfraCo or its agents or subcontractors being prevented or restricted by Network Rail from gaining access to any relevant section or part of track; and
- (f) any strike or other Industrial Action by any or all of the employees of:
  - (i) Network Rail;
  - (ii) the operator of any other railway facility;
  - (iii) InfraCo performing Infrastructure Manager Services in respect of a dispute solely arising in the CVL;
  - (iv) InfraCo, or any employees of TfW who are provided to InfraCo pursuant to the Infrastructure Management Staffing Agreement, performing Infrastructure Manager Services in respect of a dispute solely arising in the CVL;

- (v) InfraCo, or any employees of TfW who are provided to InfraCo pursuant to the Infrastructure Management Staffing Agreement, performing Infrastructure Manager Services in respect of a dispute solely arising in respect of WCB or in WCB and CVL (subject to the determination as to whether such event constitutes a Force Majeure Event being the Authority's sole discretion); or

of the agents or subcontractors of any such person listed in paragraphs 1.1(f)(i) to 1.1(f)(v).

- 1.2 For the avoidance of doubt, the Parties acknowledge and agree that the acts or omissions of the Authority shall not prevent any claim being made in connection with a Force Majeure Event pursuant to paragraph 1.1(f) of this Schedule 10.3.

## **2 CONDITIONS TO FORCE MAJEURE EVENTS**

- 2.1 The occurrence, and continuing existence of a Force Majeure Event shall be subject to satisfaction of the following conditions:

- (a) Not used.
- (b) InfraCo notifies the Authority within two (2) Weekdays of it becoming aware or, if circumstances dictate, as soon as reasonably practicable thereafter, of:
  - (i) the occurrence or likely occurrence of the relevant event; and
  - (ii) the effect or the anticipated effect of such event on InfraCo's performance of the Infrastructure Manager Services (as the case may be);
- (c) at the same time as InfraCo serves notification on the Authority under paragraph 2.1(b), it informs the Authority of the steps taken and/or proposed to be taken by InfraCo to prevent the occurrence of, and/or to mitigate and minimise the effects of, the relevant event and to restore the provision of the Infrastructure Manager Services (as the case may be);
- (d) the relevant event did not occur as a result of:
  - (i) any act or omission to act by InfraCo or its agents or subcontractors, save that in respect of the occurrence of Industrial Action in accordance with paragraph 1.1(f) the provisions of paragraph 2.2 apply; or
  - (ii) InfraCo's own contravention of, or default under, the Infrastructure Agreement, any Access Agreement, Property Lease or any other agreement;

- (e) InfraCo used and continues to use all reasonable endeavours to avert or prevent the occurrence of the relevant event and/or to mitigate and minimise the effects of such event on its performance of the Infrastructure Manager Services and to restore the provision of the Infrastructure Manager Services as soon as reasonably practicable after the onset of the occurrence of such event; and
- (f) InfraCo shall, to the extent reasonably so requested by the Authority, exercise its rights and remedies under any Relevant Agreement to prevent the occurrence or recurrence of any such event and to obtain appropriate redress and/or compensation from any relevant person.

2.2 Where:

- (a) Industrial Action in accordance with paragraph 1.1(f) occurs as a result of an act or omission to act by InfraCo or its agents or subcontractors;
  - (b) the Authority reasonably believes that it was reasonable for InfraCo, its agents or subcontractors (as the case may be) so to act or omit to act; and
  - (c) the other conditions specified in paragraph 2.1 have been satisfied,
- such occurrence shall be a Force Majeure Event.

### **3 CONSEQUENCES OF FORCE MAJEURE EVENTS**

- 3.1 InfraCo shall not be responsible for any failure to perform any of its obligations under the Infrastructure Agreement, nor shall there be any contravention of the Infrastructure Agreement if and to the extent that such failure is caused by any Force Majeure Event.
- 3.2 If any Force Majeure Event continues, with the effect of preventing InfraCo from delivering, wholly or mainly, the Infrastructure Manager Services for more than six (6) consecutive months, it shall be a Termination Event in accordance with paragraph 2 of Schedule 10.2 (Events of Default and Termination Events).

### **4 BUSINESS CONTINUITY**

4.1 **Not Used**

4.2 **No Relief under Force Majeure**

- (a) Nothing in paragraph 3 (Consequences of Force Majeure Events) will relieve InfraCo from its obligations under the Infrastructure Agreement to create, implement and operate the Business Continuity Plan.
- (b) If a Force Majeure Event affecting InfraCo occurs which is an event or circumstance that is within the scope of the Business Continuity Plan, then paragraph 3.1 will only apply to

that Force Majeure Event to the extent that the impacts of that Force Majeure Event would have arisen even if:

- (i) InfraCo had complied with this paragraph 4; and
- (ii) the Business Continuity Plan had been fully and properly implemented and operated in accordance with this paragraph 4 and the terms of the Business Continuity Plan in respect of that Force Majeure Event.

## **Schedule 10.4 – Liability**

### **1 EXCLUSION OF LIABILITY**

#### **1.1 Liability with respect to Passengers and Third Parties**

- (a) InfraCo hereby acknowledges that the Authority will not be responsible for the actions of InfraCo or any Affiliate of InfraCo providing services to InfraCo and that, except as expressly provided in the Infrastructure Agreement, InfraCo shall provide and operate InfraCo Services at its own cost and risk without recourse to the Authority or government funds or guarantees.
- (b) InfraCo, on demand, shall hold the Authority fully protected and indemnified in respect of all losses, liabilities, costs, charges, expenses, actions, proceedings, claims or demands incurred by or made on the Authority in connection with any death, personal injury, loss or damage suffered by passengers or by any third party using or affected by InfraCo Services which is caused or contributed to by InfraCo, any Affiliate of InfraCo providing services to InfraCo, or any employee, agent, contractor or subcontractor of InfraCo or of any Affiliate of InfraCo providing services to InfraCo.

#### **1.2 Liability of the Authority**

Neither the Authority nor any of its officers, agents or employees shall in any circumstances be liable to InfraCo for any loss or damage caused by the negligent exercise of any powers reserved to the Authority under the Infrastructure Agreement, except to the extent that such negligence also constitutes a contravention of an obligation of the Authority under the Infrastructure Agreement. InfraCo may not recover from the Authority or any of its officers, agents, or employees any amount in respect of loss of profit or consequential loss.

### **2 REVIEW OR MONITORING BY THE AUTHORITY**

- 2.1 The Authority may for its own purposes (whether under the Infrastructure Agreement or under any other arrangement or otherwise and whether before or after the date of the Infrastructure Agreement) monitor or review any proposals, plans or projects (or any aspect thereof) of InfraCo under the Infrastructure Agreement, but no review, enquiry, comment, statement, report or undertaking, made or given by or on behalf of the Authority during such review or monitoring (and no failure to undertake, make or give any review, enquiry, comment or statement) shall operate to exclude or relieve either Party from or reduce or otherwise affect the obligations of such Party under the Infrastructure Agreement.
- 2.2 The exercise by or on behalf of the Authority of (or, as the case may be, any failure to exercise) any of its functions, rights or obligations in respect of any review or monitoring



process shall not in any way impose any liability, express or implied, on the Authority to any other Party save to the extent that the exercise (or failure to exercise) of any of such functions, rights or obligations results in a contravention by the Authority of an express provision of the Infrastructure Agreement and the Authority does not make or give any representation or warranty, either express or implied, as to whether any proposal, plan or project will enable either Party to comply with its obligations under the Infrastructure Agreement.

## **Schedule 11 - InfraCo Performance Meetings and Management Information**

### **Schedule 11.1 - InfraCo Performance Meetings**

#### **1 NOT USED**

#### **2 GOVERNANCE ARRANGEMENTS**

##### **Joint Steering Group**

- 2.1 The Parties shall support and attend the Joint Steering Group (the “**JSG**”), in accordance with this paragraph 2, to provide senior level oversight and accountability to the Authority and InfraCo for the delivery of the InfraCo Services.
- 2.2 InfraCo shall provide reasonable accommodation and administrative support to the JSG.
- 2.3 Subject to the reporting requirements in the Infrastructure Agreement, the JSG will agree (and review from time to time) the format and content of appropriate InfraCo reports to be provided by InfraCo (such format of InfraCo reports to be aligned with the format of the reports required to be provided under the Infrastructure Agreement) to enable the JSG to monitor the financial and operational performance of InfraCo Services and risks.
- 2.4 The JSG will review actual and forecast financial and operational performance of InfraCo Services, informed by the JTRG and the CVL Asset Monthly Performance Meeting and recommend actions to address emerging issues.
- 2.5 The JSG will review any proposed changes or variations to the Infrastructure Agreement in accordance with the relevant provisions of the Infrastructure Agreement. The JSG may agree with the Authority and InfraCo delegated financial limits within which it may approve such changes or variations. If such approach is adopted the JSG will comment on changes or variations above these delegated limits but will refer decisions to InfraCo and the Authority as applicable.
- 2.6 The JSG will include senior representatives of the Authority and InfraCo, including representatives of the JTRG and the CVL Asset Monthly Performance Meeting. InfraCo and Authority shall both nominate an equal number of JSG members. The JSG will be chaired by the Authority.
- 2.7 The JSG will agree what constitutes a quorum.
- 2.8 The frequency of JSG meetings will be agreed by the JSG. It is expected that the JSG will meet every Reporting Period initially, with frequency expected to drop to once every two Reporting Periods or once every three Reporting Periods once CVL Transformation is complete.
- 2.9 The JSG will agree an appropriate agenda, but initially, the agenda will be:

- (a) developments since previous meetings;
- (b) financial performance;
- (c) reports and escalation from JTRG and the CVL Asset Monthly Performance Meeting;
- (d) key risks/issues; and
- (e) any strategic and policy decisions required.

#### **Joint Transformation Review Group**

- 2.10 The Parties shall support and attend the Joint Transformation Review Group (the “**JTRG**”) to provide a forum for InfraCo and Authority to provide direction in the areas of the Mobilisation and Transition Plan related to the CVL Transformation.
- 2.11 The JSG will delegate to the JTRG rights to approve certain classes of change to the Mobilisation and Transition Plan related to the CVL Transformation.
- 2.12 The JTRG will be chaired by the Authority. In the event of deadlock, the JTRG shall refer such decision to the JSG for resolution.
- 2.13 The JTRG will agree what constitutes a quorum.
- 2.14 The JTRG will include representatives of the Authority and InfraCo. InfraCo and Authority may both nominate an equal number of JTRG members.
- 2.15 The JTRG membership may expand to include wider Infrastructure Delivery Alliance members, but such members will not be counted for voting purposes unless otherwise agreed by the Authority and InfraCo. The JTRG will consider any alliancing arrangements and issues arising from them.
- 2.16 InfraCo will provide reasonable accommodation and administrative support to the JTRG.
- 2.17 The JTRG will agree (and review from time to time) the format and content of appropriate InfraCo reports and benchmarks to enable it to monitor the relevant areas of the Mobilisation and Transition Plan related to the CVL Transformation.
- 2.18 The JTRG will report on progress, financial performance related to CVL Transformation, risks (including development of the Quantified Risk Assessment (“**QRA**”)) and issues to the JSG.
- 2.19 The JTRG will review Material Discoveries and key design decisions relating to the CVL Concept Design. The JTRG will consider Infrastructure Services milestones.
- 2.20 The JTRG will approve detailed testing plans for milestone deliverables related to CVL milestones.

- 2.21 The JTRG will meet two-weekly (or such other period as agreed) until December 2023.
- 2.22 The JTRG will agree an appropriate agenda, but initially, the agenda will be:
- (a) CVL Transformation programme update;
  - (b) Milestone delivery plans (actual, forecast) for CVL milestones;
  - (c) financial performance;
  - (d) IM Mobilisation plans and progress;
  - (e) major issues affecting CVL Transformation;
  - (f) CVL Transformation risk register review; and
  - (g) key decisions required.
- 2.23 InfraCo plans to organise the Principal Infrastructure Services into 'Work Packages' (distinct from the terms 'Packages', 'Package Orders' or 'ODP Work Packages' described in Schedule 3B) including a distinct group of design and build activities. For instance, Work Packages may be created for depots, route sections etc. There are expected to be c. 5 engineering Work Packages running concurrently at any one time, and additional Work Packages for Discovery Plan and IM Mobilisation. Work Packages will be determined by InfraCo.
- 2.24 For each Work Package, the ODP will nominate a team which the Authority may liaise with. InfraCo will nominate a Work Package manager and (for engineering Work Packages) an engineering lead for the Work Package. The Authority will nominate a lead for each Work Package to act as key liaison point.
- 2.25 For each Work Package, InfraCo will maintain documents which set out effective controls such as:
- (a) scope;
  - (b) Work Package plan including key project management milestones;
  - (c) links to Infrastructure Agreement commitments and milestone deliverables;
  - (d) risks including QRA plans;
  - (e) financial performance and forecast; and
  - (f) IDP scope and planned/actual use.
- 2.26 The JTRG will consider:

- (a) Safety – reporting of issues;
- (b) Standards – approval and policing;
- (c) IDPs and Infrastructure Delivery Alliance;
- (d) Interfaces: Network Rail, Local Authority, other stakeholders;
- (e) Overall programme;
- (f) Overall CVL financial performance;
- (g) Milestone progress
- (h) Matters for escalation/with operational impact; and
- (i) Risks.

2.27 The Authority and InfraCo have agreed that the JTRG will consider the items described in Appendix 1 to this Schedule 11.1 during the twelve (12) weeks after signature of the ODP Grant Agreement to enable steady state operation of the JTRG from 12 weeks onwards:

#### **Joint Health and Safety Group**

2.28 InfraCo shall (at all times in compliance with relevant Legislation and Licenses):

- (a) chair the quarterly Joint Health, Safety Environment Committee (JHSEC) with attendance from Heads of Department and elected Health and Safety Representatives (H&SRs); and
- (b) by not later than 1 August 2021, implement the Safety & Standards Review Group to uphold the safety of the InfraCo Services Employees by careful management and review of current industry safety standards.

**Appendix 1 to Schedule 11.1 – JTRG Controls**

<b>Time after signature</b>	<b>JTRG controls</b>
<b>+2 weeks</b>	InfraCo and Authority agree 12w work programme: Discovery Plan, Possessions, Design, IDP use, Reporting (including finance)
<b>+4 weeks</b>	Initial work breakdown into Work Package plans agreed, and dashboard reporting (monthly reporting) including Concept Design
<b>+6 weeks</b>	<ul style="list-style-type: none"> <li>(a) PD&amp;D Discovery Plan agreed, including PD&amp;D Possessions</li> <li>(b) First package dashboard returns</li> </ul>
<b>+8 weeks</b>	<ul style="list-style-type: none"> <li>(a) Schedule 3B Plans tranche 1 agreed</li> <li>(b) Review of Work Package plans/dashboards and revision if required</li> <li>(c) First CVL financial reports and Milestone updates</li> </ul>
<b>+12 weeks</b>	<ul style="list-style-type: none"> <li>(a) Agreement of all Schedule 3B Plans</li> <li>(b) Steady state JTRG operation based on Package reports</li> </ul>

## **Schedule 11.2 - Management Information**

### **1 CORPORATE INFORMATION**

1.1 InfraCo shall provide the following information to the Authority on the Start Date and shall notify the Authority of any change to such information within twenty one (21) days of such change:

- (a) its name;
- (b) its business address and registered office;
- (c) its directors and company secretary;
- (d) its auditors;
- (e) its trading name or names;
- (f) to the best of InfraCo's knowledge and belief, having made due and diligent enquiry, the identity of all persons holding, separately or acting by agreement, directly or indirectly, the right to cast more than twenty percent (20%) of the votes at general meetings of InfraCo; and
- (g) for each subsidiary entity under the control of InfraCo, InfraCo shall provide the following information to the Authority on the Start Date and shall notify the Authority of any change to such information within twenty one (21) days of such change:
  - (i) its name;
  - (ii) its business address and registered office;
  - (iii) its directors and company secretary;
  - (iv) its auditors; and
  - (v) its trading name or names.

1.2 InfraCo shall inform the Authority of any:

- (a) material change or proposed material change in its business (which shall include the employment or the termination of employment of any Key Personnel or the termination of any Key Contract);
- (b) material change in or restructuring of the capitalisation or financing of InfraCo; and
- (c) litigation or other dispute which may have a material effect on its business.

**2 NOT USED**

**3 IDENTIFICATION OF KEY PERSONNEL, PROVISION OF ORGANISATION CHART AND RESOURCE PLAN**

3.1 InfraCo shall identify and provide to the Authority a schedule of Key Personnel who shall be employed by InfraCo in the performance of the Infrastructure Agreement. This shall include but not be limited to the following persons:

- (a) a general manager whose role will include the overall management of the operation of InfraCo Services;
- (b) Not used.
- (c) Not used;
- (d) Not used;
- (e) Not used
- (f) the InfraCo's Infrastructure Manager Representative.

3.2 InfraCo shall nominate a board level director of InfraCo (or where agreed by the Parties, a director of the Parent or any appropriate Affiliate) within seven (7) days after the termination of the ODP Grant Agreement. Such director's responsibilities include overseeing, at a strategic level, InfraCo's interface with the Authority or the Secretary of State in relation to sections 119 to 121 (inclusive) of the Act and co-ordinating relevant activities and delivery of counter terrorist security on behalf of InfraCo in connection with InfraCo's compliance with relevant instructions issued by the Authority or the Secretary of State under section 119 of the Act from time to time. Such director shall be identified by job title in the organisation chart referred to in paragraph 3.3 and shall be deemed part of the Key Personnel.

3.3 On or before the date that is seven (7) days after the termination of the ODP Grant Agreement, InfraCo shall provide to the Authority an organisational chart detailing the responsibilities and reporting lines of each of the Key Personnel and shall update such chart (and provide a copy to the Authority promptly thereafter) as and when any material changes occur.

3.4 InfraCo shall, where reasonably possible, obtain the prior written consent of the Authority before removing or replacing any Key Personnel during the Infrastructure Agreement Term, and, where practicable, at least one (1) month's written notice shall be provided by InfraCo of its intention to replace Key Personnel.

3.5 The Authority shall not unreasonably delay or withhold its consent to the appointment of a replacement for any relevant Key Personnel by InfraCo. The Authority may give notice of its requirement to interview the candidates for Key Personnel positions before they are appointed.



- 3.6 InfraCo acknowledges that the Key Personnel are essential to the proper provision of the InfraCo Services to the Authority. InfraCo shall ensure that the role of any Key Personnel is not vacant for any longer than fifteen (15) days and that any replacement shall be fully qualified to carry out such role and is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced, provided always that InfraCo may in satisfaction of this provision appoint an interim replacement from among its management staff in an acting capacity pending the appointment of a permanent replacement.
- 3.7 InfraCo shall use reasonable endeavours to ensure that each of the Key Personnel shall work for such a period of time in the performance of InfraCo Services that is commensurate with and sufficient to perform the obligation of that person's role unless the Authority otherwise gives its prior written consent. To the extent that it can do so without disregarding its statutory obligations, InfraCo shall take reasonable steps to ensure that it retains the services of all the Key Personnel.
- 3.8 The Authority may acting reasonably identify any of InfraCo Services Employees as Key Personnel, who will then be included on the list of Key Personnel by InfraCo.
- 3.9 The Authority may acting reasonably require InfraCo to remove any Key Personnel that the Authority considers in any respect unsatisfactory, provided always that the Authority shall give InfraCo no less than two (2) months' notice, prior to the date of the required removal, of the Authority's performance concerns in respect of any Key Personnel.
- 3.10 The Parties acknowledge and agree that the Resource Plan sets out InfraCo's resourcing plan.
- 3.11 From 1 April 2021, InfraCo shall:
- (a) periodically update and maintain the Resource Plan (including core roles, skills and responsibilities) to reflect the actual resourcing of InfraCo Services; and
  - (b) provide the most up-to-date Resource Plan to the Authority as soon as reasonably practicable (but in any event no later than one month) following a request by the Authority for such plan.
- 3.12 The Parties acknowledge and agree that resourcing of InfraCo Services is an InfraCo responsibility and that the Resource Plan is to be used exclusively for:
- (a) reporting purposes and (where applicable) for information in respect of assessing adjustments to Infrastructure Manager Services Payments in accordance with Schedule 9.1 (Financial and other consequences of a Change); and
  - (b) in the event of any relevant contravention by InfraCo of the Infrastructure Agreement, InfraCo shall, where requested by the Authority, be required to assess and justify to the Authority any material reduction or change in resourcing relevant roles from the Resource Plan which may have contributed (directly or indirectly) to such contravention.

#### **4 NOT USED**

#### **5 MAINTENANCE OF RECORDS**

5.1 InfraCo shall at all times create and maintain true, up to date and complete records and other materials relating to the:

- (a) operation of InfraCo Services; and
- (b) financial performance of InfraCo.

in each case exercising that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would reasonably be expected from a prudent infrastructure manager and in order to fulfil the requirements of this Infrastructure Agreement.

5.2 Unless otherwise agreed by the Authority, all records and materials required to be maintained by InfraCo in accordance with this Schedule 11.2 shall be held in a form that is capable of audit for a period of not less than six (6) years following the Expiry Date or the date of an early termination of this Infrastructure Agreement.

#### **6 RIGHT TO INSPECT**

6.1 InfraCo shall, if requested by the Authority, allow the Authority and its representatives and advisers:

- (a) to inspect and copy any records referred to in this Schedule 11.2 and the Authority may verify any such records; and
- (b) to inspect and copy at any reasonable time any books, records and any other material kept by or on behalf of InfraCo and/or its auditors and any assets used by InfraCo in connection with InfraCo Services.

6.2 InfraCo shall make available to the Authority, its representatives and advisers the information referred to in paragraph 6.1 and grant or procure the grant of such access (including to or from third parties) as the Authority, its representatives and advisers shall reasonably require in connection therewith. The obligation of InfraCo under this paragraph 6.2 shall include an obligation on InfraCo to grant or procure the grant of such access to premises (including third party premises) where the information referred to in paragraph 6.1 is kept by or on behalf of InfraCo.

6.3 The Authority, its representatives and advisers shall be permitted to take photographs, film or make a video recording, or make any other kind of record of any such inspection.

6.4 If any inspection reveals that information previously supplied to the Authority was, in the reasonable opinion of the Authority, inaccurate in any material respect or if such inspection reveals any other contravention of InfraCo's obligations under the Infrastructure Agreement

which the Authority considers to be material, the costs of any such inspection shall be borne by InfraCo.

## **7 INFORMATION TO OTHER BODIES**

7.1 InfraCo shall comply with any reasonable requests and guidance issued by the Authority from time to time in respect of the provision of information to and co-operation and consultation with the Department for Transport, the UK Government, other devolved governments and Local Authorities Rail User Groups.

7.2 InfraCo shall provide reasonable co-operation and information as reasonably requested by the Authority to assist the Authority with any information requests it receives from Transport Focus (the Passenger Council, established by Section 20 of the Railways Act 2005 and subsequent amendments and which has an operating name of Transport Focus).

## **8 ADDITIONAL REPORTS**

8.1 InfraCo shall prepare and submit to the Authority additional reports other than those specified within this Schedule 11.2 and otherwise in the Infrastructure Agreement in each Reporting Period which shall:

- (a) contain such information as the Authority may specify from time to time for the previous Reporting Period, or such other period as may be reasonably required; and
- (b) disaggregated to the extent required by the Authority ("**Additional Reports**").

8.2 InfraCo's obligations under this paragraph 8.2 are subject to InfraCo receiving at least twenty eight (28) days' notice of:

- (a) the requirement to prepare any such report; and
- (b) any amendments required to the contents of such report.

