

**SECOND SUPPLEMENTAL AGREEMENT  
(CVL CHARGING REVIEW)**

**between**

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

**Freightliner (Heavy Haul) Limited**

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

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**THIS SECOND SUPPLEMENTAL AGREEMENT** is dated 29<sup>th</sup> May 2024 and made between:

- (1) **SEILWAITH AMEY CYMRU / AMEY INFRASTRUCTURE WALES LIMITED**, a company registered in England under number 11389544, whose registered office is at Transport for Wales CVL Infrastructure Depot, Ty Trafnidiaeth, Treforest Industrial Estate, Gwent Road, Pontypridd, United Kingdom, CF37 5UT (the "**CVL IM**"); and
  
- (2) **Freightliner (Heavy Haul) Limited** a company registered in England under number 03118392 having its registered office at 3rd Floor, 90 Whitfield Street, Fitzrovia, London, W1T 4EZ (the "**Train Operator**").

**Whereas:**

- A. The parties entered into a Track Access Contract (Freight Services) dated 24<sup>th</sup> December 2019 pursuant to Section 18(6) of the Act, (hereafter referred to as the "**Contract**").
  
- B. The parties now propose to enter into this Supplemental Agreement in order to make amendments to the Contract on the terms set out below.

**IT IS HEREBY AGREED** as follows:

**1 INTERPRETATION**

1.1 In this Supplemental Agreement:

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

**2 EFFECTIVE DATE AND DURATION**

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

### 3 AMENDMENTS TO THE CONTRACT

3.1 In paragraph 1.1 (Definitions) amend the definition of "Service Variation Sum" by deleting "£665" and replacing with "£[To be determined]".

3.2 In clause 16.1.3 of the Contract replace part (b) with the following new part (b):

"(b) contain such detail as to the constituent elements of the amounts stated to be payable as shall be necessary or expedient so as to enable the person to whom it is given to understand and check it and where required by either party, include a purchase order number."

3.3 In Schedule 4 of the contract in clause 1.1 (Definitions) amend the definition of "Category 1 Disruption" (d) by the insertion "; or" after "Base Service".

3.4 In Schedule 4 of the contract in clause 1.1 (Definitions) amend the definition of "Category 1 Disruption" by the insertion of a new paragraph (e) immediately after paragraph (d) as shown below:

"(e) the Revised Base Service departs its Origin but does not arrive at its Destination, going forward to its Destination on a further Revised Base Service,"

3.5 In Schedule 4 Appendix 1 delete Appendix 1 and replace with the following:

#### **"Appendix 1:**

#### **Performance**

The Normal Planned Disruption Sum shall be £[To be determined] (amount to be expressed in pounds sterling and rounded to zero decimal places).

The Enhanced Planned Disruption Sum shall be £[To be determined] (amount to be expressed in pounds sterling and rounded to zero decimal places)."

3.6 In Schedule 7 (Definitions) add the following in alphabetical order:

"CVL IM Cap" has the meaning ascribed to it in Schedule 8;"

"CVL IM Payment Rate" has the meaning ascribed to it in Schedule 8;"

"Disruption Sum" has the meaning ascribed to it in Schedule 8;"

"Enhanced Planned Disruption Sum" has the meaning ascribed to it in Schedule 4;"

"Late Notice Cancellation Sum" has the meaning ascribed to it in Schedule 8;"

"Normal Planned Disruption Sum" has the meaning ascribed to it in Schedule 4;"

"Train Operator Cap" has the meaning ascribed to it in Schedule 8;"

"Train Operator Payment Rate" has the meaning ascribed to it in Schedule 8;"

3.7 In Schedule 7 (Definitions) replace the definition of "Indexed Figures" with the following:

"**Indexed Figures**" means the CVL IM Cap, the CVL IM Payment Rate, the Cancellation Sum, the VUC Default Rate, the Disruption Sum, the Enhanced Planned Disruption Sum, the Incident

Cap Access Charge Supplement Rate, the Late Notice Cancellation Sum, the Normal Planned Disruption Sum, the Service Variation Sum, the Train Operator Cap and the Train Operator Payment Rate;”

- 3.8 In Schedule 7 (Definitions) delete the definition of “Initial Indexation Factor”.
- 3.9 In Schedule 7 (Definitions) replace the definition of “Track Usage Price List ” with the following:  
“**Track Usage Price List**” means the document entitled “Track Usage Price List” published by Network Rail on or about 20 December 2023 which, for the purposes of this contract, shall be deemed to incorporate any supplements to that document consented to or determined pursuant to paragraph 4.10 of Schedule 7 of this contract;”
- 3.10 In Schedule 7 (Definitions) “VUC Default Period” delete the date “1 April 2019” and replace it with the date “1 April 2024”.
- 3.11 In Schedule 7 (Definitions) “VUC Rate” delete the date “1 April 2019” and replace it with the date “1 April 2024”.
- 3.12 In Schedule 7 paragraph 2.7.1 (Price variation) delete “2019” and replace with “2024”.
- 3.13 In Schedule 7 paragraph 2.7.2 (Price variation) (a) delete “.For the Relevant Year commencing on and from 1 April 2019, the Indexed Figures shall be adjusted as at 1 April 2019 by multiplying them by the Initial Indexation Factor” and replace with “Not used.”
- 3.14 In Schedule 7 paragraph 2.7.2 (b) (Price variation) delete “For the Relevant Year commencing on and from 1 April 2020, and for each subsequent Relevant Year, the adjusted Indexed Figures from the preceding Relevant Year shall be further adjusted as at the applicable 1 April by multiplying them by the Adjustment Factor for the Relevant Year in question (rounded to three decimal places).” and replace with “For the Relevant Year commencing on and from 1 April 2024, the Indexed Figures shall be adjusted as at 1 April 2024 by multiplying them by the Adjustment Factor (rounded to three decimal places). In subsequent years, the adjusted Indexed Figures from the preceding Relevant Year shall be further adjusted as at the applicable 1 April by multiplying them by the Adjustment Factor for the Relevant Year in question (rounded to three decimal places).”
- 3.15 In Schedule 7 paragraph 2.7.2 (c) (Price variation) delete “2019” and replace with “2024”.
- 3.16 In Schedule 7 paragraph 2.7.3 (Price variation) delete paragraph (a) and replace with “(a) Not used.”
- 3.17 In Schedule 7 paragraph 2.7.3 (Price variation) delete (b) and replace with the following:

“(b) in respect of any Relevant Year t commencing on or after 1 April 2024, from the following formula:

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

where:

PCIA<sub>t</sub> means the Phased in Charges Indexation Adjustment in respect of the Relevant Year t;

CPI<sub>t-1</sub> has the same meaning as set out in paragraph 2.7.2 above;

CPI<sub>2022</sub> means the average value of the monthly CPI figures for the 12 months up to and including the month of December 2022.

The value derived from this formula shall be rounded to three decimal places.” .

3.18 In Schedule 8 (Definitions) delete:

“**30% Exposure**” has the meaning ascribed to it in paragraph 11.1.1;”

3.19 In Schedule 8 (Definitions) delete:

“**Exposure Level**” has the meaning ascribed to it in paragraph 11.1.1;”

3.20 In Schedule 8 (Definitions) delete:

“**Prolonged Disruption**” means the operation of Services in accordance with the Working Timetable on any part of the CVL (for which there is no reasonably practicable diversionary route) being prevented for more than one Week as a result of any event or circumstance Attributable to the CVL IM, but excluding from such events and circumstances Restrictions of Use, strikes, any kind of industrial action (on the part of any person) and the direct effects of the weather;”

3.21 In Schedule 8 (Definitions) delete:

“**Prolonged Disruption Amount**” means the Prolonged Disruption Amount specified in Appendix 1, as adjusted under paragraphs 2.7.1 and 2.7.2 of Schedule 7, expressed in pounds sterling and rounded to zero decimal places;”

3.22 In Schedule 8 (Definitions) delete:

“**Prolonged Disruption Sum**” means the Prolonged Disruption Sum calculated in accordance with paragraph 7;”

3.23 In Schedule 8 (Definitions) delete:

“**Zero Exposure**” has the meaning ascribed to it in paragraph 11.1.1.”