## **9 FINANCIAL INFORMATION**

### **9.1 Accounting Records**

InfraCo shall prepare and at all times during the Infrastructure Services Term maintain true, up to date and complete accounting records as are required to be kept under Section 386 of the Companies Act 2006. Such records shall be prepared on a consistent basis for each Reporting Period.

### **9.2 Reporting Period Financial Information**

- (a) Unless stated otherwise, InfraCo will deliver to the Authority the information specified in 9.2(b), (c) and (d) for each of the service elements comprising InfraCo Services, namely:

- (i) Infrastructure Services;
  - (ii) AKI Infrastructure Works; and
  - (iii) Infrastructure Manager Services.
- (b) InfraCo shall deliver to the Authority, within ten (10) Weekdays of the end of each Reporting Period:
  - (i) Management Accounts for such Reporting Period, setting out a cashflow statement, profit and loss account and balance sheet for that Reporting Period and cumulatively for the Infrastructure Manager Year to date (noting that notwithstanding paragraph 9.2(a) balance sheet and cashflow statements are provided at a combined level for InfraCo as a whole only);
  - (ii) not used; and
  - (iii) not used.
- (c) Noting that balance sheet and cashflow statements are provided at a combined level for InfraCo as a whole only, InfraCo shall ensure that the aggregate costs, revenues, assets and liabilities shown in its cashflow statement, profit and loss account and balance sheets for each of InfraCo Service elements shall materially reconcile to the total costs, revenues, assets and liabilities of InfraCo.
- (d) The Management Accounts shall also set out:
  - (i) a comparison of InfraCo's financial performance during such period against the forecast provided by InfraCo in the then current Business Plan;
  - (ii) a comparison of InfraCo's cumulative financial performance during the Infrastructure Manager Year in which such period occurs against the forecast referred to in paragraph 9.2(d)(iv);
  - (iii) a detailed statement and a detailed and comprehensive written explanation of any material differences between such Management Accounts and the forecast referred to in paragraph 9.2(d)(iv);
  - (iv) where the level of financial performance reported in the Management Accounts is, in the reasonable opinion of the Authority, materially worse than forecast by InfraCo in its current Business Plan, the Authority may require InfraCo to prepare and submit to the Authority, as soon as reasonably practicable, a Financial Action Plan to ensure that the level of financial performance forecast in its current Business Plan for the remainder of the

currency of that Business Plan is achieved and InfraCo shall use all reasonable endeavours to implement such Financial Action Plan,

and with respect to any Management Accounts prepared from 1 April 2021 shall also set out:

- (v) a detailed schedule to support IMI payments (as defined in Schedule 8.5) including actual IMI generated in period, year to date and the forecast IMI for the IM Year;
- (vi) a detailed schedule of actual Restrictions of Use payments in period, year to date and forecast for the IM Year;
- (vii) a detailed schedule of financial performance of workpackages contracted under Schedule 3B including:
  - (A) contracted cost to deliver;
  - (B) actual cost to date;
  - (C) current forecast cost to complete; and
  - (D) previous forecast cost to complete;
- (viii) a detailed schedule of Material Discoveries (as defined in Schedule 3A);
- (ix) a detailed schedule of actual in period, year to date and forecast staff costs and headcount against its current Business Plan;
- (x) a detailed schedule of Schedule 4 and Schedule 8 track access financial information; and
- (xi) a detailed schedule of Excluded Risk expenditure pursuant to the amount for which InfraCo is responsible pursuant to paragraph 15A.4 of Schedule 3A.

### 9.3 **Not used**

### 9.4 **Annual Financial Information**

- (a) Unless stated otherwise, InfraCo will deliver to the Authority within fifteen (15) Weekdays of the end of each InfraCo Financial Year, its Annual Management Accounts for that InfraCo Financial Year for each of the service elements comprising InfraCo Services, namely:
  - (i) Infrastructure Services;
  - (ii) AKI Infrastructure Works; and
  - (iii) Infrastructure Manager Services.

(b) InfraCo shall deliver to the Authority:

- (i) in respect of any InfraCo Financial Year other than the final InfraCo Financial Year, its Annual Financial Statements for that InfraCo Financial Year within three (3) Reporting Periods of the end of that InfraCo Financial Year; and
- (ii) in respect of the final InfraCo Financial Year, its Annual Financial Statements for the period from the start of that InfraCo Financial Year to the end of the Infrastructure Agreement Term within three (3) Reporting Periods of the end of the Infrastructure Agreement Term,

each together with a reconciliation to the Management Accounts for the same period.

(c) Within nine (9) calendar months after the end of each InfraCo Financial Year, InfraCo shall deliver to the Authority the following information:

- (i) certified true copies of its annual report and Annual Audited Accounts for that InfraCo Financial Year, together with copies of all related directors' and auditors' reports;
- (ii) a reconciliation to the Management Accounts for the same period in a format to be agreed with the Authority
- (iii) not used; and
- (iv) a statement from InfraCo (signed by a statutory director of InfraCo) confirming compliance with the reporting requirements of paragraph 9.2(d)(viii) of this Schedule.

(d) Within nine (9) calendar months after the end of each InfraCo Financial Year, InfraCo shall deliver to the Authority the following information:

- (i) a reconciliation of the profit and loss account, cash flow and balance sheets required of InfraCo in paragraph 9.4(b) to the profit and loss account, cash flow and balance sheets required of InfraCo in paragraph at 9.4(c);
- (ii) where there is a material difference between the reconciled values provided in paragraph at 9.4(d)(i) then InfraCo will provide a detailed statement and a detailed and comprehensive written explanation of any material differences; and
- (iii) where such an explanation, in the reasonable opinion of the Authority, is considered insufficient then the Authority may, at its absolute discretion exercise its rights to undertake an Authority Audit pursuant to paragraph 9.7(a).

## 9.5 Accounting Standards and Practices

- (a) Each set of Management Accounts and Annual Management Accounts shall:
- (i) not used;
  - (ii) be prepared consistently in accordance with InfraCo's normal accounting policies, details of which shall be supplied on request to the Authority; and
  - (iii) identify to the reasonable satisfaction of the Authority, any changes in such accounting policies from those policies that were applied in preparing each of the profit and loss account, the cashflow projection and the balance sheet contained in the Final Tender Financial Model on the date of the Infrastructure Agreement.
- (b) The Annual Audited Accounts shall:
- (i) be prepared and audited in accordance with GAAP, consistently applied and in accordance with the Companies Act 2006; and
  - (ii) give a true and fair view of:
    - (A) the state of affairs, profits and financial condition of InfraCo for the period covered by such accounts; and
    - (B) the amount of its total revenue (being all revenue whatsoever from any source obtained from any commercial or non-commercial activity or undertaking of InfraCo
    - (C) or to such other level of disaggregation as may be notified to InfraCo by the Authority from time to time) derived by InfraCo in respect of that InfraCo Financial Year.
- (c) For Annual Audited Accounts in respect of InfraCo Financial Years beginning on or after 1 January 2019 InfraCo will deliver within nine (9) calendar months after the end of each InfraCo Financial Year:
- (i) following the introduction of IFRS 16 from 1 January 2019, a reconciliation between the relevant profit as bid under pre-existing GAAP and relevant profit as shown in its Management Accounts, Annual Financial Statements and Annual Audited Accounts; and
  - (ii) for any other change in GAAP that the Authority, at its absolute discretion, considers to have a material impact on financial reporting, a reconciliation between the relevant profit as bid under pre-existing GAAP and relevant profit

as shown in their Management Accounts, Annual Financial Statements and Annual Audited Accounts.

## 9.6 **Parent Accounts**

InfraCo shall, upon the request of the Authority, promptly deliver to, or procure delivery to, the Authority, certified true copies of the annual reports and audited accounts of the Parent.

## 9.7 **Authority Audit of calculations provided pursuant to paragraph 9.2(d)(iii)**

- (a) Without prejudice to paragraph 2.2 of Schedule 12 (Financial Covenants and Bonds) or to any other rights of the Authority under the Infrastructure Agreement, the Authority and its representatives shall be permitted to inspect at any time the books, records and any other material kept by or on behalf of InfraCo in order to check or audit any item contained in or relating to the Management Accounts in so far as they relate to the statement of calculations required by paragraph 9.2(d)(iii) of this Schedule 11.2.
- (b) InfraCo shall make available to the Authority and its representatives such information and grant such access or procure the grant of such access (including to or from third parties) as they shall reasonably require in connection with any audit to be carried out pursuant to paragraph 9.7(a). If any audit carried out pursuant to paragraph 9.7(a) reveals, in the reasonable opinion of the Authority, any material inaccuracy in the Management Accounts (but only in so far as such accounts relate to the statement of calculations required by paragraph 9.2(d)(iii)) then InfraCo shall pay all reasonable costs of any such audit as a monitoring cost pursuant to paragraph 7.4 of Schedule 10.1 (Procedure for remedying a Contravention of the Infrastructure Agreement).

## 10 **BUSINESS PLANS**

### 10.1 **Not Used**

### 10.2 **Annual Business Plans**

- (a) InfraCo shall provide to the Authority any annual business plan (in written or electronic form) that it produces in undertaking its regulatory role as infrastructure manager (the “**Business Plan**”).
- (b) InfraCo shall, not more than three (3) calendar months and not less than one (1) calendar month prior to the start of each InfraCo Financial Year), provide to the Authority:
  - (i) a revised profit and loss forecast, cash flow forecast and forecast balance sheet for each calendar month in the relevant InfraCo Financial Year and each subsequent InfraCo Financial Year of the Infrastructure Services Term;
  - (ii) not used;



- (iii) an annual improvement plan in respect of the relevant InfraCo Financial Year providing:
    - (A) details of any new technologies, processes, developments and/or proposals which could improve the provision of Infrastructure Manager Services, reduce the cost of providing Infrastructure Manager Services or enable InfraCo Services to be provided more efficiently;
    - (B) an analysis of the impact of any technologies, processes, developments and/or proposals that are proposed in relation to Infrastructure Manager Services, including analyses of the costs of and timescale for effecting such changes and the impact on the provision of Infrastructure Manager Services;
    - (C) details of those technologies, processes, developments and/or proposals which InfraCo proposes to implement during the relevant InfraCo Financial Year; and
    - (D) an analysis of the technologies, processes, developments and/or proposals which InfraCo implemented in the previous InfraCo Financial Year including details of any cost reductions and/or efficiency gains arising from the same and a reconciliation to the annual improvement plan for that previous InfraCo Financial Year.
- (c) NOT USED.
- (d) The Authority may at any time require InfraCo to produce a Business Action Plan in respect of any aspect of the Business Plan. Such Business Action Plan may include steps relating to:
  - (i) not used;
  - (ii) not used;
  - (iii) performance management improvement;
  - (iv) not used; and
  - (v) asset management and improvement.
  - (vi) improvements in the efficiency of delivery of InfraCo Services.
- (e) Not used.
- (f) Any proposal in a Business Action Plan shall only be implemented if and to the extent that the Authority decides it is appropriate to do so and subject to any conditions which it may impose.

## **11 SAFETY INFORMATION**

### **11.1 Safety**

- (a) InfraCo shall co-operate with any request from any relevant competent authority for provision of information and/or preparation and submission of reports detailing or identifying compliance with safety obligations set out in the Safety Regulations including any breaches of the Safety Regulations.
- (b) InfraCo shall notify the Authority as soon as practicable of the receipt and contents of any formal notification relating to safety or any improvement or prohibition notice received from the ORR. Immediately upon receipt of such notification or notice, InfraCo shall provide the Authority with a copy of such notification or notice.
- (c) InfraCo shall participate in industry groups and committees addressing the domestic and European safety agenda of the Railway Group.

## **12 FURTHER INFORMATION**

### **12.1 InfraCo shall:**

- (a) deliver to the Authority, or procure the delivery to the Authority of, such information, records or documents as it may request within such period as it may reasonably require and which relate to or are connected with InfraCo's performance of the Infrastructure Agreement; and
- (b) procure that each Affiliate of InfraCo complies with paragraph 12.1(a) in respect of any information, records or documents that relate to its dealings with InfraCo in connection with InfraCo's performance of its obligations under the Infrastructure Agreement.

### **12.2 The Authority may require InfraCo to provide:**

- (a) the information required to be provided under this Schedule 11.2 more frequently than set out in this Schedule 11.2;
- (b) the information required to be provided under this Schedule 11.2; and
- (c) such unaudited accounts under such accounting policies as may be prescribed by the Authority, acting reasonably, from time to time.

## **13 INFORMATION FROM THIRD PARTIES**

### **13.1 InfraCo shall, if the Authority so requests, use all reasonable endeavours to ensure that the Authority has direct access to any information, data or records relating to InfraCo which is or are maintained by third parties and to which the Authority is entitled to have access, or of which the Authority is entitled to receive a copy under the Infrastructure Agreement.**

### **13.2 Not used.**

- 13.3 The obligations of InfraCo under this Schedule 11.2 to provide information to the Authority shall not apply if the Authority notifies InfraCo that it has received the relevant information directly from any other person (including Network Rail). InfraCo shall, if the Authority so requests, confirm or validate any such information which is received from any such other person.
- 13.4 InfraCo shall promptly advise the Authority of any changes that are to be made to its systems or processes that will, in the reasonable opinion of InfraCo, materially affect the continuity of any of the records that are provided pursuant to this Schedule 11.2. Any such advice shall include an assessment of the materiality of the relevant change.

#### **14 COMPATIBILITY OF INFORMATION**

- 14.1 All financial, operational or other information and reports required to be provided to the Authority under the Infrastructure Agreement shall be provided in formats specified by the Authority acting reasonably. This may include paper and electronic formats including spreadsheets. Where calculations or other summarisation is made within such reports, the formulas utilised and any external linked data shall be made available to the Authority.
- 14.2 All financial, operational or other information, and any data and records required to be provided to the Authority under the Infrastructure Agreement shall be provided, if so requested by the Authority, in a form compatible with the Authority's electronic data and records systems on the Start Date, as modified from time to time in accordance with paragraphs 5 and 9 of Schedule 13.1 (Rail Industry Initiatives).
- 14.3 InfraCo shall ensure that the interconnection of such systems or the provision of such information, data and records to the Authority under the Infrastructure Agreement will not result in any infringement of any third party Intellectual Property Rights to which its systems or such information, data or records may be subject.

**Appendix 1 to Schedule 11.2 - Resource Plan**

**Appendix 2 to Schedule 11.2 – NOT USED -**

## **Schedule 12 - Financial Covenants and Bonds**

### **1 OBLIGATIONS**

1.1 Except to the extent that the Authority may otherwise agree from time to time, InfraCo shall not:

- (a) incur any liability or financial indebtedness except in the ordinary course of providing and operating InfraCo Services;
- (b) make any loan or grant any credit, or have or permit to subsist any loan or any credit, to any person (other than the deposit of cash with a Bank as permitted under paragraph (d) or to an employee in the ordinary course of its business);
- (c) create or permit to subsist any Security Interest over any of its assets or property or give any guarantee or indemnity to or for the benefit of any person or otherwise assume liability or become obliged (actually or contingently) in respect of any obligation of any other person, in each case other than in the ordinary course of the business of providing and operating InfraCo Services; or
- (d) create or acquire any subsidiary or make or have any investment in any other entity, except for the deposit of cash with a Bank.

### **2 NOT USED**

### **3 NOT USED**

### **4 PERFORMANCE BOND**

4.1 InfraCo shall procure that there shall be a valid and effective Performance Bond in place with effect from the date that all bonds required to be provided pursuant to the Termination Deed are cancelled, released and returned, and InfraCo shall thereafter procure that there shall be a valid and effective Performance Bond in place:

- (a) throughout the remainder of the Infrastructure Services Term; and
- (b) for a further period of seven (7) Reporting Periods after the end of the Infrastructure Agreement Term ("**Performance Bond Expiry Date**"),

and the provisions of this paragraph 4.1 shall survive the termination of the Infrastructure Agreement.

4.2 Each Performance Bond shall:

- (a) be substantially in the form of Appendix 1 (Form of Performance Bond) to this Schedule 12;

- (b) be issued by a Bond Provider;
- (c) in the case of the Initial Performance Bond and any Replacement Performance Bond, have a value of three (3) million pounds (£3,000,000), less the amount paid to the Authority under any Performance Bond; and
- (d) have a minimum duration of:
  - (i) three (3) years; or
  - (ii) if the Performance Bond Expiry Date will occur during the three (3) year duration referred to in paragraph 4.2(d)(i), the period from the date that the Performance Bond is required to be obtained and maintained until the Performance Bond Expiry Date.

#### 4.3 Provision of Replacement Performance Bond

- (a) InfraCo may replace the then current Performance Bond at any time.
- (b) InfraCo shall replace each Performance Bond at least six (6) months prior to its scheduled expiry with a Replacement Performance Bond.
- (c) If at any time the Authority reasonably consider the Bond Provider under the then current Performance Bond to be unacceptable, the Authority may require InfraCo within thirty (30) Weekdays to procure the execution and delivery of a new Performance Bond by a Bond Provider acceptable to the Authority, provided that it shall only be reasonable for the Authority to consider the relevant Bond Provider to be unacceptable if such Bond Provider does not have the Relevant Credit Rating.

#### 4.4 Not used.

#### 4.5 Demands under the Performance Bond

- (a) The Performance Bond shall be on terms that it is payable without further enquiry by the Bond Provider to the Authority in full on first written demand by the Authority on the Bond Provider, certifying as to any one or more of the following:
  - (i) that the Infrastructure Agreement has:
    - (A) not used;
    - (B) terminated solely as a consequence of the occurrence of one or more Events of Default or a Termination Event of a type described in paragraphs 2.2, 2.3 and 2.4 of Schedule 10.2 (Events of Default and Termination Events) in circumstances where the Authority has incurred or expects to incur losses, liabilities, costs or expenses in connection with:

- 1) the Authority's mobilisation of, and transfer of responsibility to, Wales Infrastructure Manager of Last Resort Limited (company number 12213395) ("WIMLR");
- 2) procurement costs in respect of a Successor Operator;
- 3) InfraCo's failure to comply with its obligations under Schedule 14 (Preservation of Assets) and/or Schedule 15 (Obligations associated with Termination);

following early termination of the Infrastructure Agreement;

- (ii) not used;
- (iii) not used;
- (iv) not used;
- (v) that InfraCo has failed to provide a replacement Performance Bond complying with this paragraph 4 at least six (6) months prior to the scheduled expiry of the existing Performance Bond; or
- (vi) that InfraCo has failed to procure the execution and delivery of a new Performance Bond by a Bond Provider acceptable to the Authority when required to do so in accordance with paragraph 4.3 (c).

- (b) If the Authority makes a demand under the Performance Bond, it shall, within a reasonable period, account to InfraCo for the proceeds of such Performance Bond less the amount of the losses, liabilities costs or expenses incurred in connection with:

- (i) the Authority's mobilisation of, and transfer of responsibility to, WIMLR;
- (ii) procurement costs in respect of a Successor Operator; and
- (iii) InfraCo's failure to comply with its obligations under Schedule 14 (Preservation of Assets) and/or Schedule 15 (Obligations associated with Termination);

following early termination of the Infrastructure Agreement, and which are not otherwise recovered by the Authority.

- (c) Not used.
- (d) Nothing in paragraphs 4.5(b) shall oblige the Authority to account to InfraCo for the proceeds of such Performance Bond in the circumstances described in paragraph



4.5(a)(v) and 4.5(a)(vi) until such time as InfraCo has procured a replacement Performance Bond which complies with the requirements of paragraph 4.

4.6 Characteristics of Performance Bond Provider

- (a) Not used.
- (b) InfraCo shall provide such information relating to any Bond Provider or proposed Bond Provider as the Authority may require from time to time.

4.7 Provision of more than one Performance Bond

- (a) InfraCo shall be permitted subject to the prior consent of the Authority (such consent not to be unreasonably withheld or delayed) to meet its obligations to provide a valid and effective Performance Bond by providing up to three (3) valid and effective Performance Bonds, the aggregate value of which at all times is equal to the value determined under paragraph 4.2(c) with the exception of the value of each individual Performance Bond the provisions of the Infrastructure Agreement in relation to the Performance Bond shall be deemed to apply separately in relation to each such Performance Bond. Where more than one (1) Performance Bond is provided, each claim by the Authority shall be made against (i) all of such Performance Bonds, and (ii) each Performance Bond in the proportion that the Performance Bond bears to value determined under paragraph 4.2(c).

**5 NOT USED**

**6 TAX COMPLIANCE**

6.1 InfraCo represents and warrants that as at the Start Date, it has notified the Authority in writing of any Occasions of Tax Non-Compliance where InfraCo (including where InfraCo is an unincorporated joint venture or consortium, the members of that unincorporated joint venture or consortium) is the Affected Party (as defined in paragraph 6.3 below) or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance where InfraCo (including where InfraCo is a joint venture or consortium, the members of that joint venture or consortium) is the Affected Party.

6.2 If, at any point during the Infrastructure Services Term, an Occasion of Tax Non-Compliance occurs in relation to any Affected Party, InfraCo shall:

- (a) notify the Authority in writing of such fact within five (5) Weekdays of its occurrence; and
- (b) promptly provide to the Authority:
  - (i) details of the steps which the Affected Party is taking to address the Occasion of Tax Non-Compliance and to prevent the same from

recurring, together with any mitigating factors that it considers relevant;  
and

- (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

6.3 For the purposes of this paragraph 6, the following defined terms shall have the following meanings:

**“Affected Party”** has the meaning given to it in the definition of Occasion of Tax Non-Compliance;

**“DOTAS”** means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;

**“General Anti-Abuse Rule”** means:

- (a) the legislation in Part 5 of the Finance Act 2013; and
- (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions; and

**“Halifax Abuse Principles”** means the principle explained in the CJEU Case C-255/02 Halifax and others;

**“Occasion of Tax Non-Compliance”**

means, in respect of InfraCo (including where InfraCo is an unincorporated joint venture or consortium, the members of that unincorporated joint venture or consortium) or InfraCo (such party being the **“Affected Party”**):

- (a) any tax return of the Affected Party submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 is found to be incorrect as a result of:
  - (i) a Relevant Tax Authority successfully challenging the Affected Party under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
  - (ii) the failure of an avoidance scheme which the Affected Party was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
- (b) any tax return of the Affected Party submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Start Date or to a civil penalty for fraud or evasion.

**“Relevant Tax Authority”**

means HM Revenue & Customs or, if applicable, a tax authority in the jurisdiction in

which the relevant person is established.

**Appendix 1 to Schedule 12**

**Form of Performance Bond**

[DOCUMENT "PB" - PERFORMANCE BOND]

Dated [INSERT DATE]

[INSERT NAME OF BOND PROVIDER]

*[Note: form of bond subject to confirmation from ██████████.]*

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Performance Bond

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To: Transport for Wales  
[3 Llys Cadwyn  
Pontypridd  
Wales  
CF37 4TH]

Company number: 09476013

(the “**Authority**”)

Whereas:

We are informed that you are party to an agreement which was originally entered into on 12 October 2018 between Keolis Amey Cymru Limited (company number 11391059) (the “**ODP**”) and Amey Keolis Infrastructure / Seilwaith Amey Limited (company number 11389544) (“**InfraCo**”) which was subsequently novated from the ODP to the Authority pursuant to a deed of novation entered into between [INSERT PARTIES] on [INSERT DATE] (the “**Infrastructure Agreement**”). Pursuant to the Infrastructure Agreement, InfraCo will provide certain infrastructure related services.

We are further informed that the Infrastructure Agreement requires that the Authority receives a duly executed performance bond in the amount of [REDACTED] (the “**Bond Value**”).

Accordingly:

We hereby unconditionally and irrevocably undertake to pay to you in full, immediately upon receipt of your first written demand on us in the form set out in the Schedule and, without further enquiry, the sum specified therein. Such written demand shall state:

- 1 the Call Event (as defined in Clause 4 hereof) that has occurred; and
- 2 the date of occurrence of such Call Event.

You may call on us for the whole or part of the amount of our liability hereunder and you may make any number of calls on us up to a maximum aggregate amount of the Bond Value. All sums payable hereunder shall be paid free of any restriction or condition and free and clear of and (except to the extent required by law) without any deduction or withholding, whether for or on account of tax, by way of set-off or otherwise.

3 The undertaking given by us above shall operate provided that:

- 3.1 our maximum liability shall be limited to a sum or sums not exceeding in the aggregate the amount of the Bond Value or such lesser amount as you may notify us of from time to time in writing, separately from any demand, shall constitute the Bond Value of this Bond; and

3.2 notwithstanding anything contained herein, our liability hereunder shall expire on the earliest of:

- (a) the date falling seven (7) Reporting Periods after the end of the Infrastructure Agreement Term; and
- (b) [INSERT DATE REQUIRED BY PARAGRAPH 4.2(d) OF SCHEDULE 12 OF THE INFRASTRUCTURE AGREEMENT],

except in respect of any written demand for payment complying with all the requirements hereof which is received by us on or before such date for either the Bond Value, or for such lesser amount which, when aggregated with any previous demands, amounts to the Bond Value or less, after which date this undertaking shall be void whether returned to us or not.

**4** “**Call Event**” means, in this Bond, either of:

4.1 the termination of the Infrastructure Agreement solely as a consequence of the occurrence of one or more Events of Default or a Termination Event of a type described in paragraphs 2.2, 2.3 and 2.4 of Schedule 10.2 (*Events of Default and Termination Events*) of the Infrastructure Agreement in circumstances where the Authority has incurred or expects to incur losses, liabilities, costs or expenses in connection with:

- (a) the Authority's mobilisation of, and transfer of responsibility to, Wales Infrastructure Manager of Last Resort Limited (company number 12213395);
- (b) procurement costs in respect of a Successor Operator; and
- (c) InfraCo's failure to comply with its obligations under Schedule 14 (Preservation of Assets) and/or Schedule 15 (Obligations associated with Termination) following early termination of the Infrastructure Agreement; or

4.2 the failure by InfraCo to provide the Authority with a replacement Performance Bond which complies with paragraph 4 of Schedule 12 (*Financial Covenants and Bonds*) of the Infrastructure Agreement at least six (6) months prior to the scheduled expiry of the existing Performance Bond.

**5** This undertaking is made to you, your successors and your assigns.

**6** You may not assign or otherwise transfer your rights under this Bond without our prior written consent (such consent not to be unreasonably withheld or delayed if the assignment of the rights or transfer of the rights under this Bond is to your assignee or successor under the Infrastructure Agreement).

- 7** This undertaking shall not be discharged or released by time, indulgence, waiver, alteration or release of, or in respect to, the obligations of InfraCo under the Infrastructure Agreement or any other circumstances that might operate as a release of a guarantor at law or in equity.
- 8** You may make demand or give notice to us under this Bond in writing by hand or via email transmission to us as follows:
- Address: [INSERT BOND PROVIDER'S ADDRESS]
- Email Address: [INSERT BOND PROVIDER'S EMAIL ADDRESS]
- 9** References in this Bond to the Infrastructure Agreement are to the Infrastructure Agreement as amended from time to time.
- 10** Where used in this Bond, capitalised terms have the same meanings as in the Infrastructure Agreement.
- 11** This Bond shall be governed by and construed in accordance with the laws of England and Wales.

Executed as a deed this [INSERT DAY AND MONTH] of [INSERT YEAR].



## SCHEDULE TO THE PERFORMANCE BOND

### Specimen Demand Notice

To: [INSERT NAME AND ADDRESS OF BOND PROVIDER]

[INSERT DATE OF DEMAND NOTICE]

We refer to the performance bond issued by you on [INSERT DATE OF BOND] (the "**Performance Bond**") in connection with the agreement which was originally entered into on 12 October 2018 between Keolis Amey Cymru Limited (company number 11391059) (the "**ODP**") and Amey Keolis Infrastructure / Seilwaith Amey Limited Amey Keolis Infrastructure / Seilwaith Amey Limited (company number 11389544) ("**InfraCo**") which was subsequently novated from the ODP to Transport for Wales (company number 09476013) (the "**Authority**") pursuant to a deed of novation entered into between [INSERT PARTIES] on [INSERT DATE] (the "**Infrastructure Agreement**").

We hereby notify you that the following Call Event (as defined in the Performance Bond) occurred on [INSERT DATE OF OCCURRENCE OF CALL EVENT]: [**DRAFTING NOTE: DELETE AS APPROPRIATE**]

#### 1

1.1 The Infrastructure Agreement has terminated solely as a consequence of the occurrence of one or more Events of Default or a Termination Event of a type described in paragraphs 2.2, 2.3 and 2.4 of Schedule 10.2 (Events of Default and Termination Events) of the Infrastructure Agreement in circumstances where the Authority has incurred or expects to incur losses, liabilities, costs or expenses in connection with:

- (a) the Authority's mobilisation of, and transfer of responsibility to, Wales Infrastructure Manager of Last Resort Limited (company number 12213395);
- (b) procurement costs in respect of a Successor Operator; or
- (c) InfraCo's failure to comply with its obligations under Schedule 14 (Preservation of Assets) and/or Schedule 15 (Obligations associated with Termination);

following early termination of the Infrastructure Agreement.

1.2 InfraCo has failed to provide the Authority with a replacement Performance Bond which complies with paragraph 4 of Schedule 12 (*Financial Covenants and Bonds*) of the Infrastructure Agreement at least six (6) months prior to the scheduled expiry of the existing Performance Bond.

We hereby demand immediate payment from you of [SPECIFY ALTERNATIVE AMOUNT IF NOT BOND VALUE] or the Bond Value, whichever is smaller.

Please arrange for immediate payment of the relevant amount as follows:

[INSERT ACCOUNT DETAILS TO WHICH BOND MONIES TO BE PAID INTO]

Where used in this Notice, capitalised terms have the same meanings as in the Infrastructure Agreement.

For and on behalf of **Transport for Wales**

.....

**Schedule 13 - Rail Industry Initiatives, Innovation Obligations and Sustainability and**  
**Ethical Procurement**

**Schedule 13.1 – Rail Industry Initiatives**

**1 BRITISH TRANSPORT POLICE**

1.1 Not used.

1.2 InfraCo shall and the Authority shall procure that TfWRL shall:

(a) work with the British Transport Police to:

(i) reduce crime and anti-social behaviour on the railway; and

(ii) reduce minutes lost to police-related disruption;

(b) Not used;

(c) Not used;

(d) fully and effectively co-operate with the British Transport Police as to its requirements in relation to records and/or systems and shall ensure that the British Transport Police has access to such records and/or systems within five (5) Weekdays of the notification of a crime by the British Transport Police.

1.3 Not used;

1.4 Not used;

1.5 Not used.

**2 SUICIDE PREVENTION**

2.1 As soon as reasonably practicable after 1 April 2021, InfraCo shall seek to participate in the Suicide Prevention Duty Holders Group and wider cross-industry suicide prevention activities. InfraCo shall develop a draft suicide prevention plan and seek comments from the British Transport Police and the Suicide Prevention Duty Holders Group (or such other group as may replace the Suicide Prevention Duty Holders Group from time to time).

2.2 InfraCo shall make amendments to the draft suicide prevention plan to reflect comments from:

(a) the British Transport Police; and

(b) the Suicide Prevention Duty Holders Group (or such other group as may replace the Suicide Prevention Duty Holders Group from time to time).

- 2.3 InfraCo shall submit a completed suicide prevention plan (the “**Plan**”) to the Authority within 6 months of 1 April 2021.
- 2.4 InfraCo shall review and update the Plan at least once every twelve (12) months.
- 2.5 Such review and any updating shall be by reference to changing circumstances and new relevant information with the intention that it is kept as up to date and effective as reasonably possible. InfraCo shall consult with the British Transport Police and wider cross-industry suicide prevention groups (as appropriate) in relation to any such review and update of the Plan. InfraCo shall deliver a copy of any revised and/or updated Plan to the Authority as soon as is reasonably practicable.
- 2.6 InfraCo shall implement the Plan as it may be revised and/or updated pursuant to paragraph 2.1 in accordance with its then prevailing provisions, provided that the Authority shall compensate InfraCo for any additional costs incurred (excluding any Renewals, which shall be paid for in accordance with the Renewals Process) in implementing the Plan where such costs are incurred in addition to its existing obligations under this Infrastructure Agreement and/or its regulatory requirements.

**3 NOT USED.**

**4 NOT USED.**

## **5 CO-OPERATION WITH LOCAL AUTHORITIES**

- 5.1 InfraCo shall fully and effectively co-operate with any Local Authority or group thereof that seeks to promote a scheme for the provision of additional or varied rail services including by attending meetings, contributing to feasibility schemes and project plans and liaising with relevant industry participants including Network Rail.
- 5.2 Paragraph 5.1 does not oblige InfraCo to incur any cost in the actual provision of the revised services.

**6 NOT USED.**

## **7 DEVELOPMENT OF INDUSTRY SYSTEMS**

The Authority shall procure that TfWRL shall, and InfraCo shall (as appropriate) fully and effectively co-operate with Network Rail, the Authority, ORR and all other relevant railway industry bodies and organisations in relation to the development of anything that can reasonably be considered to be a railway industry system including systems in relation to the attribution of train delay, the allocation of revenue and the collection and dissemination of industry wide information.

**8 NOT USED**

**9 CO-OPERATION WITH NETWORK RAIL AND ALLIANCING**

9.1 InfraCo shall use reasonable endeavours to work with the Authority and TfWRL to co-operate with Network Rail on cross-network issues.

**10 NOT USED**

**11 NOT USED.**

**12 NOT USED.**

**13 SOUTH WALES VALLEYS EMPLOYMENT INITIATIVES**

13.1 Throughout the Infrastructure Agreement Term, InfraCo shall support people living in the South Wales Valley to access jobs through initiatives including the apprenticeship scheme.

## **Schedule 13.2 - Innovation Obligations**

### **1 INNOVATION STRATEGY**

- 1.1 Not Used.
- 1.2 InfraCo shall provide reasonable assistance to, and shall co-operate with, the Authority with regard to the Authority implementing the Welsh Government Innovation Strategy including implementation of the following programmes:
  - (a) SMART Innovation;
  - (b) SMART Expertise; and
  - (c) SMART Cymru.
- 1.3 Not used.
- 1.4 Not Used

### **2 SMALL BUSINESS RESEARCH INITIATIVE**

- 2.1 In delivering InfraCo Services, InfraCo shall fully and effectively co-operate with the Authority to ensure innovation through the supply chain supporting initiatives such as the Small Business Research Initiative (SBRI).

### **3 OPEN INNOVATION PROGRAMME**

- 3.1 InfraCo shall fully and effectively co-operate with, the Authority and Innovate UK Rail Innovation Programme to establish open and collaborative innovative approaches to innovation that creates opportunities for innovative Welsh SMEs & academia and enables new ways to accelerate the delivery of innovation to the rail market.
- 3.2 InfraCo shall fully and effectively co-operate with, the Authority and Innovate UK to utilise the Expertise Wales website to launch challenges and collaborative project opportunities.
- 3.3 InfraCo shall fully and effectively co-operate with, the Authority and Innovate UK to consider the 'Catalogue' of Innovations from Wales and similar "catalogues" produced by RSSB and Innovate UK, and agree a clear plan and timeline for innovation demonstrators as relevant that focus upon improving the rail passenger experience during the Infrastructure Services Term.
- 3.4 Not Used.
- 3.5 Not Used.

**Appendix 1 to Schedule 13.2 – Not Used**

## **Schedule 13.3 - Sustainability and Ethical Procurement**

### **Part 1 to Schedule 13.3 - Scope**

#### **1 NOT USED**

#### **2 SUSTAINABILITY – GENERAL OBLIGATIONS**

2.1 In carrying out InfraCo Services InfraCo shall:

- (a) have regard to the objectives and requirements of the Future Generations Act;
- (b) fully and effectively co-operate with, the Authority to allow the Authority to comply with the Future Generations Act;
- (c) comply with InfraCo's obligations as set out in this Schedule 13.3 (Sustainability and Ethical Procurement); and
- (d) comply with the Welsh Government's Code of Practice for Ethical Employment in Supply Chains.

#### **3 SUSTAINABLE DEVELOPMENT MANAGER**

3.1 InfraCo shall appoint a Sustainable Development Manager to promote, manage and assure InfraCo's delivery of the programme of sustainable development, ethical procurement and innovation envisaged by this Schedule 13.3 (Sustainability and Ethical Procurement).

3.2 The Sustainable Development Manager shall be identified in the schedule of Key Personnel to be provided to the Authority by InfraCo in accordance with paragraph 3.1 of Schedule 11.2 of this Infrastructure Agreement.

#### **4 SUSTAINABILITY AND OTHER RELATED INITIATIVES**

4.1 Sustainable Development Strategy and Plan

- (a) By no later than 1 August 2021, InfraCo shall consult with Stakeholders as agreed between the Authority and InfraCo (or, in the absence of agreement, such Stakeholders as the Authority shall reasonably determine) in order to propose an infrastructure manager sustainable development strategy and plan which shall be agreed by the Authority no later than 1 November 2021. Such agreed plan shall be the 'IM Sustainable Development Plan' for the purposes of this Infrastructure Agreement.



**Appendix 1 to Part 1 Schedule 13.3 – Not Used**

**Appendix 2 to Part 1 Schedule 13.3 – Not Used**

## **Part 2 to Schedule 13.3 – Economic and Ethical Procurement**

### **1 LOCAL SUPPLIERS, SMALL AND MEDIUM SIZE ENTERPRISES (SMES) AND THIRD SECTOR ENTERPRISES (TSES)**

- 1.1 In delivering InfraCo Services, InfraCo shall provide opportunities for:
- (a) Local Suppliers;
  - (b) SMEs; and
  - (c) TSEs in Wales.
- 1.2 In providing InfraCo Services where there are tender opportunities for subcontractors to InfraCo, InfraCo shall work collaboratively with Business Wales and other relevant Welsh Government agencies and/or departments to hold regular events and workshops (involving where appropriate its subcontractors) and advertise, where reasonably practicable, all new tender opportunities in respect of the provision of InfraCo Services through Sell2Wales to help ensure resulting business opportunities are maximised with Local Suppliers, SMEs and TSEs.
- 1.3 InfraCo shall at all times keep accurate and complete records of its use of and interaction with Local Suppliers, SMEs and TSEs in delivering InfraCo Services.
- 1.4 By no later than 31 January in each Infrastructure Manager Year (and within one (1) month of the end of the Infrastructure Agreement Term) InfraCo shall deliver to the Authority a breakdown of the number of Local Suppliers, SMEs and TSEs used by InfraCo in providing InfraCo Services during the calendar year (or part thereof) which ended on the immediately preceding 31 December or at the end of the Infrastructure Agreement Term (as applicable).

### **2 USE OF ETHICAL RESOURCES**

- 2.1 InfraCo shall ensure that the materials used by it and its subcontractors comply with the requirements of “BES 6001 Responsible Sourcing of Construction Products”.
- 2.2 InfraCo shall make all reasonable endeavours to ensure that the following resources are not used in the delivery of InfraCo Services:
- (a) ‘dumped’ steel which is steel provided at a cost that is subsidised by a foreign government;
  - (b) timber without Forest Stewardship Council (FSC) certification; and
  - (c) any other materials or resources the use of which would cause material damage to the reputation of the Authority through lack of ethical resourcing.

- 2.3 In delivering InfraCo Services, InfraCo shall fully and effectively co-operate with the Authority with regard to the Authority's commitment to:
- (a) responsible and sustainable sourcing of raw materials part finished and finished products; and
  - (b) Wales' status as a Fair Trade Nation and commitment to International Labour Organisation standards.

### **3 ETHICAL EMPLOYMENT**

- 3.1 InfraCo shall sign up to and comply with the Welsh Government's Code of Practice for Ethical Employment in Supply Chains.
- 3.2 InfraCo shall, in partnership with the Authority, support a South Wales Valley Working Group and Board Level committee to monitor, promote and report on the representation of minority groups and the proportion of the workforce and supply chain which lives within the South Wales Valleys.

## **Part 3 to Schedule 13.3 - Social**

### **1 SKILLS GAP ANALYSIS**

- 1.1 InfraCo shall fully and effectively co-operate with the Authority to identify the skills needed to deliver InfraCo Services including through InfraCo's supply chain which shall include (but not be limited to) the Authority's development of its own initial skills gap analysis.

### **2 SKILLS DEVELOPMENT**

- 2.1 InfraCo shall fully and effectively co-operate with the Authority in order to establish (where not currently in existence) and support:
- (a) training facilities related to the skills required to deliver InfraCo Services as notified by the Authority to InfraCo. This may involve working with, amongst others, Qualifications Wales, Network Rail, local colleges and universities, private providers, trade bodies and the Construction Wales Innovation Centre;
  - (b) the Authority's ambition to increase the number of women and BAME candidates; and
  - (c) a review of the likely short, medium and long term requirements of InfraCo and any Successor Operators including in the context of expected change to InfraCo Services (including as a result of technological change) and the age profile of InfraCo Services Employees.

### **3 TAKING WALES FORWARD**

- 3.1 The Authority shall procure that TfWRL shall, and InfraCo shall (as appropriate), fully and effectively co-operate with the Authority and relevant third parties to support the Authority's objectives to implement the Welsh Government's "Taking Wales Forward" programme or any equivalent subsequent programme.

### **4 INFRACO SERVICES EMPLOYEES**

- 4.1 InfraCo shall, in carrying out InfraCo Services during the Infrastructure Agreement Term, deliver:
- (a) a minimum number of Full Time Equivalent Jobs during the Infrastructure Agreement Term as enumerated for each Infrastructure Manager Year in Table 1 within Appendix 1 to Part 3 of this Schedule 13.3;
  - (b) a minimum number of Full Time Equivalent Jobs to be provided for Apprentices and Graduate Schemes as enumerated for each Infrastructure Manager Year in Table 2 within Appendix 1 to Part 3 of this Schedule 13.3; and
  - (c) opportunities for work experience or work placements.

- 4.2 The requirements in paragraphs 4.1(b) and 4.1(c) shall be subject to a pro rata reduction in relation to the first Infrastructure Manager Year and in relation to the final Infrastructure Manager Year.
- 4.3 In relation to every (6) six months InfraCo shall record:
- (a) the qualifications and competency of each InfraCo Services Employee;
  - (b) the full date of birth of each InfraCo Services Employee (except in relation to those who do not permit disclosure);
  - (c) the gender of each InfraCo Services Employee (except in relation to those who do not permit disclosure);
  - (d) each InfraCo Services Employee who is of BAME origin (except in relation to those who do not permit disclosure);
  - (e) the number of new apprenticeships created in that period and the postcode of the location at which each InfraCo Services Employee who enters into an apprenticeship is principally employed; and
  - (f) the first half of each InfraCo Services Employee's residential postcode.
- 4.4 Such information shall be provided to the Authority with the relevant quarterly financial information to be provided pursuant to paragraph 9.3 of Schedule 11.2 (Management Information).

## **5 APPRENTICES AND GRADUATE SCHEMES**

- 5.1 InfraCo shall remunerate Apprentices providing InfraCo Services in accordance with InfraCo's terms and conditions of employment, such remuneration to be in accordance with the Apprentice Rate.
- 5.2 InfraCo shall assist each Apprentice providing InfraCo Services to achieve relevant Qualifications Wales qualifications or equivalent.
- 5.3 InfraCo shall meet the Specification of Apprenticeship Standards for Wales.
- 5.4 InfraCo shall keep accurate and complete records of the training and apprenticeships offered by InfraCo and its UK based supply chain in delivering InfraCo Services.
- 5.5 By no later than 31 January in each year (and within one (1) month of the end of the Infrastructure Agreement Term) InfraCo shall deliver to the Authority a breakdown of the number of training and apprenticeships offered by InfraCo and its supply chain in providing InfraCo Services during the calendar year (or part thereof) which ended on the

immediately preceding 31 December or at the end of the Infrastructure Agreement Term (as applicable).

## **6 LIVING WAGE**

- 6.1 InfraCo shall pay the Living Wage to its employees provided that this requirement does not apply to Apprentices.
- 6.2 InfraCo shall procure, by no later than the date which is twelve (12) months from the Start Date, that its subcontractors shall pay (in respect of provision of InfraCo Services such requirement to be included in the sub-contract) the Living Wage to their respective employees provided that this requirement does not apply to Apprentices.
- 6.3 InfraCo shall pay its staff in line with Living Wage Foundation recommendations throughout the term of this Infrastructure Agreement.

## **7 VOLUNTEERING**

- 7.1 In recognition of the value of volunteering to the community InfraCo shall support its staff in voluntary community work and relevant schemes that encourage, support and reward volunteering in Welsh communities.

## **8 INFRACO STAFF SAFETY AND WELLBEING**

- 8.1 InfraCo shall support and improve the health and well-being of InfraCo Services Employees, including by:
- (a) monitoring, managing and improving occupational health risks, level of InfraCo Services Employee engagement and morale and general wellbeing of the workforce; and
  - (b) supporting the management of individual health risk.
- 8.2 InfraCo shall use all reasonable endeavours to safeguard the security of InfraCo Services Employees, including by:
- (a) implementing systems, including staff training, to control and minimise crime and security incidents; and
  - (b) assessing and reviewing regularly the security and crime risk to InfraCo Services Employees.

## **9 NO COMPULSORY REDUNDANCY**

- 9.1 InfraCo shall not, and shall procure that no subcontractor shall, for the duration of the Infrastructure Services Term, terminate the employment of any Protected Employee by reason of redundancy within the meaning of section 139 of the Employment Rights Act 1996 (without the prior written consent of the Authority), provided that this clause shall

apply only to any such termination by reason of compulsory redundancy and shall not apply in respect of any termination of employment by InfraCo or a subcontractor by reason of voluntary redundancy, by way of voluntary exit or voluntary severance, for any other reason or otherwise.

## **10 ZERO HOUR CONTRACT**

10.1 InfraCo shall ensure that zero hours contracts are not used unfairly or as a means to:

(a) avoid, or facilitate avoidance of, the payment of tax and National Insurance contributions and the relevant minimum wages;

(b) unduly disadvantage workers in terms of pay and employment rights, job security and career opportunities; or

(c) avoid health and safety responsibilities.

## **11 MODERN SLAVERY ACT**

11.1 InfraCo shall (and shall procure that its subcontractors shall) perform this Infrastructure Agreement in accordance with the Modern Slavery Act 2015

## **12 INFRACO POLICIES**

12.1 InfraCo shall comply with its Anti Bribery Policy, Diversity and Inclusion Policy, and Equal Opportunities Policy.

## **13 HEALTH AND SAFETY RESPONSIBILITIES**

13.1 InfraCo shall ensure that individual responsibilities of each Infraco Services Employee for health and safety shall be explicitly set out in job descriptions and safety responsibility statements, signed by the Infraco Services Employee, which shall be reviewed at the beginning of every IM Year.

13.2 The job descriptions and safety responsibility statements shall be linked to the Safety Management System and supporting processes through a responsibility matrix ensuring all InfraCo Services Employees are responsible, accountable, consulted and informed.

## **14 HEALTH AND SAFETY TRAINING**

14.1 Throughout the Infrastructure Agreement Term, InfraCo shall deliver role-specific industry standard Health and Safety training for all management and staff appropriate for their respective Health and Safety responsibilities.

14.2 By no later than six months after the CVL Asset Transfer Date InfraCo shall introduce an electronic competence management system for all InfraCo Services Employees and



relevant InfraCo Services Employees which shall enable the InfraCo to work alongside the Sentinel Scheme (or any successor scheme) for Safety Critical Workers.

**Appendix 1 to Part 3 of Schedule 13.3 – InfraCo Commitments**

Table 1 – Minimum Number of Full Time Equivalent Jobs (including Apprentices and Graduate Schemes):

Infrastructure Manager Year	Number of Full Time Equivalent Jobs
1	█
2	█
3	██
4	███
5	████
6	█████
7	█████
8	█████

Table 2 – Minimum Number of Full Time Equivalent Jobs (Apprenticeships and Graduate Schemes):

Infrastructure Manager Year	Number of Full Time Equivalent Jobs (Apprenticeships and *Graduate Schemes)
1	■
2	■
3	■
4	■
5	■
6	■
7	■
8	■

## **Part 4 to Schedule 13.3 - Environment**

### **1 ENVIRONMENTAL MANAGEMENT AND ACCREDITATION**

- 1.1 InfraCo shall, no later than 16 February 2022, attain and, at all times thereafter, maintain certification in relation to the Infrastructure Manager Services pursuant to Green Dragon or equivalent standards.
- 1.2 Not used.

### **2 ENVIRONMENT - GENERAL OBLIGATIONS**

- 2.1 In delivering InfraCo Services, InfraCo shall assist the Authority in meeting its obligations under the following:
- (a) the Environment (Wales) Act 2016;
  - (b) the “Towards Zero Waste Strategy”;
  - (c) the Construction Demolition Sector Plan; and
  - (d) the recommendations of the Green Growth Wales Paper.

### **3 NATURAL ENVIRONMENT AND BIODIVERSITY**

- 3.1 In delivering InfraCo Services, InfraCo shall use its best endeavours not to do anything that would have an adverse effect on the integrity of any Natura 2000 site.
- 3.2 In delivering InfraCo Services, InfraCo shall have due regard to conserving and enhancing biodiversity and in particular, have due regard to:
- (a) the United Nations Environmental Programme Convention on Biological Diversity of 1992;
  - (b) any list of living organisms and types of habitat published by the National Assembly for Wales under section 42 of the Natural Environment and Rural Communities Act 2006; and
  - (c) and conserving biodiversity includes, in relation to a living organism or type of habitat, restoring or enhancing a population or habitat.
- 3.3 In delivering InfraCo Services, InfraCo shall take all reasonable precautions to reduce or prevent pollution of air, soils and water, and meet the costs of fully rectifying any pollution caused by InfraCo Services in accordance with the Polluter Pays Principle.
- 3.4 InfraCo shall prepare and maintain an environmental management plan to comply with its requirements pursuant to this Infrastructure Agreement and its network licence.

## **4 WASTE MANAGEMENT AND RECYCLING**

4.1 In delivering InfraCo Services, InfraCo shall, and shall use reasonable endeavours to procure that its subcontractors shall, use reasonable endeavours to minimise the impact of waste through implementing a plan that deals with waste in the following descending order of priority:

- (a) prevention of waste;
- (b) minimisation of waste;
- (c) re-use of waste;
- (d) recycling of waste; and
- (e) disposal of waste,

being the “**Waste Management Plan**”

4.2 Not used.

4.3 In delivering InfraCo Services, InfraCo shall implement measures across InfraCo Services which seek to minimise water usage. By the end of the second (2nd) Infrastructure Manager Year, InfraCo shall install automatic meter readings (AMR) for all water meters, where practicable. InfraCo shall determine a baseline of water consumption by the end of the third (3rd) Infrastructure Manager Year, such baseline to be agreed with the Authority.

4.4 In delivering InfraCo Services, InfraCo shall:

- (a) use all reasonable endeavours to use recycled aggregates and recycled paint; and
- (b) ensure that by the second Infrastructure Manager Year and for each Infrastructure Manager Year thereafter a minimum of fifty percent (50%) of all paper used in the delivery of InfraCo Services shall be recycled paper.

## **5 CARBON REDUCTION**

5.1 InfraCo shall:

- (a) adopt a low carbon impact strategy to help minimise the greenhouse gas emissions arising from provision of InfraCo Services in accordance with the principles and goals set out in the Welsh Government publication ‘Climate Change Strategy for Wales’;
- (b) comply with such targets as set out in Part 2 Appendix 2 of this Schedule;

- (c) calculate on 1 April 2021 and in each Infrastructure Manager Year thereafter the estimated carbon emissions that will be produced in carrying out InfraCo Services and, as soon as reasonably practicable after such calculation, provide to the Authority each annual estimate and a breakdown of how the same was calculated;
- (d) implement a low carbon impact strategy in relation to traffic and traffic miles to help monitor and minimise the movements to and from sites for the transporting of the workforce and materials;
- (e) where reasonably practicable, deliver and operate the Infrastructure Works and Infrastructure Services with taking into account the Authority's objective of zero carbonisation; and
- (f) implement measures to minimise energy usage in relation to InfraCo Services.

## **6 ACTIVE TRAVEL**

- 6.1 In carrying out InfraCo Services, and in addition to other requirements concerning InfraCo Services InfraCo shall have due regard to the desirability of acting in a manner which facilitates end to end journeys that involve travel by all transport modes (including cycles).
- 6.2 InfraCo shall have regard to and provide support to the Authority in undertaking responsibilities under the Active Travel (Wales) Act including to support an increase in walking and cycling. InfraCo shall attend meetings and participate in the Authority's Active Travel Board and the Authority's Integration Alliance Board ("**IAB**").
- 6.3 InfraCo shall (where relevant) use reasonable endeavours in co-operation with Local Authorities and others as relevant to:
  - (a) enable safe walking access to stations from neighbouring communities; and
  - (b) enable safe cycle access to stations.

## **7 OBLIGATION TO PROCURE ENERGY FROM RENEWABLE SOURCES**

- 7.1 Where the procurement of electricity is within InfraCo's control and electricity from renewable sources is available for procurement, InfraCo shall procure, and shall ensure that its agents or subcontractors procure, the percentage of electricity that is used in the performance of InfraCo Services is procured from Renewable Sources as defined by s.32Z2(2) of the Electricity Act 1989 for each Infrastructure Manager Year shall be as set out in the table below. Such percentages shall include any microgeneration of electricity from renewable sources undertaken by InfraCo at Stations or other premises and which the Authority wishes to see increased as set out in the Green Growth Wales Paper.

<b>Infrastructure Manager Year</b>	<b>Percentage of electricity procured from Renewable Sources</b>
1	0
2	100
3	100
4	100
5	100
6	100
7	100
8	100

## **8 SUSTAINABLE CONSTRUCTION**

- 8.1 The Parties shall agree up to 3 sub-projects per year that relate to CVL Transformation which shall achieve certification under the Construction Excellence Wales Exemplar Scheme.

## **9 REPORTING**

- 9.1 InfraCo shall record the sustainability benefits it achieves in providing InfraCo Services and shall provide a report to the Authority on delivery of such benefits on an annual basis with the first such report being provided on the anniversary of the CVL Asset Transfer Date. The report shall cover as a minimum the matters included within Appendix 1 to Part 2 of this Schedule 13.3 and shall record progress to achievement of the targets as set out in Appendix 2 to Part 2 of this Schedule 13.3.

**Appendix 1 to Part 4 of Schedule 13.3 - Sustainability and Ethical Procurement reporting**

These reports shall be made following the Welsh Government's Community Benefits Measurement tool and must relate specifically to the relevant Infrastructure Manager Year or Reporting Period.

**1 LOCAL SUPPLIERS, SMALL AND MEDIUM SIZE ENTERPRISES (SMES) AND THIRD SECTOR ENTERPRISES (TSES)**

<b>Description</b>	<b>Unit of Measure</b>	<b>InfraCo to Report</b>	<b>Frequency of Reporting</b>
The amount of the contract that relates to goods, services, and overheads	£	Total £ contract value for the Reporting Period	Annual
The amount spent with businesses based in Wales and the borders providing goods, services, or overheads	£	Total £ amount for the Reporting Period	Annual
The amount spent with small and medium-size enterprises (SMEs) based in Wales and the borders	£	Total £ amount spent for the Reporting Period	Annual
The amount spent with Third Sector Enterprises (TSEs) based in Wales and the borders during the period.	£	Total £ amount for the Reporting Period	Annual
The percentage (%) of subcontractors paid within 30 days during the period to align with the Code of Practice – Ethical Employment in Supply Chains.	%	% paid within 30 days for the Reporting Period	Annual



## 2 SKILLS, DISADVANTAGED GROUPS AND TRAINING

### Skills

Description	Unit of Measure	InfraCo to Report	Frequency of Reporting
The amount of the contract that relates to staff and labour	£	Total £ value for the Reporting Period	Annual
The amount paid to people living in Wales and the borders who are/were employed as a result of this contract	£	Total £ paid for the Reporting Period	Annual
Has this contract allowed the contractor or subcontractors to retain staff who would have been made redundant without the work provided by this contract?	Yes/No	Yes/No for the Reporting Period	Annual
Staff, living in Wales and the borders retained as a result of this contract.	Number	Number of people retained for the Reporting Period	Annual
People living in Wales and the borders, who were previously unemployed but are now employed by the contractor and/or subcontractors during	Number	Number of previously unemployed people employed for the Reporting Period	Annual

the period as a result of this contract			
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#### Disadvantaged groups – specific information required per individual

Was this individual <u>UNEMPLOYED</u> for up to 6 months immediately prior to being taken on?
Would this individual have been considered a <u>DISADVANTAGED</u> worker prior to being taken on for this contract? i.e. unemployed for 6 months or more but less than 24 months or falls into one of the categories in the definition of disadvantaged workers
Would this individual have been considered a <u>SEVERELY DISADVANTAGED</u> worker prior to being taken on for this contract? i.e. unemployed for 24 months or more
Is this individual considered to be a <u>DISABLED</u> worker?
Was this individual <u>recruited through the LIFT programme</u> ?
Will the contractor and/or subcontractors continue to employ this individual after the current contract?

#### Training

Description	Unit of Measure	InfraCo to Report	Frequency of Reporting
Apprenticeships started by people living in Wales and the borders as part of this contract	Number	Number of apprenticeships started for the Reporting Period	Annual
Apprenticeship weeks completed by people living in Wales and the borders as part of this contract	Number	Number of apprenticeship weeks completed for the Reporting Period	Annual
Traineeships by people living in Wales and the borders were started and completed as part of this contract	Number	Number of traineeships started and completed for the Reporting Period	Annual

Work experience / internship opportunities for people living in Wales and the borders were started and completed	Number	Number of work experience / internship opportunities started and completed for the Reporting Period	Annual
Work experience / internship weeks in total completed as part of this contract	Number	Total number of work experience / internship weeks started and completed for the Reporting Period	Annual
Graduate placements for people living in Wales and the borders started and completed as part of this contract	Number	Number of graduate placements started and completed for the Reporting Period	Annual
Graduate placement weeks in total completed as part of this contract	Number	Total number of graduate placements started and completed for the Reporting Period	Annual
Work trial weeks in total completed as part of this contract	Number	Number of work trial weeks for the Reporting Period	Annual
Voluntary work opportunities completed as part of this contract	Number	Number of voluntary work opportunities for the Reporting Period	Annual
Voluntary work weeks completed as part of this contract	Number	Number of voluntary work weeks completed for the Reporting Period	Annual
Accredited training opportunities of any level completed as part of this contract	Number	Number of accredited training opportunities completed for the Reporting Period	Annual
NB do not include			

Apprenticeship training here,			
Accredited training weeks of any level completed as part of this contract	Number	Number of accredited training weeks completed for the Reporting Period	Annual
Non-accredited training opportunities completed as part of this contract	Number	Number of non-accredited training opportunities completed for the Reporting Period	Annual
Non-accredited training weeks provided as part of this contract	Number	Number of non-accredited training weeks provided for the Reporting Period	Annual

### 3 Environment

As soon as reasonably practicable after the date of the termination of the ODP Grant Agreement, the Parties shall develop an efficient way of capturing and recording the information set out below, utilising existing TfW models where appropriate.

Description	Unit of Measure	InfraCo to Report	Frequency of Reporting
Non-Traction fuel / energy	kWh	metered	4-week period
Non-Traction fuel / energy	kWh	unmetered	4-week period
Non-Traction fuel / energy Gas-oil	Litre		4-week period
Carbon (CO <sub>2</sub> e) Scope 1 emissions (direct emissions)	Tonnes	Tonnes	Annual
Carbon (CO <sub>2</sub> e) Scope 2 emissions (indirect emissions)	Tonnes	Tonnes	Annual

Carbon (CO2e) Scope 3 emissions (other indirect emissions)	Tonnes	Tonnes	Annual
Embodied (CO2e) carbon in new projects	Tonnes	Total tonnes per project	End of project
Energy and fuel from renewable sources	Kilowatt hours (kWh)	% of total fuel	Annual
Energy and fuel from Welsh renewable sources	Kilowatt hours (kWh)	% of total fuel	Annual
Waste generated	Tonnes	Tonnes	Annual
Tonnes of waste diverted from landfill for re-use or recycling or waste to energy.	Tonnes	Tonnes	Annual
Tonnes of hazardous waste disposed of.	Tonnes	Tonnes	Annual
Tonnes of waste going to landfill.	Tonnes	Tonnes	Annual
Mains water consumption	Cubic metres	Total cubic metres	Annual
Water recycling initiatives	n/a	Narrative	Annual
Noise Pollution	Total number of noise complaints received	Directly or forwarded from other sources	Annual
Enforcement/information notices	Number received	Number received	Immediately upon receipt
Environmental fines or prosecutions	Number received	Number received	Immediately upon receipt
Environmental incidents	Reported through EMS	Reported through EMS	Annual
Environmental training records	% personnel briefed/trained	% personnel briefed/trained	Annual

#### 4 Cultural

Description	Unit of Measure	InfraCo to Report	Frequency of Reporting
Welsh speaking staff	Number	Number of staff for the Reporting Period	Annual

#### 5 ETHICAL

Description	Unit of Measure	InfraCo to Report	Frequency of Reporting
Directly employed staff being paid no less than the Living Wage	%	% of staff for the Reporting Period	Annual
Staff employed in the supply chain being paid no less than the Living Wage	%	% of staff for the Reporting Period	Annual
Supply chain partners who have signed up to the Welsh Government's Code of Practice for Ethical Employment in Supply Chains	Number	Number of partners for the Reporting Period	Annual

## **Appendix 2 to Part 4 of Schedule 13.3 - Environment Targets**

### **Environment Targets**

The Parties agree to the following targets in the table below.

<b>Description</b>	<b>Target</b>	<b>InfraCo to Report</b>	<b>Granularity</b>	<b>Notes</b>
Carbon (CO <sub>2</sub> e) Scope 2 emissions (indirect emissions) – electricity procured by InfraCo	0 carbon emissions by the end of Infrastructure Manager Year 5 sustained to the end of the Term of the Infrastructure Agreement	Total tonnes	Annual	Such target to exclude the procurement of any electricity outside of InfraCo's reasonable control (including traction electricity).
Carbon (CO <sub>2</sub> e) Scope 3 emissions - Embodied carbon in any Associated Project (as defined in Appendix 1 of Schedule 3B to the Infrastructure Agreement)	Target to be fixed no later than the end of Infrastructure Manager Year 2. Aim is zero net carbon.	Total tonnes per individual project	End of individual project	Aim is zero net carbon.
Energy and fuel from renewable sources from Wales	Minimum fifty percent (50%)	Kilowatt hours (kWh), therms, litres % of total electricity % of other fuels and energy sources	Annual	Such target subject to sufficiency of supply and market availability.
Waste diverted from landfill for re-use, recycling or other recovery applications including waste to heat / energy	Minimum ninety five percent (95%) by the end of Infrastructure Manager year 2 sustained to the end of the Term of the Infrastructure Agreement.	% of total waste	Annual	1) The parties will agree how such Target will be measured no later than the end of Infrastructure Manager Year 2.  2) Such target excludes dangerous or hazardous waste and invasive species.

Waste to landfill	Maximum five percent (5%) by the end of year Infrastructure Manager Year 2 sustained to the end of the Term of the Infrastructure Agreement	% of total waste	Annual	Such target excludes dangerous or hazardous waste and invasive species.
Enforcement/information notices	Zero	Number received	Annual	
Environmental fines or prosecutions	Zero	Number received	Annual	
Notifiable environmental incidents	Zero	Reported through EMS	Annual	
Environmental training records	100% personnel briefed/trained	% personnel briefed/trained	Annual	



## **Part 5 of Schedule 13.3 - Culture**

### **1 CULTURE – GENERAL REQUIREMENTS**

- 1.1 The Authority wishes to see the language and culture of Wales promoted throughout InfraCo Services.
- 1.2 InfraCo shall support the use of the Welsh language in InfraCo Services and shall have regard to:
- (a) the official status which the Welsh language has in Wales;
  - (b) the duties to use Welsh which are (or may be) imposed by law, and the rights which arise from the enforceability of those duties;
  - (c) the principle that, in Wales, the Welsh language should be treated no less favourably than the English language; and
  - (d) the principle that persons in Wales should be able to live their lives through the medium of the Welsh language if they choose to do so.

### **2 WELSH LANGUAGE – WRITTEN COMMUNICATIONS**

- 2.1 All written communications by InfraCo to the public and passengers within Wales other than those covered by the provisions of paragraph 2.2 shall be provided in both English and Welsh including amongst others and without exclusion:
- (a) documents made available to the public;
  - (b) public facing signage; and
  - (c) other relevant written communications from InfraCo.
- 2.2 Communications to individual members of the public or passengers shall be provided in English and Welsh except where the individual has selected either Welsh or English as their preferred language of communication. Where such preference has been received and recorded by InfraCo, communications may be provided in the selected language of English or Welsh. Where a communication has been received in English or Welsh InfraCo may reply in that language only, subject to the response including an invitation for the individual members of the public or passengers to identify a language preference for future communications.

### **3 NOT USED**

**4 NOT USED**

**5 NOT USED.**

**6 WELSH LANGUAGE TRAINING**

6.1 InfraCo shall offer Welsh language training to InfraCo Services Employees.

6.2 Not used.

**7 NOT USED**

## **Schedule 14 - Preservation of Assets**

### **Schedule 1**

#### **Preservation of Assets**

Schedule 14.1:	Maintenance of Services
Schedule 14.2:	Maintenance of Operating Assets
Schedule 14.3:	Key Contracts
	Appendix 1: List of Key Contracts
Schedule 14.4:	Not used
	Appendix 1: not used
Schedule 14.5:	Not used

## **Schedule 14.1 - Maintenance of InfraCo Services**

### **1 Maintenance as a going concern**

Notwithstanding any other provision of this Infrastructure Agreement, nothing in this Schedule 14 shall require InfraCo to transfer any of the systems, assets or equipment referred to in Appendix 1 to this Schedule 14.1 to a Successor Operator or otherwise and the Authority and InfraCo acknowledge and agree that InfraCo shall not be in breach of this Infrastructure Agreement to the extent it does not so transfer such systems, assets or equipment, provided always that it shall use all reasonable endeavours to transfer any data (including data architecture), information and knowledge from such systems to facilitate the smooth transition to a Successor Operator to the extent it relates to the InfraCo Services.

1.1 InfraCo shall maintain and manage the business of providing the InfraCo Services so that, to the greatest extent possible and practicable:

- (a) InfraCo is able to perform its obligations under this Infrastructure Agreement; and
- (b) a Successor Operator would be able to take over the business of providing the InfraCo Services immediately at any time.

1.2 InfraCo's obligation under paragraph 1.1 shall include an obligation to ensure that any material computer and information technology systems necessary for the provision of the InfraCo Services shared in whole or in part with Affiliates or third parties can be operated by a Successor Operator as a stand alone system without continued reliance on such Affiliates or other third parties immediately from the date of termination of this Infrastructure Agreement without any reduction in functionality or any increase in maintenance or support costs to the Successor Operator (this obligation being without prejudice to any requirement for InfraCo to obtain consent to such arrangements relating to sharing computer and information technology systems from the Authority).

1.3 Subject to the Authority's compliance with the Infrastructure Management Staffing Agreement, InfraCo shall use all reasonable endeavours to ensure that such Successor Operator would have immediate access to all InfraCo Services Employees and Operating Assets for such purpose.

1.4 Except where agreed otherwise by the Authority, InfraCo shall maintain and manage the business of providing the InfraCo Services on the basis that such business will be transferred, in the manner contemplated under this Infrastructure Agreement, as a going concern at the end of the Infrastructure Agreement Term to, and continued immediately thereafter by, a Successor Operator.

- 1.5 Subject to the Authority's compliance with the Infrastructure Management Staffing Agreement, InfraCo shall use all reasonable endeavours to ensure that an appropriate number of employees (having sufficient skills, qualifications and experience) will transfer by operation of Law to any Successor Operator following the expiry of the Infrastructure Agreement Term and in so doing shall plan for the recruitment and training of InfraCo Services Employees to continue up until the end of the Infrastructure Agreement Term.
- 1.6 The Authority and InfraCo acknowledge and agree that the rights and liabilities of the Parties in respect of managing and maintaining the CVL Assets following the CVL Asset Transfer Date shall be as set out in Schedule 3A (Infrastructure Manager Services) and the CVL Asset Lease.

**2 NOT USED**

**Appendix 1 to Schedule 14.1 - List of systems, Assets and Equipment not transferring**

Area	Provider	System	Function
General admin	Microsoft 365	Office	Email, calendar, contacts
		Word	Document production
		Excel	Spreadsheets
		Power point	Presentations
		Power BI	Management information
		Sharepoint	Comms
	Datascope	Datascope	Fatigue management Competence management
Design Compliance & Assurance	Bentley E365	Complypro*	Requirements management
		Project Wise	Data management
		Microstation (plus add ons)	CAD
HR	SAP	Employee Service (ESS) Self	Personnel management Personal information Payroll Benefits management Qualifications management Performance management Working time, holidays, absence Expenses Training
		Manager self service	Employee management Team management Organisation control Absence management Training HR reporting Performance management Team change management, recruitment, leavers, benefit management
		Adobe Forms	Timesheets
Finance	SAP	Production	General ledger Purchase ledger Balance sheet reporting Cost reporting Timesheet reporting Payroll Fleet management
		BPC	Actual reporting Budgeting Forecasting

Area	Provider	System	Function
			Cash flow
		BI	Data mining
Commercial	ARES	Prism**	Forecasting Earned value management Budget control
	Viral apps	Risk Assurance Platform (RAP)	Risk management
Planning	Primavera	P6	Programme production
Any other system, asset or equipment agreed by the Authority and InfraCo			

Billed directly to project by Amey

\*\* Billed directly to InfraCo and then to project

All in forecast - remainder of systems covered by affiliate rates.

#### Assets

Mobile phones Computers and peripherals Company cars Off area office equipment (head/design offices etc) IT hosting
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## **Schedule 14.2 - Maintenance of Operating Assets**

### **1 Not Used**

### **2 Strategic Spares**

#### **2.1** InfraCo shall:

- (a) maintain a stock of spares to the value of no less than [REDACTED] (exclusive of VAT) (the "**Strategic Spares**") for the Infrastructure Agreement Term;
- (b) provide information to the Authority, no less than once annually following a request from the Authority, in respect of the maintained stock of Strategic Spares; and
- (c) transfer a stock of spares of equivalent value to the Strategic Spares to any Successor Operator at nil cost.

### **3 Brand Licence**

3.1 The Parties acknowledge and agree that the Authority shall be responsible for any costs, losses or damages incurred by InfraCo in connection with any ATW Trade Marks or branding on the CVL Assets. InfraCo shall use reasonable endeavours to provide notification to the Authority in respect of any ATW Trade Marks or branding that InfraCo is aware of and/or identifies during the course of performing the services under this Infrastructure Agreement.

3.2 The Authority shall provide InfraCo with a licence on or before the date the ODP Grant Agreement terminates on substantially the same terms as the TfW brand licence entered into between the Authority and the ODP dated 12 October 2018 (the "**TfW Brand Licence**") in respect of the Trade Marks (as such term is defined in the TfW Brand Licence).

3.3 The Authority shall provide InfraCo with a licence on or before the date the ODP Grant Agreement terminates on substantially the same terms as the SoS brand sub-licence entered into between the Authority and the ODP dated 12 October 2018 (the "**SoS Brand Sub-Licence**") in respect of the Trade Marks (as such term is defined in the SoS Brand Sub-Licence).

3.4 The Parties acknowledge and agree that InfraCo shall use:

- (a) use its own brand in relation to the performance of Infrastructure Manager Services; and
- (b) use the TfW brand in relation to performance of Infrastructure Services; and
- (c) seek approval for all proposed use of TfW's brand.



## **4 Brand Guidelines**

4.1 The Parties shall acting reasonably and in good faith work together to agree by no later than 1 June 2021 guidelines setting out:

- (a) the appropriate usage of its own brand and the TfW brand by InfraCo, taking into account the regulatory and licence requirements of InfraCo;
- (b) the need to promote the CVL transformation and Renewals as part of the Authority's investment in the Core Valley Lines and the creation of Metro;
- (c) InfraCo's obligation to comply with the Authority's bilingual Brand Guidelines (including stations toolkit, EU funding guidelines and contractors' guidelines) (as updated and notified by the Authority to InfraCo from time to time, including any guidelines requiring usage of the Welsh Language and requirements linked to ERDF funding);
- (d) that InfraCo may request the Authority to assist and progress the development of the TfW brand to provide for the branding requirements of InfraCo; and
- (e) InfraCo's participation in the Authority's brand guardianship and creative development group.

## **4.2 Branding**

Subject to any applicable obligations or restrictions on InfraCo, InfraCo may apply registered or unregistered trade marks (including company names, livery and other distinctive get-up) to any assets owned or used by it in the operation and provision of the InfraCo Services.

- (a) Subject to paragraphs 4.2(c) and (g), InfraCo may:
  - (i) in respect of unregistered Marks, provide or procure the provision of an irrevocable undertaking to any relevant Successor Operator to the effect that neither it nor the owner of the Marks will enforce such rights as it may have or may in the future have in respect of such Marks against such Successor Operator and its successors; and
  - (ii) in respect of registered Marks, grant or procure the grant of an irrevocable licence to use such Marks to such Successor Operator and its successors.
- (b) Any such licence or undertaking under paragraph 4.2(c) shall be in such form as the Authority shall reasonably require except that the terms of any such licence and, to the extent appropriate, any such undertaking shall accord with the provisions of paragraph 8.3 of Schedule 15.4 (Provisions Applying on and after Termination).

(c) Subject to paragraph 4.2(g), to the extent that:

- (i) InfraCo does not provide a relevant undertaking or licence in accordance with paragraph 4.2(a);
- (ii) the Authority considers the relevant Marks to be so distinctive or otherwise such that a Successor Operator could not reasonably be asked to use the relevant assets to which the Marks are applied; or
- (iii) InfraCo has not otherwise removed or covered such Marks in such a way as may be reasonably acceptable to the Authority prior to the expiry of the Infrastructure Agreement Term,

then InfraCo shall pay to the relevant Successor Operator such amount as may be agreed between InfraCo and such Successor Operator, as being the reasonable cost (including any Value Added Tax for which credit is not available under sections 25 and 26 of the Value Added Tax Act 1994) of covering such Marks or otherwise removing all indications of or reference to the Marks in a manner reasonably acceptable to the Authority. Such amount shall not in any event exceed the cost to the Successor Operator of replacing such Marks with its own. If InfraCo and the relevant Successor Operator fail to agree such cost within twenty eight (28) days of the expiry of the Infrastructure Agreement Term, InfraCo shall submit such dispute for resolution in accordance with such dispute resolution procedures as the Authority may require.

(d) The amount to be paid to a Successor Operator under paragraph 4.2(c) may include the reasonable cost of:

- (i) Not used;
- (ii) removing or covering interior indications of the Marks;
- (iii) replacing or covering all station or other signs including bill boards; and
- (iv) otherwise ensuring that such removal, covering or replacement is effected with all reasonable care and in such manner that the relevant assets may reasonably continue to be used by a Successor Operator in the provision of the InfraCo Services.

(e) InfraCo shall, in addition to making a payment under paragraph 4.2(c) grant or procure the grant of a licence or undertaking complying with paragraphs 4.2(a) and (b) except that such licence shall only be for such period as may be agreed between InfraCo and the Successor Operator as being reasonably required by the Successor Operator to remove the Marks from all relevant assets without causing excessive disruption to the operation of services similar to the InfraCo Services provided by such Successor

Operator. If such period cannot be agreed, InfraCo shall submit such dispute for resolution in accordance with such dispute resolution procedures as the Authority may require.

- (f) The Authority shall determine at or around the end of the Infrastructure Agreement Term, and after consultation with InfraCo, the maximum liability of InfraCo under paragraph 4.2(c) and the maximum length of licence or undertaking under paragraph 4.2(e).
- (g) The provisions of paragraphs 4.2(a) to 4.2(f) shall not apply to the extent that the relevant asset is not to be used by a Successor Operator in the provision of services similar to the InfraCo Services. The Authority shall notify InfraCo as soon as the Authority becomes aware of whether or not any such asset is to be so used.

## **5 Security Interests over Operating Assets**

- (a) InfraCo may create a Security Interest over any Operating Asset provided always that:
  - (i) if the relevant Operating Asset is assigned, novated or otherwise transferred to a Successor Operator pursuant to and in accordance with this Infrastructure Agreement, it shall be fully and automatically released from the relevant Security Interest immediately before such assignment, novation or transfer; and
  - (ii) InfraCo shall promptly inform the Authority of any Security Interest arising at any time over any of its property or rights and shall provide the Authority with such information in relation thereto as the Authority may reasonably require.

### **Schedule 14.3 - Key Contracts**

#### **1 Key Contracts**

1.1 This Schedule sets out the rights of the Authority to:

- (a) designate certain contracts or categories of contracts as Key Contracts where the Authority considers that such contracts or categories of contract are necessary for the purposes of securing continuity of the Infrastructure Manager Services by a Successor Operator on expiry of the Infrastructure Agreement Term; and
- (b) in accordance with paragraph 5, require InfraCo to procure that a counterparty to a Key Contract enters into a Direct Agreement with the Authority.

This Schedule 14.3 shall apply to all contracts designated as Key Contracts from time to time.

1.2

- (a) The Key Contracts as at the date of the ODP Grant Agreement are set out in Appendix 1 (List of Key Contracts) to this Schedule 14.3.
- (b) InfraCo shall enter into any and all Key Contracts which are necessary for the Infrastructure Agreement to continue in accordance with clause 5 (Duration of the Infrastructure Agreement).
- (c) Where at any time after the date of this Infrastructure Agreement InfraCo proposes to enter into any agreement, contract, licence or other arrangement which falls within one of the categories listed in Appendix 1 (List of Key Contracts) to this Schedule 14.3 InfraCo shall:
  - (i) inform the Authority from time to time of any such agreement, contract, licence or other arrangement which it may be intending to enter into; and
  - (ii) comply with the provisions of paragraph 5.1 in respect of any such agreement, contract, licence or other arrangement.

1.3 Without prejudice to the provisions of paragraphs 2, 3 and 4 of this Schedule 14.3, Appendix 1 (List of Key Contracts) to this Schedule 14.3 shall be amended as considered necessary from time to time to take account of any:

- (a) designation by the Authority of any actual or prospective agreement, contract, licence or other arrangement or any category of agreement, contract, licence or other arrangement,

to which or under which InfraCo is (or may become) a party or a beneficiary pursuant to paragraph 2 of this Schedule 14.3; or

- (b) de-designation by the Authority of any Key Contract pursuant to paragraph 3 of this Schedule 14.3; or
- (c) re-designation by the Authority pursuant to paragraph 4 of this Schedule 14.3.

## **2 Designation of Key Contracts**

2.1 Where the Authority considers that it is reasonably necessary for securing the continued provision of the Infrastructure Manager Services or the provision of services similar to the Infrastructure Manager Services by a Successor Operator in accordance with this Infrastructure Agreement, the Authority may make a designation pursuant to paragraph 2.2.

2.2 The Authority may at any time, by serving notice on InfraCo, designate as a Key Contract:

- (a) any actual or prospective agreement, contract, licence or other arrangement; and/or
- (b) any category of agreement, contract, licence or other arrangement, to which or under which InfraCo is (or may become) a party or a beneficiary,

with effect from the date specified in such notice.

2.3 Key Contracts may include any agreement, contract, licence or other arrangement whether in written, oral or other form, whether formal or informal and whether with an Affiliate of InfraCo or any other person and may include any arrangement for the storage of assets (including electronic systems or Computer Systems) or accommodation of employees.

## **3 De-designation of Key Contracts**

3.1 The Authority may at any time, by serving a notice on InfraCo, de-designate any Key Contract from continuing to be a Key Contract with effect from the date specified in such notice.

## **4 Re-designation of Key Contracts**

4.1 The Authority may at any time, by serving notice on InfraCo, re-designate as a Key Contract anything which has ceased to be designated as a Key Contract in accordance with paragraph 3 with effect from the date specified in such notice.

## **5 Direct Agreements**

5.1 Unless the Authority otherwise agrees, or unless directed to do so by the ORR, InfraCo shall not enter into any prospective Key Contract unless the counterparty to that prospective Key Contract has, prior to the Start Date, entered into a Direct Agreement with the Authority in respect of that prospective Key Contract, providing on a basis acceptable to the Authority for the continued provision of the Infrastructure Manager Services, in the event of:

- (i) breach, termination or expiry of such Key Contract;
- (ii) termination or expiry of the Infrastructure Agreement; or
- (iii) the making of a railway administration order in respect of InfraCo,

5.2 Where the Authority designates or re-designates as a Key Contract:

- (a) any agreement, contract, licence or other arrangement to which the InfraCo is already a party; or
- (b) any category of agreement, contract, licence or other arrangement where InfraCo is already a party to a contract, licence or other arrangement which, by virtue of the Authority's designation or re-designation, is classified in such category,

5.3 InfraCo shall use all reasonable endeavours to assist the Authority in entering into a Direct Agreement as envisaged by paragraph 5.1.

5.4 Nothing in this Infrastructure Agreement shall require InfraCo to procure a direct agreement from Network Rail and the Parties acknowledge and agree that the Authority shall engage and manage its relationship with Network Rail directly.

## **6 Emergencies**

6.1 Where any emergency may arise in connection with the provision and operation of the Infrastructure Manager Services, InfraCo:

- (a) may enter into on a short-term basis such contracts, licences or other arrangements as it considers necessary or appropriate to deal with the emergency;
- (b) need not procure that the relevant counterparty enters into a Direct Agreement in respect of such contracts or use all reasonable endeavours to assist the Authority in entering into the same;
- (c) shall promptly inform the Authority of any such emergency and contracts, licences or other arrangements which it proposes to enter into; and

- (d) shall take such action in relation to such emergency, contracts, licences or other arrangements as the Authority may request.

## **7 No Amendment**

- 7.1 InfraCo shall not without the prior consent of the Authority (which shall not be unreasonably withheld) vary, or purport to vary, the terms or conditions of any Key Contract at any time, unless directed to do so by the ORR.

## **8 Replacement of Key Contracts**

- 8.1 InfraCo shall, prior to the scheduled expiry date of any Key Contract (or, if earlier, such other date on which it is reasonably likely that such Key Contract will terminate), take all reasonable steps to enter into an appropriate replacement contract (whether with the counterparty to the existing Key Contract or not) and shall comply with the reasonable instructions of the Authority in relation to such replacement contract.

## **9 Termination of Key Contracts**

- 9.1 InfraCo shall, to the extent so requested by the Authority, exercise its right to terminate any Key Contract on the Expiry Date.

## **10 NOT USED**

### **Appendix 1 to Schedule 14.3 - List of Key Contracts**

Subject to any de-designations by the Authority under paragraph 3 of Schedule 14.3 (Key Contracts), the following items have as at the date of the ODP Grant Agreement been agreed between the Parties to be Key Contracts:

- 1 NOT USED;
- 2 any Property Lease and all side agreements relating to such relevant Property Lease;
- 3 NOT USED;
- 4 NOT USED;
- 5 NOT USED;
- 6 NOT USED;
- 7 NOT USED;
- 8 NOT USED;
- 9 any contract or arrangement for the supply of spare parts or Spares;
- 10 any contract or arrangement which the Authority considers is reasonably necessary for securing the continued provision of the Infrastructure Manager Services or the provision of services similar to the Infrastructure Manager Services by a Successor Operator in accordance with this Infrastructure Agreement:
  - (a) in relation to the maintenance and management of track and other CVL infrastructure for which InfraCo is responsible under this Infrastructure Agreement, including any asset knowledge managements system; and
  - (b) in respect of any such contract or arrangement entered into on and from the date of termination of the ODP Grant Agreement in relation to the operation, maintenance, management, asset management of any CVL Assets and other CVL infrastructure (including the ICC) for which InfraCo is responsible under this Infrastructure Agreement, including any asset knowledge managements system;
- 11 any licences of Marks to InfraCo;
- 12 NOT USED
- 13 NOT USED;



- 14** any contract or arrangement for the provision or lending of Computer Systems that the Authority reasonably considers is essential for the delivery of the InfraCo Services;
- 15** any MCS (*Mobile Communication Services*) contract; and
- 16** NOT USED;
- 17** NOT USED; and
- 18** NOT USED;

**Schedule 14.4 – Not Used**

**Schedule 14.5 – Not Used**

## **Schedule 15 - Obligations Associated with Termination**

### **Schedule 15.1 – Reletting Provisions**

#### **1 RELETTING OF INFRACO SERVICES**

- 1.1 InfraCo acknowledges that the Authority may wish, at or before the expiry of the Infrastructure Agreement Term either to invite persons to tender for the right to provide all or some of InfraCo Services under a Successor Agreement or alternatively to enter into a Successor Agreement in respect of all or some of InfraCo Services without having gone through a tendering process.
- 1.2 InfraCo further acknowledges that the Authority has in certain circumstances a duty under Section 30 of the Act to secure the continued provision of certain passenger rail services. InfraCo accordingly accepts and agrees to the restrictions and obligations imposed on it under Schedule 15 (Obligations Associated with Termination).

#### **2 PREPARATION FOR RELETTING**

- 2.1 InfraCo shall, if so requested by the Authority:
- (a) provide the Authority and its representatives and advisers with access to officers, InfraCo Services Employees and all books, records and other materials kept by or on behalf of InfraCo in connection with the InfraCo Services (including electronic or magnetic records) for the purpose of assisting such representatives and advisers:
    - (i) to prepare reports or other documents in connection with any invitation to potential Successor Operators to tender for the right and obligation to operate all or any of InfraCo Services;
    - (ii) to prepare invitations to other potential Successor Operators to tender for the right and obligation to operate any other additional railway asset; or
    - (iii) to enter into a Successor Agreement or other agreement relating to the services equivalent to InfraCo Services, without undergoing a tendering process,

provided that the exercise of such access rights by the Authority and its representatives and advisers shall not unduly interfere with the continuing provision and operation of the InfraCo Services by InfraCo.

2.2 Not used.

2.3 Not used.

### 3 DATA SITE INFORMATION

3.1 InfraCo shall make available to the Authority and its representatives and advisers such Data Site Information (as defined at paragraph 3.5) as they shall reasonably require in connection with the matters referred to in paragraph 2.1 by no later than three (3) months after the date of such request.

3.2 InfraCo shall prepare and present such information in such manner (including in disaggregated form) as the Authority may require, and shall provide such assistance as the Authority may require in connection with the verification of such information.

3.3 InfraCo shall provide such confirmation in relation to the accuracy of:

- (a) the contents of the documents referred to in paragraph 2.1; and
- (b) any Data Site Information uploaded to such electronic data site as the Authority may require pursuant to paragraph 3.4,

in each case, as the Authority shall require from time to time.

3.4 InfraCo shall upload such Data Site Information as the Authority may require to such electronic data site as the Authority may specify and shall make a sufficient number of appropriate staff available for that purpose. InfraCo shall ensure that such staff are trained in the use of such data site (such training to be at the expense of the Authority). For the avoidance of doubt, the Data Site Information required by the Authority under this paragraph may cover the entire Infrastructure Agreement Term or any part of it.

3.5 “**Data Site Information**” means information relating to any of the following:

- (a) InfraCo Services or InfraCo (including its audited and management accounts, asset registers and contract lists);
- (b) Not used;
- (c) Not used;
- (d) InfraCo's safety authorisation as defined in the Safety Regulations);
- (e) any other safety matter;
- (f) any pension arrangement in respect of employees of InfraCo;
- (g) the management structure of InfraCo's business (including organograms and any planned changes);
- (h) employees and contractors (including details of responsibilities, job title, remuneration, grade, qualifications and any other personnel records);

- (i) terms and conditions of employment and human resources policies;
- (j) not used;
- (k) not used;
- (l) not used;
- (m) not used;
- (n) health and safety and environmental information;
- (o) copies of contracts;
- (p) Network Rail charges and requirements;
- (q) any information technology system (hardware or software) used or owned by InfraCo or any Affiliate of InfraCo (including any software licences);
- (r) performance data;
- (s) not used;
- (t) not used;
- (u) relationships with stakeholders (including minutes of meetings with unions, Passenger Transport Executives, Local Authorities, Department for Transport and other relevant bodies as identified by the Authority from time to time);
- (v) Information relating to the provision of the Infrastructure Manager role including all associated regulatory consents;
- (w) Information concerning the CVL Assets, their design, construction, maintenance and renewal; or
- (x) any other matter which the Authority may specify from time to time,

provided that the disclosure of any such Data Site Information does not breach any relevant confidentiality obligations and in this paragraph 3.5, the term “employee” includes any person engaged by InfraCo pursuant to a contract of personal service.

### 3.6 InfraCo shall:

- (a) comply with its obligations under paragraph 2.1 and this paragraph 3 promptly and in any case in accordance with any reasonable timetable with which the Authority requires InfraCo by notice in writing to comply;

- (b) where the Authority raises with InfraCo any query in relation to any Data Site Information, make a full and substantive response to such query within five (5) Weekdays. Such response shall include any further information requested by the Authority in relation to such query; and
- (c) nominate a person to whom:
  - (i) all queries or requests for information pursuant to paragraph 3.6(b);
  - (ii) requests for access to premises pursuant to paragraph 5; and
  - (iii) requests for access to employees,shall be addressed and who shall be responsible for complying with any such queries or requests for information and such requests for access to employees and premises. InfraCo shall notify the Authority (its representatives and advisers) of the name and contact details of such person.

3.7 Not used

3.8 Subject to paragraph 3.9, the Authority shall reimburse any reasonable out-of-pocket expenses that InfraCo may incur in complying with its obligations under this paragraph 3.

3.9 Without prejudice to any other rights the Authority may have (under the Infrastructure Agreement or otherwise) in respect of any contravention by InfraCo of its obligations under this paragraph 3, if the Authority is of the reasonable opinion that InfraCo does not have sufficient resources to enable its compliance with its obligations under this paragraph 3 the Authority may:

- (a) require InfraCo (at its own cost) to employ; or
- (b) after notification to InfraCo, employ,

such suitable additional resource as may be required to ensure that InfraCo can comply with its obligations under this paragraph 3. InfraCo shall reimburse to the Authority, by way of adjustment to InfraCo Service Payments, any proper costs (including staff costs) incurred by the Authority in the employment of any such additional resource pursuant to paragraph 3.9(b).

3.10 To the extent reasonably practicable, prior to taking any of the actions referred to in paragraph 3.9, the Authority shall allow InfraCo a reasonable opportunity to make representations to the Authority concerning the exercise by the Authority of its rights under paragraph 3.9 but the Authority shall not be obliged by those representations to refrain from exercising any of the actions specified under paragraph 3.9.

#### **4 NON-FRUSTRATION OF TRANSFER TO SUCCESSOR OPERATOR**

- 4.1 InfraCo shall take no action or steps which is or are designed, directly or indirectly:
- (a) to prevent, prejudice or frustrate the transfer as a going concern of the business of providing InfraCo Services at the end of the Infrastructure Agreement Term on the date at which such InfraCo Services are transferred to a Successor Operator; or
  - (b) to avoid, frustrate or circumvent any provision of the Infrastructure Agreement (including in particular the provisions of this Schedule 15) which is included in whole or in part for the purpose of preventing any such preventive, prejudicial or frustrating action or steps.
- 4.2 Subject to the restrictions set out in paragraph 4.1 and the other provisions of the Infrastructure Agreement, InfraCo may take such action as it may require for the purposes of bidding to become, or becoming, a Successor Operator.

#### **5 INSPECTION RIGHTS AT PREMISES USED FOR THE PROVISION OF THE INFRACO SERVICES**

- 5.1 Without limiting any other rights of the Authority under the Infrastructure Agreement and subject to paragraph 5.2, InfraCo shall, if so requested by the Authority and subject to appropriate asset protection arrangements, permit the Authority (or its nominee, which for these purposes shall include potential Successor Operators including potential bidders who have expressed an interest in tendering for the right and obligation to operate any or all of InfraCo Services) to have such access to premises owned or occupied by InfraCo (which for these purposes shall include any premises used in connection with the provision of InfraCo Services by InfraCo) as the Authority may reasonably require in connection with any Tendering/Reletting Process including for the purposes of inspecting such premises (including the taking of inventories) and undertaking such surveys as may be necessary or desirable for the purposes of ascertaining the condition of any such premises.
- 5.2 The Authority shall use reasonable endeavours to ensure that any access rights required pursuant to paragraph 5.1 shall be undertaken so as not to unduly interfere with the continuing provision and operation of InfraCo Services by InfraCo.

#### **6 CONTRACTS WHICH CONTAIN INFRACO OBLIGATIONS THAT EXTEND BEYOND THE INFRASTRUCTURE AGREEMENT TERM**

- 6.1 Subject to 6.2, the Authority and InfraCo acknowledge and agree that the Authority shall at the end of the Infrastructure Agreement Term novate or otherwise transfer in full any of the following contracts to which InfraCo is a party where it has obligations that extend beyond the Infrastructure Agreement Term to a Successor Operator or the Authority's nominee:



- (a) any contract that as at the date of the termination of the ODP Grant Agreement contains InfraCo obligations that extend beyond the end of the Infrastructure Agreement Term;
  - (b) any contract that the Authority consents to InfraCo that it shall contain InfraCo obligations that extend beyond the end of the Infrastructure Agreement Term (such consent not to be unreasonably withheld or delay); and
  - (c) any contract that requires approval of the ORR,
- 6.2 The Authority and InfraCo acknowledge and agree that InfraCo shall continue to be responsible for all liabilities and losses arising or resulting from any breach or non-performance of InfraCo prior to the date such contract is novated or otherwise transferred in full and the Authority shall ensure that the Successor Operator or the Authority's nominee (as applicable) shall be responsible for all liabilities and losses incurred on and from the date such contract is novated or otherwise transferred in full.

**Schedule 15.2 - Last Twelve (12) or Thirteen (13) months of the Infrastructure Agreement**  
**Term or termination of certain InfraCo Services and other conduct of business**  
**provisions**

**1 LAST TWELVE (12) OR THIRTEEN (13) MONTH PERIOD**

1.1 Where reference is made in the Infrastructure Agreement to the last twelve (12) or thirteen (13) months of the Infrastructure Agreement Term, such period shall be deemed to commence on the earliest of the following dates:

- (a) the date which is twelve (12) or thirteen (13) months, as the case may be, prior to the Expiry Date or if the actual date of expiry of the Infrastructure Agreement Term is known the date which is twelve (12) or thirteen (13) months prior to that date;
- (b) the date on which the Authority notifies InfraCo that such period of twelve (12) or thirteen (13) months shall be deemed to commence on the grounds that the Authority reasonably considers that an Event of Default may occur within the following twelve (12) months; or
- (c) the date on which the Authority notifies InfraCo that such period of twelve (12) or thirteen (13) months shall be deemed to commence on the grounds that the Authority considers it reasonably likely that the Infrastructure Agreement will be terminated by agreement between the Parties within such period;

1.2 Any such period (which may be longer or shorter than twelve (12) or thirteen (13) months, as the case may be) shall expire on the Expiry Date or, if earlier:

- (a) in the case of periods commencing under paragraph 1.1(b) or 1.1(c), the date falling twelve (12) or thirteen (13) months after the date of any notice under paragraph 1.1(b) or 1.1(c); or
- (b) such earlier date as the Authority may determine.

**2 TERMS OF EMPLOYMENT OF EXISTING EMPLOYEES**

2.1 InfraCo shall not, and shall secure that each other relevant employer (other than the Authority) shall not, without the prior consent of the Authority (which shall not be unreasonably withheld), vary or purport or promise to vary the terms or conditions of employment of any InfraCo Services Employee (in particular, InfraCo shall not promise to make any additional payment or provide any additional benefit or vary any term or condition relating to holiday, leave or hours to be worked) where such variation or addition:

- (a) takes effect in the last twelve (12) months of the Infrastructure Agreement Term, unless it is in the ordinary course of business and, when aggregated with any other variation or addition which takes effect during such period, represents an increase in the

remuneration of an InfraCo Services Employee of no more than the amount determined in accordance with the following formula:

$\frac{MAWE + JAW E + SAWE + DAWE}{4}$	
<b>Where:</b>	
<b>MAWE</b>	is the change in the Average Weekly Earnings between March in the preceding twelve (12) months and the corresponding March one (1) year before, expressed as a percentage;
<b>JAW E</b>	is the change in the Average Weekly Earnings between June in the preceding twelve (12) months and the corresponding June one (1) year before, expressed as a percentage;
<b>SAWE</b>	is the change in the Average Weekly Earnings between September in the preceding twelve (12) months and the corresponding September one (1) year before, expressed as a percentage; and
<b>DAWE</b>	is the change in the Average Weekly Earnings between December in the preceding twelve (12) months and the corresponding December one (1) year before, expressed as a percentage;

- (b) wholly or partly first takes effect after the end of the Infrastructure Agreement Term;
- (c) results in any such employment not being terminable by InfraCo or other relevant employer within six (6) months of the expiry of the Infrastructure Agreement Term;
- (d) relates to a payment or the provision of a benefit triggered by termination of employment;
- (e) relates to the provision of a benefit (excluding base salary) which any such employee will or may have a contractual right to receive after the expiry of the Infrastructure Agreement Term; or
- (f) prevents, restricts or hinders any such employee from working for a Successor Operator or from performing the duties which such employee performed for InfraCo.

2.2 It is agreed that InfraCo will be permitted to make a decrease in the remuneration of any InfraCo Services Employee that takes effect in the last twelve (12) months of the

Infrastructure Agreement Term without first obtaining the consent of the Authority in circumstances where such decrease is in the ordinary course of business and when aggregated with any other variation which takes effect during such period, represents a decrease in the remuneration of an InfraCo Services Employee of no more than the amount determined in accordance with the formula contained in paragraph 2.1(a) where a calculation pursuant to such formula gives rise to a negative percentage. In any other circumstances the prior consent of the Authority will be required to any decrease in the remuneration of an InfraCo Services Employee in the last twelve (12) months of the Infrastructure Agreement Term.

- 2.3 Without limiting the foregoing, InfraCo shall consult the Authority as soon as reasonably practicable in any circumstances in which the Authority's consent under paragraph 2.1 may be required. Further, it shall always be deemed to be reasonable for the Authority to withhold its consent to a variation or addition which is prohibited without such consent under paragraph 2.1(a) provided the Authority agrees that, to the extent that InfraCo would otherwise be in contravention of the Infrastructure Agreement as a consequence of Industrial Action, no such contravention shall have occurred, save where such contravention relates to safety requirements.
- 2.4 The expression "promise to vary" when used in paragraph 2.2 includes any offer or indication of willingness to vary (whether or not such offer or willingness is made conditional upon obtaining the Authority's consent).

### **3 TERMS OF EMPLOYMENT OF NEW EMPLOYEES**

- 3.1 InfraCo shall not, and shall secure that each other relevant employer (other than the Authority) shall not, without the prior consent of the Authority (which shall not be unreasonably withheld), create or grant, or promise to create or grant, terms or conditions of employment for any InfraCo Services Employee where the employment of such InfraCo Services Employee by InfraCo or such other relevant employer may commence on or after the Start Date if and to the extent that:
- (a) such terms or conditions are, in the reasonable opinion of InfraCo, materially different from the terms or conditions of employment of equivalent or nearest equivalent InfraCo Services Employees at the date on which such employment is scheduled to commence; and
  - (b) if such terms or conditions were granted to such equivalent InfraCo Services Employees already employed by InfraCo by way of variation to their terms or conditions of employment, InfraCo would be in contravention of paragraph 2.1.

**4 CHANGES IN NUMBERS AND TOTAL COST OF EMPLOYEES**

4.1 Subject to and excluding any increase in the remuneration of InfraCo Services Employees permitted under paragraph 2.1, InfraCo shall not, and shall secure that each other relevant employer shall not, without the prior written consent of the Authority (which shall not be unreasonably withheld provided that it shall be unreasonable for the Authority to withhold its consent where any decrease relates to CVL Transformation) increase or decrease in the last twelve (12) months of the Infrastructure Agreement Term the number of InfraCo Services Employees such that:

- (a) the total number of InfraCo Services Employees or the total cost per annum to InfraCo and each other relevant employer of employing all InfraCo Services Employees is increased; or
- (b) the total number of InfraCo Services Employees is decreased,

in each case, by more than five percent (5%) during such period of twelve (12) months provided that:

- (i) where the last twelve (12) or thirteen (13) months of the Infrastructure Agreement Term; or
- (ii) has been deemed to have commenced under paragraph 1.1 and the period of the restriction contemplated by this paragraph 4 lasts longer than twelve (12) months such restriction shall apply in respect of the longer period.

**5 NOT USED**

**6 NOT USED**

**7 NOT USED**

### **Schedule 15.3 - Handover Package**

#### **1 HANDOVER PACKAGE STATUS**

1.1 InfraCo shall:

- (a) on or before the Start Date (save for paragraph 1.1(a)(ii), provide to the Authority:
    - (i) the Handover Package in the form set out in Appendix 1 to this Schedule 15.3; and
    - (ii) for any insurances in respect of the InfraCo Services procured after the date of termination of the ODP Grant Agreement, a letter in a form approved by and addressed to the Authority confirming the details of any insurer providing insurance to InfraCo and authorising the insurer (and any relevant broker) to release any insurance-related information to the extent it relates to the InfraCo Services to any of the Authority, a Successor Operator or its agent on demand, provided that the Authority shall only request such information from the relevant insurer or broker after it has requested the same from InfraCo and InfraCo fails to provide the requested information within 10 Weekdays;
  - (b) maintain the Handover Package and update it at least every three (3) Reporting Periods; and
  - (c) in respect of the information required pursuant to paragraph 1.1(a)(ii), supply revised information and/or letters to the Authority as and when required in order to ensure that such information and letters remain accurate and up to date.
- 1.2 InfraCo shall ensure that any Successor Operator will have immediate access to the Handover Package on the expiry of the Infrastructure Agreement Term
- 1.3 InfraCo shall also ensure that the Key Contacts List is provided to the Authority within twenty four (24) hours of the receipt of any Termination Notice.

#### **2 DIRECTOR'S CERTIFICATE**

Within one (1) month of the start of each Infrastructure Manager Year, InfraCo shall provide to the Authority a certificate signed by a nominated and duly authorised director of InfraCo, addressed to the Authority, which confirms (to the best of that director's knowledge having undertaken reasonable and proper due diligence of the same) that the Handover Package contains the information and objects specified in Appendix 1 (Form of Handover Package) to this Schedule 15.3 and that such information is accurate as at the date of the certificate.

## **Appendix 1 to Schedule 15.3 - Form of Handover Package**

### **1 Property**

- 1.1 A list of all property owned, leased, operated or occupied by InfraCo which shall include the address and contact telephone number of each property. Where applicable, the list will also include the name, address and telephone number of the lessor and/or the party which has granted authority to use or occupy the property, and any relevant reference numbers applicable to that lease or occupation.

### **2 Contracts**

- 2.1 A printed or electronic list (in a format acceptable to the Authority) of all contracts (sales, purchases or otherwise including leases and licences) between InfraCo and the counterparty or counterparties to each such contract, showing the name, address and telephone number of each counterparty; the contract reference number of InfraCo and each counterparty (if any); and the contract price/value, term and expiry date. This requirement shall apply to all contracts unless otherwise agreed by the Authority.

### **3 Systems**

- 3.1 A list of the electronic systems in use by InfraCo, together with the name, office address and telephone number of InfraCo's information technology manager (or the holder of any equivalent post) who is responsible for administration of each such system.

### **4 Daily Operations**

- 4.1 A printed or electronic list (in a format acceptable to the Authority) of all assets owned or operated by InfraCo, together with their location.

### **5 Insurance**

- 5.1 A list of the names, addresses and telephone numbers of all insurers and any relevant broker providing insurance to InfraCo, together with the relevant policy numbers and other references and details of any outstanding claims or unresolved disputes.

### **6 Safety Authorisation**

- 6.1 A complete copy of the relevant Safety Authorisation, an electronic copy of InfraCo's application for Safety Authorisation (in Microsoft Word format or such other format as is acceptable to the Authority) and full details of InfraCo's safety management system in place to support the Safety Authorisation.

### **7 Structure**

- 7.1 The form of Handover Package shall be structured by InfraCo in separate parts to reflect the different elements of the services to be delivered as part of InfraCo Services including:
- (a) Infrastructure Services;
  - (b) Not used;
  - (c) Not used; and
  - (d) Infrastructure Manager Services.



**Schedule 15.4 - Provisions Applying on and after Termination**

**1      NOVATION OF ACCESS AGREEMENTS ON TERMINATION OF THE INFRASTRUCTURE AGREEMENT**

1.1      InfraCo shall, to the extent so requested by the Authority on termination of the Infrastructure Agreement in relation to any Access Agreement to which it is a party, novate its interest under any relevant Access Agreement (and any related Collateral Agreement) to the Authority or as the Authority may direct.

1.2      Such obligation to novate shall be subject to the agreement of any counterparty to such Access Agreement or Collateral Agreement and, to the extent applicable, the ORR.

1.3      Such novation shall be on such terms as the Authority may reasonably require, including:

(a)      that InfraCo shall not be released from any accrued but unperformed obligation, the consequences of any breach of the Relevant Agreement which is the subject of arbitration or litigation between the Parties or any liability in respect of any act or omission under or in relation to the Relevant Agreement prior to, or as at the date of, any such novation (except to the extent that the Authority or its nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant novation); and

(b)      that neither the Authority nor its nominee shall be obliged, in connection with such novation, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 1.3(a),

but shall not, unless InfraCo otherwise agrees, be on terms which release any counterparty to the Relevant Agreement from any liability to InfraCo arising prior to the date of such novation.

1.4      Not used.

1.5      InfraCo shall notify the Authority on becoming aware of any circumstances which might lead to the Authority being able to require InfraCo to novate its interest under this paragraph 1.

**2      CO-OPERATION WITH SUCCESSOR OPERATOR**

2.1      In order to ensure the continuity of, and an orderly handover of control over, InfraCo Services, InfraCo shall co-operate with:

(a)      where a Successor Operator has been appointed, such Successor Operator; or

(b)      where a Successor Operator has not been so appointed, the Authority,

and shall take such steps as may be reasonably requested by the Authority in connection therewith.

2.2 In satisfaction of its obligations under paragraph 2.1, InfraCo shall make appropriately skilled and qualified InfraCo Services Employees reasonably available to attend such meetings with the Authority, the Successor Operator, Network Rail and/or and other relevant third party as are reasonably required in order to determine:

(a) those actions that are required in order to facilitate such continuity and orderly handover, in particular those actions arising under, but not limited to, the following agreements:

- (i) Access Agreements;
- (ii) Property Leases;
- (iii) agreements in relation to Shared Facilities;
- (iv) any other Key Contract; and

(b) Not Used

### **3 TRANSFER OF INFRACO SERVICES ASSETS**

#### **3.1 Option Arrangements – Not used**

#### **3.2 Transfer Agreement**

(a) InfraCo shall:

- (i) Subject to Schedule 14.1, ensure that all property, contracts, rights and liabilities required to deliver the Infrastructure Manager Services shall be transferrable (at no cost) to a Successor Operator on the date of termination of this Infrastructure Agreement; and
- (ii) enter into an agreement substantially in the form of the Transfer Agreement, which shall provide for the determination of amounts to be paid in respect of any property, rights and liabilities which are to be transferred to the Successor Operator. InfraCo shall enter into any such Transfer Agreement and shall comply with its obligations thereunder.

3.3 Subject to paragraph 3.4, the Parties acknowledge and agree that they shall work together in good faith and acting reasonably from the date of the termination of the ODP Grant Agreement to jointly review the Form of Transfer Agreement included at Appendix 2 of Schedule 15.4 and to agree, by no later than 1 April 2021, any appropriate amendments to the mechanisms, rights and obligations of the Parties as set out in the

Form of Transfer Agreement in relation to the transfer and valuation of certain assets, contracts, property and liabilities including any consequential amendments that may be required to this Schedule 15.4.

- 3.4 The Parties acknowledge and agree that notwithstanding paragraph 3.3 above, paragraph 7 (Employees) of the Form of Transfer Agreement shall remain binding on the Parties and shall not be amended or revised or otherwise impacted by the Parties review of the Form of Transfer Agreement.

**3.5 Payment of Estimated Transfer Price**

- (a) The Authority may require InfraCo to pay to any Successor Operator, or may require any Successor Operator to pay to InfraCo on the date of transfer of InfraCo Services to the Successor Operator such sum as the Authority may determine should be so paid having regard to:

- (i) Its estimate of the sum likely to be paid under the Transfer Agreement;
- (ii) its estimate of any other sums likely to be paid thereunder;
- (iii) the financial condition of InfraCo and the transferee and whether any estimate so paid would be likely to be repaid, if in excess of the sums eventually payable thereunder; and
- (iv) such other matters as the Authority may consider appropriate.

- (b) InfraCo shall pay to any such transferee the sum determined by the Authority in accordance with paragraph 3.3(a) on the day on which the relevant InfraCo Services are transferred to a Successor Operator.

**3.6 Not used**

**4 ASSOCIATED OBLIGATIONS ON TERMINATION**

**4.1 Assistance in Securing Continuity**

- (a) In order to facilitate the continuity of InfraCo Services on expiry of the Infrastructure Agreement Term, InfraCo shall take such steps, both before and after the expiry of the Infrastructure Agreement Term or termination of certain InfraCo Services, as the Authority may reasonably require, to assist and advise any Successor Operator in providing and operating InfraCo Services (or part thereof).
- (b) In particular, InfraCo shall provide any Successor Operator with such records and information relating to or connected with InfraCo Services as the Authority may reasonably require (other than confidential financial information but including all records relating to InfraCo Services Employees).

#### **4.2 Access**

On the expiry of the Infrastructure Agreement Term InfraCo shall grant the Authority and its representatives such access as the Authority may reasonably request to any property owned, leased or operated by InfraCo at such time, for the purpose of facilitating the continued provision of InfraCo Services.

#### **4.3 Key Contracts**

- (a) InfraCo shall provide such assistance to any Successor Operator as the Authority may reasonably require in ensuring that, pursuant to any Direct Agreements, such Successor Operator may enter into (or enjoy the benefit of) contracts equivalent to the relevant Key Contracts (or part thereof).
- (b) In satisfaction of its obligations under paragraph 4.3(a), InfraCo shall terminate, surrender, cancel or undertake not to enforce its rights under any Key Contract (or part thereof) provided that nothing in this paragraph shall require InfraCo to undertake not to enforce any rights under a Key Contract relating to the period prior to the expiry of the Infrastructure Agreement Term.

#### **4.4 Change of Name**

InfraCo shall cease to use any trade marks which are licensed to InfraCo under any of the Brand Licences forthwith upon expiry of the Infrastructure Agreement Term and shall take all necessary steps to change any company name which incorporates any such marks as soon as practicable.

#### **4.5 Property Leases**

- (a) InfraCo shall, on the expiry of the Infrastructure Agreement Term if requested by the Authority, assign its interest under all or any Property Leases to the Authority or as the Authority may direct, subject where applicable to the agreement of any other party to such Property Lease or the ORR.
- (b) Such assignment shall be on such terms as the Authority may reasonably require, including:
  - (i) that InfraCo shall not be released from any accrued but unperformed obligation, the consequences of any antecedent breach of a covenant or obligation in the Property Leases or any liability in respect of any act or omission under or in relation to the Property Lease prior to, or as at the date of, any such assignment (except to the extent that the Authority or its nominee agrees to assume responsibility for such unperformed

obligation, such liability or the consequences of such breach in connection with the relevant assignment); and

- (ii) that neither the Authority nor its nominee shall be obliged, in connection with such assignment, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 4.5(b)(i), and InfraCo shall indemnify the Authority or its nominee, as the case may be, on demand, on an after-tax basis against any costs, losses, liabilities or expenses suffered or incurred in relation thereto.
  - (iii) InfraCo shall, on the occurrence of any of the circumstances specified in paragraph 4.5(a) in relation to any other Train Operator who is a party to a Property Lease to which InfraCo is also party, agree to the assignment of such Train Operator's interest under the relevant Property Lease to the Authority or as the Authority may direct, subject, where applicable, to the consent of Network Rail. The provisions of paragraph 4.5(b) shall apply to any such assignment.
- (c) InfraCo shall notify the Authority on becoming aware of any circumstances which might lead to the Authority being able to require InfraCo to assign its interest.

## **5 ACTIONS REQUIRED IMMEDIATELY ON HANDOVER**

- 5.1 InfraCo shall immediately on the expiry of the Infrastructure Agreement Term make available to the Authority:
- (a) information as to the status of each purchase order or contract, including its award date, anticipated delivery date, confirmation of receipt of goods or services and the payment records for each purchase order, together with any matters in dispute with the appointed subcontractor and, to the extent that InfraCo is a subcontractor to another Train Operator, equivalent information in respect of that Train Operator; and
  - (b) information concerning any contract necessary for the continued operation of the Infrastructure Agreement where a procurement or bidding process has been initiated.
- 5.2 InfraCo agrees that the Authority or its agents may have access to and use free of charge any information contained in any Computer System or in hard copy format as the Authority sees fit (for the purposes of continuing the operation of InfraCo Services).

## **6 MAINTENANCE RECORDS**

- 6.1 InfraCo shall immediately on expiry of the Infrastructure Agreement Term provide to the Authority:

- (a) Not used;
- (b) Not used;
- (c) a list of any deferred maintenance;
- (d) Not used; and
- (e) records of CVL Assets,

including the extent of completion of examinations and the modification status of each such rolling stock vehicle.

## **7 NOT USED.**

## **8 INFRACO'S INTELLECTUAL PROPERTY**

8.1 On the expiry of the Infrastructure Agreement Term InfraCo will grant to any Successor Operator licences of any Intellectual Property Rights which:

- (a) is owned by or licensed to InfraCo;
- (b) was not owned by or licensed to it immediately prior to the Start Date;
- (c) not used;
- (d) does not represent or constitute a Mark; and
- (e) may, in the reasonable opinion of the Authority, be necessary for any Successor Operator to operate InfraCo Services on an efficient and economic basis after the expiry of the Infrastructure Agreement Term.

8.2 When agreeing the terms on which Intellectual Property Rights is to be licensed to it, InfraCo shall use all reasonable endeavours to ensure that such terms include the right to sub-license such Intellectual Property Rights in accordance with this paragraph 8. InfraCo shall not enter into a licence that does not include such a provision without first obtaining the Authority's prior written consent (such consent not to be unreasonably withheld).

8.3 Any such licence shall be granted to the relevant Successor Operator for such period as the Authority may determine to be reasonably necessary for the purpose of securing continuity of the provision of InfraCo Services and shall be free of charge and royalty-free for a period of one (1) month or less.

8.4 If such licence is for a period in excess of one month, the grant of the licence shall be subject to payment of a reasonable royalty (backdated to the expiry of the Infrastructure Agreement Term) on the basis of a willing licensor and licensee entering into a licence

on comparable terms to similar licences of such Intellectual Property Rights. If InfraCo and the relevant Successor Operator are unable to agree such royalty, InfraCo shall submit such dispute for resolution in accordance with such dispute resolution rules as the Authority may require.

8.5 Any such licence shall be in such form as the Authority shall reasonably determine and shall:

- (a) be non-exclusive and limited to use solely for the purposes of the provision and operation of InfraCo Services and will not provide for any right to use such Intellectual Property Rights for any other purpose (including its marketing or exploitation for any other purpose);
- (b) be terminable on material breach by the Successor Operator;
- (c) contain an indemnity from InfraCo to the effect that to the best of its knowledge and belief it owns the relevant Intellectual Property Rights or has the right to license it and the licensing of it and the subsequent use of the Intellectual Property Rights will not infringe any third party Intellectual Property Rights; and
- (d) require the Successor Operator, to the extent that it relates to any trade marks, to use such trade marks in such manner as may reasonably be required by InfraCo provided that it shall not be reasonable for InfraCo to require any such trade mark to be used in a manner materially different from its use during the Infrastructure Agreement Term.

**Appendix 2 – Form of Transfer Agreement**

Dated [INSERT DATE]

[INSERT NAME OF OUTGOING [INFRACO]

and

[INSERT NAME OF SUCCESSOR OPERATOR]

**TRANSFER AGREEMENT**



**THIS TRANSFER AGREEMENT** is made on [INSERT DAY] [INSERT YEAR]

**BETWEEN:**

- (1) [INSERT NAME OF OUTGOING [INFRACO] whose registered office is at [INSERT ADDRESS OF REGISTERED OFFICE] (the “**Transferor**”); and
- (2) [INSERT NAME OF SUCCESSOR OPERATOR] whose registered office is at [INSERT ADDRESS OF REGISTERED OFFICE] (the “**Transferee**”).

**WHEREAS**

- (A) The Transferor has been providing certain infrastructure services pursuant to an Infrastructure Agreement with the Authority (the “**Authority**”) dated [INSERT DATE] (the “Infrastructure Agreement”).
- (B) The Infrastructure Agreement terminated or is to terminate on [INSERT DATE] and the Transferee has been selected by the Authority to continue the provision of all or part of such services pursuant either to a Successor Agreement with the Authority or arrangements made with the Authority in connection with the Authority's duties and powers.
- (C) Certain property, rights and liabilities of the Transferor are to be transferred to the Transferee.
- (D) This Infrastructure Agreement sets out certain terms between the Transferor and the Transferee in relation to the transfer of such property, rights and liabilities and the transfer of certain other property, rights and liabilities at the same time.

**IT IS AGREED THAT:**

**1 DEFINITIONS AND INTERPRETATION**

**Definitions**

- 1.1 The following words and expressions shall have the following meaning:

**Business** means such of the undertaking or part of the undertaking of the Transferor prior to the Transfer Date as may be continued by the Transferee after the Transfer Date;

**Estimated Completion Payment** has the meaning ascribed to that term in Clause 2.1;

**Net Asset Statement** means the statement to be drawn up pursuant to Clause 2.2;

**Net Asset Value** means the aggregate of the amounts of the Relevant Contract Liabilities, the Relevant Debits and Credits and the Relevant Employee Liabilities as shown in the Net Asset Statement agreed or determined pursuant to Clause 2.2;

**Purchase Price** has the meaning ascribed to that term in Clause 2.1;

**Relevant Contract Liabilities** means such rights and liabilities of the Transferor as may be transferred to the Transferee on the expiry of the Infrastructure Agreement Term in relation to any Licence, Access Agreement or Property Lease under paragraphs 1 and 4.5 of Schedule 15.4 (Provisions Applying on and after Termination) of the Infrastructure Agreement;

**Relevant Employee Liabilities** means such rights and liabilities of the Transferor (or any other relevant employer or person) under any contracts of employment relating to the Relevant Employees which have been or are to be transferred to the Transferee by virtue of the operation of Law (including the Transfer Regulations);

**Relevant Employees** means all persons employed in the Business immediately before the Transfer Date (whether employed by the Transferor or otherwise) whose contract of employment has been or is to be transferred to the Transferee by virtue of the operation of Law (including the Transfer Regulations) or any other person employed at any time in the Business in respect of whom liabilities arising from a contract of employment or employment relationship have or will be transferred by virtue of the operation of Law (including the Transfer Regulations), but excluding the REM Employees;

**Relevant InfraCo Services Assets** means such of the property, rights and liabilities that are legally or beneficially owned by the Transferor and which are or are to be transferred to the Transferee under the Infrastructure Agreement;

**REM Employees** means means those individuals (if any) who are employed by the Authority and provided to the Transferor pursuant to the Amended Staffing Agreement relating to the Provision of Operations and Maintenance Personnel between the Authority and the Transferor dated [27 March 2020] immediately before the Transfer Date;

**Reporting Accountants** means such firm of accountants as may be selected by agreement between the parties within four (4) weeks of the preparation of the Net Asset Statement or, in the absence of such agreement, selected by the Authority upon the request of either party;

**Taxation** comprises all forms of taxation, duties, contributions and levies of the United Kingdom whenever imposed and (except in so far as attributable to the unreasonable delay or default of the Transferee) all penalties and interest relating thereto;

**TOGC** has the meaning assigned to that term in Clause 6.2;

**Transfer Date** means the date and, where relevant, the time on or at which the InfraCo Services transfer to the Successor Operator;

**Transfer Regulations** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended, replaced or substituted from time to time);

**Transferring Assets and Liabilities** has the meaning assigned to that term in Clause 2.1; and

**Undisclosed Employee** has the meaning assigned to that term in Clause 7.1(d).

#### Construction and Interpretation

In this Agreement terms and expressions defined in the Infrastructure Agreement shall have the same meaning and the terms “contract of employment”, “collective agreement”, “employee representatives” and “trade union” shall have the same meanings respectively as in the Transfer Regulations.

## 2 TRANSFER PRICE

### 2.1 Amount and Payment

The price for the transfer of:

- (a) the Relevant InfraCo Services Assets;
- (b) the Relevant Contract Liabilities;
- (c) Not Used; and
- (d) the Relevant Employee Liabilities,

(together the “**Transferring Assets and Liabilities**”) shall (subject to adjustment as expressly provided in this Agreement) be an amount equal to the Net Asset Value (the “**Purchase Price**”). The sum of [£INSERT AMOUNT], as determined under paragraph 3.3 of Schedule 15.4 (Provisions Applying on and after Termination) of the Infrastructure Agreement (the “**Estimated Completion Payment**”) shall be paid in immediately available funds by the Transferor to the Transferee, or by the Transferee to the Transferor, as determined under paragraph 3.3 of Schedule 15.4 (Provisions Applying on and after Termination) of the Infrastructure Agreement, on the date of transfer of the InfraCo Services. On determination of the Purchase Price a balancing payment (if any) shall be made by the Transferor to the Transferee or the Transferee to the Transferor (as the case may be) in accordance with Clause 2.1.

### 2.2 Net Asset Statement

The Transferee shall procure that, as soon as practicable and in any event not later than two (2) months following the Transfer Date, there shall be drawn up a statement showing

a true and fair view of the aggregate of the amount of each separate asset and liability of the Transferring Assets and Liabilities as at the Transfer Date.

2.3 The Net Asset Statement shall be:

- (a) drawn up in the manner described in the Schedule;
- (b) prepared on such basis as would enable the Transferee's auditors, if so requested, to give an unqualified audit report thereon to the effect that it had been drawn up in accordance with the schedule; and
- (c) presented, initially as a draft, to the Transferor immediately following its preparation for review in conjunction with its auditors.

2.4 If the Transferor and the Transferee have failed to agree the Net Asset Statement within four (4) weeks following such presentation, the matter shall be referred to the Reporting Accountants who shall settle and complete the Net Asset Statement as soon as practicable and shall determine the amount of the Net Asset Value as shown by the Net Asset Statement.

## 2.5 **Adjustment of Price**

If the Purchase Price exceeds or is less than the Estimated Completion Payment, the Transferee shall pay to the Transferor or, as the case may be, the Transferor shall pay to the Transferee, in either case within fourteen (14) days of the agreement or determination of the Net Asset Value, an amount equal to such excess or deficiency together in either case with interest thereon calculated from the Transfer Date at the Interest Rate.

## 3 **REFERENCES TO THE REPORTING ACCOUNTANTS**

Whenever any matter is referred under this Agreement to the decision of the Reporting Accountants:

- (a) the Reporting Accountants shall be engaged jointly by the parties on the terms set out in this Agreement and otherwise on such terms as shall be agreed, provided that neither party shall unreasonably (having regard, amongst other things, to the provisions of this Agreement) refuse its agreement to terms proposed by the Reporting Accountants or by the other party. If the terms of engagement of the Reporting Accountants have not been settled within fourteen (14) days of their appointment having been determined (or such longer period as the parties may agree) then, unless one party is unreasonably refusing its agreement to those terms, such accountants shall be deemed never to have been appointed as Reporting Accountants, save that the accountants shall be entitled to their reasonable expenses under Clause 3(d), and new Reporting Accountants shall be selected in accordance with the provisions of this Agreement;

- (b) if Reporting Accountants acting or appointed to act under this Agreement resign, withdraw, refuse to act, or are disqualified for any reason from performing their duties then, except as may be agreed between the parties, the parties shall appoint a replacement in accordance with the definition of Reporting Accountants;
- (c) the Reporting Accountants shall be deemed to act as experts and not as arbitrators;
- (d) the Reporting Accountants shall have power to allocate their fees and expenses for payment in whole or in part by any party at their discretion. If not otherwise allocated they shall be paid as to half by the Transferor and as to half by the Transferee;
- (e) each of the parties shall promptly on request supply to the Reporting Accountants all such documents and information as they may require for the purpose of the reference;
- (f) the decision of the Reporting Accountants shall (in the absence of objection on the grounds of any manifest error discovered within fourteen (14) days of the issue of their decision) be conclusive and binding (and in accordance with Clause 3(g) below) and shall not be the subject of any appeal by way of legal proceeding or arbitration or otherwise; and
- (g) without prejudice to Clauses 3(a) to 3(f) above, either party may, prior to or during the course of the reference to the Reporting Accountants, seek a declaration from the court on a relevant point of law, including but not limited to a point of legal interpretation. Upon such application for a declaration being issued and served all applicable time limits relative to the reference to the Reporting Accountant shall be stayed pending the outcome of such application (including any appeal). The Reporting Accountants are bound to make their determination in a manner consistent with the findings of the Court.

#### **4 WARRANTY**

The Transferor warrants and represents to the Transferee that the Relevant Contract Liabilities and the Relevant InfraCo Services Assets are, to the extent they are property or rights, transferring to the Transferee free and clear of all Security Interests.

#### **5 INTEREST**

If the Transferor or the Transferee defaults in the payment when due of any sum payable under this Agreement (whether determined by agreement or pursuant to an order of a court or otherwise) the liability of the Transferor or the Transferee (as the case may be) shall be increased to include interest on such sum from the date when such payment is due until the date of actual payment (after as well as before judgement) at a rate equal to the Interest Rate. Such interest shall accrue from day to day.

#### **6 VALUE ADDED TAX**

- 6.1 All amounts under this Agreement are expressed as exclusive of Value Added Tax where Value Added Tax is applicable.
- 6.2 The Transferor and the Transferee shall use all reasonable endeavours to secure that the transfer of the Transferring Assets and Liabilities is treated for Value Added Tax purposes as the transfer of a business as a going concern ("TOGC") and accordingly as neither a supply of goods nor a supply of services for the purposes of Value Added Tax.
- 6.3 If HM Revenue & Customs direct that the transfer of the Transferring Assets and Liabilities cannot be treated as a TOGC, the Transferor shall provide the Transferee with a copy of such direction within five (5) days of receipt thereof by the Transferor.
- 6.4 The Transferee shall thereafter pay upon the receipt of a valid tax invoice the amount of any Value Added Tax which as a result of that direction may be chargeable on the transfer of the Transferring Assets and Liabilities. If the aforementioned direction was issued as a result of any action or inaction of the Transferee then the Transferee shall in addition to the Value Added Tax indemnify the Transferor for any penalties and interest that may be incurred upon receipt of such evidence from HM Revenue & Customs.
- 6.5 If the Transferee considers the direction issued by HM Revenue & Customs referred to in Clause 6.3 to be incorrect then, without prejudice to the Transferee's obligation under Clause 6.4 to pay to the Transferor the amount of any Value Added Tax which as a result such direction may be chargeable on the transfer of the Transferring Assets and Liabilities, the Transferee may, within thirty (30) days of receipt of such direction by the Transferor, give notice to the Transferor that it requires the Transferor to appeal such direction. Upon requesting such an appeal the Transferee agrees to indemnify the Transferor for all reasonable costs that the Transferor may incur in taking such action upon receipt of evidence of those costs. If such an appeal is successful the Transferor agrees to reimburse the Transferee for such reasonable costs and penalties and interest to the extent that those costs have been reimbursed by HM Revenue & Customs.
- 6.6 If any amount paid by the Transferee to the Transferor in respect of Value Added Tax pursuant to this Agreement is subsequently found to have been paid in error the Transferor shall issue a valid tax credit note for the appropriate sum to the Transferee and promptly repay such amount to the Transferee.
- 6.7 If any amount is payable by the Transferor to the Transferee in respect of the transfer of the Relevant Contract Liabilities, Relevant Debits and Credits and Relevant Employee Liabilities pursuant to this Agreement, Clauses 6.3 to 6.6 inclusive shall apply mutatis mutandis to such payment substituting Transferor for Transferee and vice versa.

6.8 All of the records referred to in Section 49 of the Value Added Tax Act 1994 relating to the Business (being the purchase records) shall be retained by the Transferor and the Transferor shall undertake to the Transferee to:

- (a) preserve those records in such manner and for such periods as may be required by law; and
- (b) give the Transferee as from the Transfer Date reasonable access during normal business hours to such records and to take copies of such records.

## **7 EMPLOYEES**

### **7.1 Transfer Regulations**

The parties accept that, to the extent that the undertaking or part of the undertaking of the Transferor is continued by the Transferee after the Transfer Date, this Agreement and the transfer of the Business are governed by the Transfer Regulations and the following provisions shall apply in connection therewith:

- (a) the contract of employment of each of the Relevant Employees (save, to the extent provided by the Transfer Regulations, insofar as such contract relates to any occupational pension scheme) shall be transferred to the Transferee with effect from the Transfer Date which shall be the “**time of transfer**” under the Transfer Regulations and the Transferee shall employ each such Relevant Employee on the terms of those contracts of employment (save, to the extent provided by the Transfer Regulations, insofar as such contract relates to any occupational pension scheme) with effect from the Transfer Date;
- (b) the Transferor shall perform and discharge all its obligations in respect of all the Relevant Employees for its own account up to and including the Transfer Date including, without limitation, discharging all wages and salaries of the Relevant Employees, all employer's contributions to any relevant occupational pension scheme and all other costs and expenses related to their employment (including, without limitation, any Taxation, accrued holiday pay, accrued bonus, commission or other sums payable in respect of service prior to the close of business on the Transfer Date) and shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, liability (including, without limitation, any Taxation), cost, claim, expense (including, without limitation, reasonable legal fees) or demand arising from the Transferor's failure so to discharge;
- (c) (other than in connection with occupational pension schemes (save for the obligation in clause 7.1(b) above)) the Transferor shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, cost, claim, liability (including, without limitation, any Taxation), expense (including, without limitation,

reasonable legal fees) or demand which relates to or arises out of any act or omission by the Transferor or any other event or occurrence prior to the Transfer Date and which the Transferee may incur in relation to any contract of employment or collective agreement concerning one or more of the Relevant Employees pursuant to the provisions of the Transfer Regulations or otherwise including, without limitation, any such matter relating to or arising out of:

- (i) the Transferor's rights, powers, duties and/or liabilities (including, without limitation, any Taxation) under or in connection with any such contract of employment or collective agreement, which rights, powers, duties and/or liabilities (as the case may be) are or will be transferred to the Transferee in accordance with the Transfer Regulations; or
  - (ii) anything done or omitted before the Transfer Date by or in relation to the Transferor in respect of any such contract of employment or collective agreement or any Relevant Employee, which is deemed by the Transfer Regulations to have been done or omitted by or in relation to the Transferee save where the thing done or omitted to be done before the Transfer Date relates to the Transferee's failure to comply with its obligations referred to in Clause 7.4;
- (d) if any contract of employment or collective agreement of or in respect of any employee other than a REM Employee which is neither disclosed in writing to the Transferee by the Transferor prior to the Transfer Date nor made available to the Authority under Schedule 15.3 (Handover Package) of the Infrastructure Agreement prior to the Transfer Date shall have effect as if originally made between the Transferee and any such employee (the "**Undisclosed Employee**") or a trade union or employee representatives as a result of the provisions of the Transfer Regulations (without prejudice to any other right or remedy which may be available to the Transferee):
  - (i) the Transferee may, upon becoming aware of the application of the Transfer Regulations to any such contract of employment or collective agreement terminate such contract or agreement forthwith;
  - (ii) the Transferor shall indemnify the Transferee against each and every action, proceeding, cost, claim, liability (including, without limitation, any Taxation), expense (including, without limitation, reasonable legal fees) or demand relating to or arising out of such termination and reimburse the Transferee for all costs and expenses (including, without limitation, any Taxation) incurred in employing such employee in respect of his or her employment following the Transfer Date; and



- (iii) the Transferor shall indemnify the Transferee in respect of any Undisclosed Employee on the same terms *mutatis mutandis* as the Transferor has indemnified the Transferee in respect of a Relevant Employee pursuant to the terms of Clauses 7.1(b) and 7.1(c); and
- (e) the Transferor shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, cost, claim, liability (including without limitation, any Taxation) expense (including, without limitation, reasonable legal fees) or demand which relates to or arises out of any dismissal (including, without limitation, constructive dismissal) by the Transferor of any employee (not being a Relevant Employee or a REM Employee) and which the Transferee may incur pursuant to the provisions of the Transfer Regulations.

## 7.2 Transferee's Indemnities

The Transferee shall indemnify the Transferor and keep the Transferor indemnified against each and every action, proceeding, liability (including, without limitation, any Taxation), cost, claim, loss, expense (including reasonable legal fees) and demand arising out of or in connection with:

- (a) any substantial change in the working conditions of the Relevant Employees to his or her detriment or any of them occurring on or after the Transfer Date;
- (b) the change of employer occurring by virtue of the Transfer Regulations being significant and detrimental to any of the Relevant Employees;
- (c) the employment by the Transferee on or after the Transfer Date of any of the Relevant Employees other than on terms (including terms relating to any occupational pension scheme) at least as good as those enjoyed prior to the Transfer Date or the termination of the employment of any of them on or after the Transfer Date; or
- (d) any claim by any Relevant Employee (whether in contract or in tort or under statute (including the Treaty of the European Community or European Union and any Directives made under the Authority of any such Treaty or any successor thereof)) for any remedy (including, without limitation, for unfair dismissal, redundancy, statutory redundancy, equal pay, sex or race discrimination) as a result of any act or omission by the Transferee after the Transfer Date.

- 7.3 The Transferee shall indemnify the Transferor and keep the Transferor indemnified against each and every action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees) and demand which arises as a result of it not providing or not having provided, in accordance with its obligations under the Transfer Regulations, the Transferor in writing with such information and at such time as will enable the Transferor

to carry out its duties under Regulation 13(2)(d) and 13(6) of the Transfer Regulations concerning measures envisaged by the Transferee in relation to the Relevant Employees.

#### **7.4 Details of Relevant Employees**

Without prejudice to the Transferor's duties under the Transfer Regulations, the Transferor warrants to the Transferee that it has (to the extent not made available to the Authority under Schedule 15.4 (Provisions Applying on and after Termination) of the Infrastructure Agreement provided the Transferee prior to the Transfer Date with full particulars of:

- (a) each Relevant Employee, including name, sex, and the date on which continuity of employment began for each Relevant Employee for statutory purposes;
- (b) terms and conditions of employment of each such person;
- (c) all payments, benefits or changes to terms and conditions of employment promised to any such person;
- (d) dismissals of Relevant Employees or termination of employment effected within twelve (12) months prior to the Transfer Date including the Transfer Date;
- (e) all agreements or arrangements entered into in relation to the Relevant Employees between the Transferor, any Affiliate of the Transferor or any other relevant employer and any trade union or association of trade unions or organisation or body of employees including employee representatives and elected representatives; and
- (f) all strikes or other Industrial Action taken by any Relevant Employee within twelve (12) months prior to the Transfer Date including the Transfer Date.

7.5 The Transferor and Transferee shall deliver to each of the Relevant Employees letters in an agreed form from the Transferor and Transferee as soon as is practicable after the execution of this Agreement (to the extent not already delivered prior to the Transfer Date).

### **8 MISCELLANEOUS PROVISIONS**

#### **8.1 Variations in Writing**

No variation of this Agreement shall be effective unless in writing and signed by duly authorised representatives of the parties.

#### **8.2 Partial Invalidity**

If any provision in this Agreement shall be held to be void, illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part shall to that

extent be deemed not to form part of this Agreement but the legality, validity and enforceability of the remainder of this Agreement shall not be affected.

### **8.3 Further Assurance**

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

### **8.4 Notices**

Any notice or other communication requiring to be given or served under or in connection with this Agreement shall be in writing and shall be sufficiently given or served if delivered or sent to the registered office of the recipient or:

- (a) in the case of the Transferor to [INSERT NAME OF TRANSFEROR] at:

[INSERT ADDRESS]

[INSERT FAX]

Attention: [INSERT NAME]

- (b) in the case of the Transferee to [INSERT NAME OF TRANSFeree] at:

[INSERT ADDRESS]

[INSERT FAX]

Attention: [INSERT NAME]

Any such notice or other communication shall be delivered by hand or sent by courier, fax or prepaid first class post. If sent by courier or fax such notice or communication shall conclusively be deemed to have been given or served at the time of despatch. If sent by post such notice or communication shall conclusively be deemed to have been received two (2) Weekdays from the time of posting.

### **8.5 Counterparts**

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

### **8.6 Third Parties**

This Agreement does not create any rights under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not a party to it.

## 8.7 Governing Law

This Agreement (and any non-contractual obligations arising out of or in connection with it) shall be governed by and construed in accordance with the laws of England and Wales and the parties irrevocably agree that the courts of England and Wales are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

**IN WITNESS** whereof the parties hereto have executed this Agreement the day and year first before written.

SIGNED FOR AND ON  
BEHALF OF THE **[INSERT  
NAME OF TRANSFEROR]:**



DIRECTOR:

DIRECTOR/SECRETARY:

SIGNED FOR AND ON  
BEHALF OF THE **[INSERT  
NAME OF TRANSFEREE]:**



DIRECTOR:

DIRECTOR/SECRETARY:

## **Schedule to the Transfer Agreement**

### **Net Asset Statement**

The Net Asset Statement shall be drawn up (except to the extent otherwise agreed by the Transferor and the Transferee) in accordance with accounting principles generally accepted in the United Kingdom and such that the Transferring Assets and Liabilities are valued on the following basis:

- 1 Rights and liabilities in respect of any contract, lease, licence or other equivalent arrangement (excluding rights and liabilities valued under paragraphs 1 to 4) shall be valued at nil except to the extent that the relevant rights and liabilities include matters specified in the left hand column of the following table, which shall be valued on the basis specified in the right hand column of the following table:

Rights and Liabilities	Value
Any accrued rights to receive payment	Monetary amounts so accrued, subject to any provision being made for payment not being received from any other person
Any right to receive payment in respect of goods and/or services provided by the Transferor prior to the Transfer Date where the due date for such payment is after the Transfer Date	Amount payable under such contract, lease, licence or other equivalent arrangement for the goods and/or services so provided by the Transferor, subject to any provision being made for payment not being received from any other person
Any accrued liabilities to make payment	Monetary amounts so accrued
Any liability to make payment in respect of goods and/or services provided to the Transferor prior to the Transfer Date where the due date for such payment is after the Transfer Date	Amount payable under such contract, lease, licence or other equivalent arrangement for the goods and/or services provided to the Transferor
Any rights in respect of which payment has already been made by the Transferor	Monetary amounts so paid, subject to any provision being made for such rights not being exercisable against any other person
Any liabilities in respect of which payment has already been received by the Transferor	Monetary amounts so received

Rights and Liabilities	Value
Any liability resulting from any breach of or failure by the Transferor to comply with the terms of any such contract, lease, licence or other equivalent arrangement	Amount of such liability or, to the extent that such amount is not ascertained, the parties reasonable estimate of the amount of such liability

- 2 Any other property, rights or liabilities shall be valued on the basis of a willing vendor and purchaser and ongoing usage within the railway industry.
- 3 Any Strategic Spares shall be valued at Nil.

**Schedule 16.1 – NOT USED**

**Schedule 16.2 - Transfer of Undertakings (Protection of Employment) Regulations 2006**

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## **Schedule 17 - Confidentiality and Freedom of Information**

### **1 CONFIDENTIALITY**

Subject to the provisions of the Act, the Transport Act, the Railways Act 2005, the Environmental Information Regulations, the Freedom of Information Act (and any code of practice or other guidance related to the same) and paragraphs 2 to 8 of this Schedule 17 inclusive, each Party shall hold in confidence all documents, materials and other information, whether technical or commercial, supplied by or on behalf of the other Party (including all documents and information supplied in the course of proceedings under the Dispute Resolution Rules or the rules of any other dispute resolution procedures to which a dispute is referred in accordance with the Infrastructure Agreement) (all together the “**Confidential Information**”) and shall not, except with the other Party's prior written authority, publish or otherwise disclose any Confidential Information otherwise than as expressly provided for in the Infrastructure Agreement unless or until the recipient Party can demonstrate that any such document, material or information is in the public domain through no fault of its own and through no contravention of the Infrastructure Agreement, whereupon to the extent that it is in the public domain this obligation shall cease.

### **2 DISCLOSURE OF CONFIDENTIAL INFORMATION**

- 2.1 Each Party may disclose any data or information acquired by it under or pursuant to the Infrastructure Agreement or information relating to a dispute arising under the Infrastructure Agreement without the prior written consent of the other Party if such disclosure is made in good faith:
- (a) to any Affiliate of such Party or outside consultants or advisers of such Affiliate, upon obtaining from such Affiliate and/or such outside consultants or advisers of such Affiliate an undertaking of confidentiality equivalent to that contained in paragraph 1;
  - (b) to any outside consultants or advisers engaged by or on behalf of such Party and acting in that capacity, upon obtaining from such consultants or advisers an undertaking of confidentiality equivalent to that contained in paragraph 1;
  - (c) to any lenders, security trustee, bank or other financial institution (and its or their advisers) from which such Party is seeking or obtaining finance, upon obtaining from any such person an undertaking of confidentiality equivalent to that contained in paragraph 1;
  - (d) to the extent required by Law or pursuant to an order of any court of competent jurisdiction or under the Dispute Resolution Rules or the rules of any other dispute resolution procedures to which a dispute is referred in accordance with the Infrastructure Agreement or the rules of a recognised stock exchange or a formal or informal request of any taxation authority;

- (e) to any insurer, upon obtaining from such insurer an undertaking of confidentiality equivalent to that contained in paragraph 1;
- (f) to any director, employee or officer of such Party, to the extent necessary to enable such Party to perform its obligations under the Infrastructure Agreement or to protect or enforce its rights under the Infrastructure Agreement;
- (g) by the Authority to the Secretary of State or any other Public Authority who will have the same obligations of non-disclosure as the Authority in respect of such information in accordance with paragraph 2 of this schedule 17; or
- (h) by InfraCo or an Affiliate, to the ORR, the Passengers' Council or a Local Authority.

2.2 The Authority may disclose the Confidential Information of InfraCo:

- (a) on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;
- (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- (c) on a confidential basis to any Public Authority including devolved governments;
- (d) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (e) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in paragraph 2.2(a) of this schedule 17 (including any benchmarking organisation) for any purpose relating to or connected with InfraCo Services;
- (f) on a confidential basis for the purpose of the exercise of its rights under this Infrastructure Agreement, including but not limited to its right of audit, assessment or inspection pursuant to paragraph 6 of Schedule 11.2 (Management Information) and its rights pursuant to Schedule 15.1 (Reletting Provisions);
- (g) on a confidential basis to a Local Authority or other relevant Stakeholder to the extent that the Authority (acting reasonably) deems such disclosure necessary or appropriate for the purposes of the development and/or implementation of any proposal promoted by (or on behalf of) such Local Authority or other relevant Stakeholder in relation to the provision of additional, varied and/or extended Passenger Services, introduction of new stations or enhancements to Stations or other infrastructure schemes which impact on InfraCo Services; or

- (h) on a confidential basis to a proposed successor, transferee or assignee of the Authority in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Infrastructure Agreement,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this paragraph 2.2 of this Schedule 17.

### **3 PUBLICATION OF CERTAIN INFORMATION**

3.1 Notwithstanding the provisions of paragraph 1, the Authority may publish (whether to the press, the public or to one or more individuals, companies or other bodies, including to any prospective Successor Operator) in such form and at such times as it sees fit, the following (irrespective of whether the same was provided to the Authority by InfraCo or a third party):

- (a) any or all of InfraCo Services Documents provided that the Authority will, prior to publishing the same, redact from any InfraCo Services Document any information contained therein which the Authority and InfraCo agree or failing which the Authority determines, in its absolute discretion, is exempt from disclosure in accordance with the provisions of the Freedom of Information Act and/or the Environmental Information Regulations;
- (b) the amount of any InfraCo Services Payments payable under the Infrastructure Agreement and the aggregate amount of InfraCo Services Payments paid in each year under the Infrastructure Agreement;
- (c) such information as the Authority may consider reasonably necessary to publish in connection with the performance of its functions in relation to any Closure or proposed Closure;
- (d) not used;
- (e) such information (including CRM Data and Yield Management Data) as may reasonably be required in connection with any Tendering/Reletting Process or the retendering or reletting of any other railway passenger services, provided that such information may only be published during the period of, or during the period leading up to, such retendering or reletting;
- (f) any reports and accounts delivered to the Authority under Schedule 13 (Rail Industry Initiatives, Innovation Obligations and Sustainability and Ethical Procurement) including any analyses, statistics and other information derived from such reports and accounts;

- (g) the results of any monitoring or measurement of the performance of InfraCo in the provision of InfraCo Services (including any information provided under Schedule 11 (InfraCo Services Performance Meetings and Management Information));
  - (h) Not used;
  - (i) the results of any assessment or inspection under Schedule 11.2 (Management Information);
  - (j) details of InfraCo's plans and performance in respect of safety;
  - (k) such information as the Authority may reasonably require to include in its annual report in respect of InfraCo provided that, in preparing that report, the Authority shall have regard to the need for excluding, so far as is practicable, the matters specified in paragraphs (a) and (b) of Section 71(2) of the Act for this purpose, taking references in those paragraphs to the ORR as references to the Authority;
  - (l) information defined as Open Travel Data; and
  - (m) such information as the Authority may reasonably require to publish at or around the expiry or possible termination of the Infrastructure Agreement Term in order to secure continuity of the provision and operation of InfraCo Services.
- 3.2 Without prejudice to any other provision of this Schedule 17, the Authority may publish any other information relating to InfraCo if it has previously notified InfraCo and InfraCo does not demonstrate to the reasonable satisfaction of the Authority within fourteen (14) days of such notification that the publication of such information would, in the reasonable opinion of InfraCo, have a material adverse effect on its business. If InfraCo attempts so to demonstrate to the Authority but it is not so satisfied, the Authority shall allow seven (7) more days before publishing the relevant information.

#### **4 SERVICE DEVELOPMENT INFORMATION**

Not used.

#### **5 PUBLICATION BY AUTHORITY**

Nothing in this Schedule 17 shall be deemed to prohibit, prevent or hinder, or render the Authority liable for, the disclosure of any information by the Authority to the ORR, the Parliamentary Commissioner for Administration, a Minister of the Crown, any department of the government of the United Kingdom, the Scottish Parliament, the National Assembly of Wales, the Mayor of London, the Greater London Authority or any department or officer of any of them or of information which is otherwise disclosed for the purpose of facilitating the carrying out of their functions.

**6 PROVISION OF INFORMATION TO THE ORR**

InfraCo hereby authorises the Authority to provide to the ORR, to the extent so requested by the ORR, such information as may be provided to the Authority in relation to InfraCo under the Infrastructure Agreement.

**7 DISCLOSURE BY COMPTROLLER AND AUDITOR GENERAL**

The parties recognise that the Comptroller and Auditor General may, in pursuance of their functions under the Exchequer and Audit Department Act 1921, the National Audit Act 1983 and the Government Resources and Accounts Act 2000, disclose information which he has obtained pursuant to those Acts and which a Party to the Infrastructure Agreement would not be able to disclose otherwise than under this Schedule 17.

**8 CONTINUING OBLIGATION**

This Schedule 17 (and any other provisions necessary to give effect hereto) shall survive the termination of the Infrastructure Agreement, irrespective of the reason for termination.

**9 FREEDOM OF INFORMATION - GENERAL PROVISIONS**

9.1 InfraCo acknowledges and shall procure that its agents and subcontractors acknowledge that the Authority and the Secretary of State are subject to the requirements of the Freedom of Information Act and the Environmental Information Regulations and accordingly InfraCo shall and shall procure that its agents and subcontractors shall assist and co-operate with the Authority and/or the Secretary of State to enable the Authority and/or the Secretary of State to comply with their information disclosure obligations under the Freedom of Information Act and/or the Environmental Information Regulations.

9.2 Notwithstanding paragraph 10 (Redactions), InfraCo shall and shall procure that its agents and subcontractors shall:

- (a) transfer to the Authority any Requests for Information received by InfraCo (or its agents or subcontractors) as soon as practicable and in any event within two (2) Weekdays of receiving any such Request for Information;
- (b) provide the Authority with a copy of all information in its (or their) possession or power in the form that the Authority and/or the Secretary of State requires within five (5) Weekdays of the Authority's and/or the Secretary of State's request (or within such other period as the Authority or the Secretary of State may specify); and
- (c) provide all necessary assistance as reasonably requested by the Authority and/or the Secretary of State to enable them to respond to any Request for Information within the time for compliance set out in Section 10 of the Freedom of Information Act or Regulation 5 of the Environmental Information Regulations as applicable.



- 9.3 The Authority and/or the Secretary of State shall be responsible for determining in their absolute discretion, and notwithstanding any other provision in the Infrastructure Agreement or any other agreement, whether Confidential Information (as such term is defined in paragraph 1 of this Schedule 17) and/or any other information is exempt from disclosure in accordance with the provisions of the Freedom of Information Act and/or the Environmental Information Regulations.
- 9.4 InfraCo shall not and shall procure that its agents and subcontractors shall not respond directly to any Request for Information unless expressly authorised to do so by the Authority and/or the Secretary of State.
- 9.5 InfraCo acknowledges and shall procure that its agents and subcontractors acknowledge that notwithstanding any provision to the contrary in the Infrastructure Agreement the Authority may be obliged under the Freedom of Information Act and/or the Environmental Information Regulations and any related Code of Practice or other guidance to disclose information concerning InfraCo and/or its agents and subcontractors:
- (a) in certain circumstances without consulting InfraCo (or its agents and/or subcontractors where applicable); or
  - (b) following consultation with InfraCo and having taken its views into account (and the views of its agents and/or subcontractors where applicable),

provided always that where applicable the Authority and/or the Secretary of State shall in accordance with the provisions of the Freedom of Information Act and/or the Environmental Information Regulations take reasonable steps where appropriate to give InfraCo advance notice or failing that to draw the disclosure to InfraCo's attention after any such disclosure.

## **10 REDACTIONS**

- 10.1 Subject to paragraph 9 (Freedom of Information - General Provisions), by no later than the date which is:
- (a) eight (8) weeks after the date of termination of the ODP Grant Agreement (in respect of InfraCo Services Documents referred to in paragraph (a) of the definition thereof);
  - (b) thirty (30) days after the date of notification by the Authority and/or the Secretary of State to InfraCo of another agreement that is required for publication (in respect of InfraCo Services Documents referred to in paragraph (b) of the definition thereof); and
  - (c) thirty (30) days after the date of any document varying the terms of any InfraCo Services Document,

InfraCo will provide to the Authority and/or the Secretary of State details of any provisions of InfraCo Services Documents or any such variation which InfraCo believes are exempt from disclosure in accordance with the provisions of the Freedom of Information Act, the Environmental Information Regulations and/or Section 73(3) of the Act (the “Redactions”).

10.2 For each such Redaction InfraCo should specify:

- (a) the exact text of InfraCo Services Document or variation that InfraCo proposes is redacted;
- (b) whether InfraCo proposes that the Redaction applies in relation to the publication of the relevant InfraCo Services Document or variation on the website of the Department for Transport, on the register required to be maintained by the Authority pursuant to Section 73 of the Act or on both such website and such register;
- (c) the reasons why InfraCo believes that the proposed Redaction is justified in accordance with the Freedom of Information Act, the Environmental Information Regulations and/or Section 73(3) of the Act.

10.3 The Authority and/or the Secretary of State shall consult with InfraCo in relation to InfraCo's proposed Redactions (provided that the same are provided to the Authority in accordance with paragraph 10.1). If the Authority and/or the Secretary of State and InfraCo are unable to agree upon any proposed Redaction, the Authority and/or the Secretary of State shall be entitled to determine, in their absolute discretion, whether or not to make such proposed Redaction. If InfraCo does not provide its proposed Redactions to the Authority and/or the Secretary of State in accordance with paragraph 10.1, InfraCo shall be deemed to have consented to publication of the relevant document without any Redactions.

**Schedule 18**

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## **Appendix 1 to Schedule 18.2 - Authority Dependencies**

### **1 AUTHORITY DEPENDENCIES**

1.1 The Authority shall provide or procure the provision, as appropriate, of the Authority Dependencies as set out below:

- (a) provision of Framework Agreement(s) with IDPs by no later than 1st July 2018;
  - (b) the appointment of an Independent Reporter in accordance with Schedule 3A;
  - (c) commencement of testing and commissioning of the Stadler CityLink (Tram-Train) Class 398 and Stadler Flirt Tri-Mode Class 756 on the CVL, by 30 November 2022;
  - (d) delivery of Taffs Well Depot by 30 November 2022 and maintenance of Taffs Well Depot from this date;
  - (e) delivery of Cardiff Canton Depot by 1 June 2022 and maintenance of Cardiff Canton Depot from this date (excluding any elements of Cardiff Canton Depot that InfraCo is responsible for under the CVL Transformation);
  - (f) TfWRL's compliance with its obligations under the CVL Stations Underlease to the extent any non compliance impacts on InfraCo delivery of the Infrastructure Manager Service (or cost of delivery); and
  - (g) the Authority shall pay for all additional costs incurred by InfraCo in connection with its maintenance, repair and replacement obligations as landlord under the CVL Stations Underlease above those included in the FTFM for the same.
-

## **Appendix 2 to Schedule 18.2 - Exceptional Items**

- 1.1 The following matters are identified as Exceptional Items:
- (a) Force Majeure Events;
  - (b) Delay in planning or land acquisition rights for the CVL (including the TWAO) to the extent that the Authority has directly caused such delay;
  - (c) Delay in the effective issue of a TWAO within the planned date, always provided:
    - (i) the requirement for such TWAO is clearly set out in the Infrastructure Works Plan including a planned period for progression of the TWAO which a skilled and competent delivery partner or rail operator would reasonably allow for such progression; and
    - (ii) ODP has carried out all its obligations in relation to the relevant deliverables including the provision of information, properly completed documentation and any other activities which a skilled and competent delivery partner or rail operator would undertake;
  - (d) Material delay in gaining planning consent for CVL Transformation because the Authority:
    - (i) or any other relevant planning authority has not responded in statutory timescales;
    - (ii) or any other relevant planning authority has not applied planning policy appropriately;
    - (iii) has breached procedural requirements; or
    - (iv) has acted or made a decision which is ultra vires;
  - (e) The Authority requirements for CVL Transformation materially changes which result in a change or variation in this Infrastructure Agreement including Schedule 3B and/or any Package Orders instructed thereunder provided that InfraCo has provided prior notification to the Authority that such consequential change or variation to such contracts would be required as a result of the Authority requirements for CVL Transformation materially changing;
  - (f) Delay in transfer of the CVL Assets from Network Rail to the Authority beyond the CVL Asset Transfer Longstop Date where the Authority has not issued a Deferral Notice or CVL Asset Notice;

- (g) Material delays arising as a result of any necessary reconfiguration of utilities to enable on-street running of rolling stock on any part of the CVL where such on-street running is specified in the Concept Design and the planned date for such reconfiguration is set out in the Infrastructure Works Plan;
  - (h) A discovery, condition or event in respect of the CVL Assets for which an adjustment to either an Emerging Charge or Firm Charge is allowable in accordance with Schedule 3A (Infrastructure Manager Services) leads to material change in CVL Transformation design;
  - (i) Material delay in obtaining outline planning consent for the Taffs Well depot site and CVL integrated control centre from the planned date in the Infrastructure Works Plan;
  - (j) Material delay in the Authority serving notice to the tenant of the Taffs Well depot site from the planned date in the Infrastructure Works Plan; and
  - (k) Any other matter that the Authority in its sole discretion determines to be an Exceptional Item.
- 1.2 By no later than six (6) weeks from the date of this Infrastructure Agreement, the Parties shall work together using the Infrastructure Works Plan to agree all planned dates from which delay is measured in respect of the relevant Exceptional Items.
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## **Appendix 1 to Schedule 18.3 – Process for the Acceptance of Document Deliverables**

### **1 PROCESS FOR THE ACCEPTANCE OF DOCUMENT DELIVERABLES**

- 1.1 The Authority and InfraCo shall be required to develop, agree and maintain documents throughout the Infrastructure Agreement Term, including those documents in Appendix 2 to this Schedule 18.3. In all cases, the Authority and InfraCo shall work together to develop and agree documentation that complies with Good Industry Practice.
- 1.2 Other formal documents relating to InfraCo Services that are required to be agreed between the parties under this Schedule 18 shall be delivered in accordance with this Process for the Acceptance of Document Deliverables.

### **2 APPROVALS**

- 2.1 InfraCo shall prepare the first draft of the relevant document, taking into account any protective security markings on such document and shall send the draft to the Authority.
- 2.2 The Authority shall issue a formal acknowledgement of receipt of the draft document within two (2) Weekdays of receiving the same. In this respect, the Authority shall not act unreasonably, capriciously or vexatiously.
- 2.3 In the event of the Authority failing to provide such acknowledgement within two (2) Weekdays of receipt of the same, InfraCo shall investigate. For the avoidance of doubt, the timescales outlined below operate from issue of an acknowledgement of receipt by the Authority to InfraCo and proof of issue by InfraCo shall not constitute acknowledgement of receipt by the Authority. However, should InfraCo be able to provide proof of issue, it shall not be in breach of its obligations under this Process for the Acceptance of Document Deliverables for the duration of any period in which the Authority has failed to issue an acknowledgement of receipt.
- 2.4 Within ten (10) Weekdays of issuing an acknowledgement of receipt, the Authority shall issue to InfraCo either an approval notice or a rejection notice in writing.
- 2.5 Should the Authority fail to issue either notice within the above time period or other time period as agreed in writing, InfraCo shall notify the Authority in writing of its intention to assume deemed approval, unless an approval notice or rejection notice is issued within the intervening period, and allow a further five (5) Weekdays from receipt by the Authority of such intention by InfraCo before deemed approval is assumed. For the avoidance of doubt, if the procedure outlined in this paragraph is followed correctly, the deemed approval will be binding on the Authority.
- 2.6 The draft document is deemed to be formally approved from the point at which the Authority issues an approval notice.

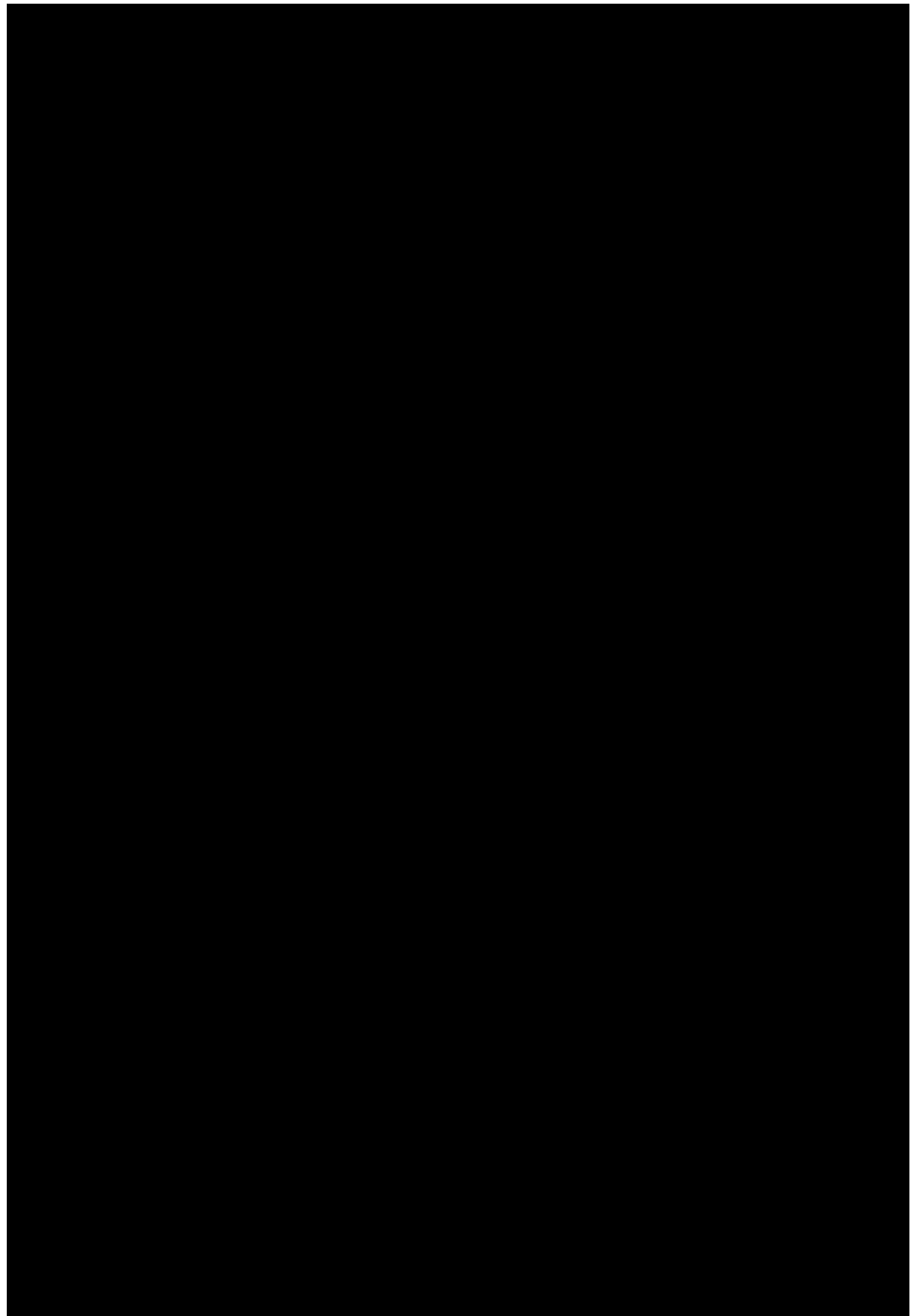
- 2.7 Where the Authority issues a rejection notice, it shall include in the rejection notice factual and evidenced feedback explaining the reasons for not granting approval. In doing so, the Authority shall not act unreasonably, capriciously or vexatiously.
- 2.8 InfraCo shall amend the draft document to incorporate any and all reasonable comments of the Authority in preparing a revised draft of the document previously rejected and shall re-issue to the Authority for approval within ten (10) Weekdays of receiving a rejection notice.
- 2.9 After two (2) failed attempts to gain approval of the draft document, either party may refer the dispute about approval of the draft document to the dispute resolution procedure.
- 2.10 For the avoidance of doubt, once approved by the parties these processes and procedures as documented shall become binding under the Agreement.

### **3 EXPEDITED PROCESS**

- 3.1 Either Party may propose an expedited timetable (for example of five (5) Weekdays in respect of the Authority issuing an approval notice or a rejection notice in accordance with paragraph 2 of this Appendix 1 to Schedule 18.3). Any such proposal shall set out:
- (a) the benefits for InfraCo Services arising from such expedited timetable; and
  - (b) the proposed change to time periods for issue and approval of the document.
- 3.2 Use of an expedited Process for the Acceptance of Document Deliverables shall be subject to:
- (a) the agreement of the Parties;
  - (b) the Authority's prior receipt of the draft documents; and
  - (c) the Authority's continued involvement in the development of the documentation in accordance with paragraph 1.1 of this Appendix 1 to Schedule 18.3.



**Schedule 4- Amended REM Agreement**



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