3.24 In Schedule 8 (Prescribed delay period) replace paragraph 4.1 with the following:

“ **4.1 Prescribed delay period**

4.1.1 For the purposes of this paragraph 4, the aggregate Minutes Delay to Third Party Trains Attributable to the Train Operator arising as a result of any one incident or event shall be capped at the Incident Cap, so that any such minutes in excess of the Incident Cap shall be disregarded.

4.1.2 Any Full Cancellation of a Third Party Train (other than an Empty Third Party Train) which is Attributable to the Train Operator shall equate to 30 Minutes Delay and any Part Cancellation of a Third Party Train (other than an Empty Third Party Train) which is Attributable to the Train Operator shall equate to 15 Minutes Delay.”.

- 3.25 In Schedule 8 (Prolonged Disruption) delete paragraph 7 and replace with the following:
- “7. Not used.”
- 3.26 In Schedule 8 (CVL IM Liability) delete paragraph 8.2.2 and replace with the following:
- “8.2.2 The CVL IM shall not be liable under this paragraph 8 for any Cancellation Sum in respect of:
- (a) an Empty Service (save that, for the purpose of this paragraph 8, a service, pursuant to a contract with a third party, conveying empty wagons and/or coaching stock will not be an Empty Service);
  - (b) a Short Notice Service;
  - (c) or an Ancillary Movement.”
- 3.27 In Schedule 8 paragraph 10.2.1 (Adjustments to the CVL IM Cap and Train Operator Cap) delete “2020” after “1<sup>st</sup> April” and replace with “2025”.
- 3.28 In Schedule 8 paragraph 11.1.1 (Selection by the Train Operator of the Incident Cap and Exposure Level) delete paragraph 11.1.1 and replace with the following:
- “11.1.1 On or before the date on which this paragraph 11.1 takes effect, the Train Operator shall notify the CVL IM in writing of the level of Incident Cap it wishes to apply (the "Initial Incident Cap Notice"). The Incident Cap Access Charge Supplement Rate applicable to the Train Operator under this contract shall be the rate set out in the column adjacent to the Incident Cap selected by the Train Operator in the Initial Incident Cap Notice until it is replaced by a different level of Incident Cap selected by the Train Operator in an Incident Cap Notice issued pursuant to paragraph 11.1.2.”
- 3.29 In Schedule 8 paragraph 11.1.2 (Selection by the Train Operator of the Incident Cap and Exposure Level) delete paragraph 11.1.2 and replace with the following:
- “11.1.2 The Train Operator may change the level of Incident Cap previously selected by it (either in the Initial Incident Cap Notice or any subsequent Incident Cap Notice issued pursuant to this paragraph 11.1.2) with effect from 1 April in any Financial Year by notifying the CVL IM in writing of the level of Incident Cap it wishes to apply for that Financial Year (the "Incident Cap Notice"). Any such Incident Cap Notice must be served by the Train Operator on the CVL IM by no later than 6 weeks prior to 1 April in the Financial Year from which the Train Operator wishes the new level of Incident Cap to apply, and the Incident Cap Access Charge Supplement Rate applicable for that and each subsequent Financial Year shall be the rate set out in the column adjacent to the Incident Cap selected by the Train Operator in the Incident Cap Notice until it is replaced by a different level of Incident Cap selected by the Train Operator pursuant to this paragraph 11.1.2.”
- 3.30 In Schedule 8 paragraph (Selection by the Train Operator of the Incident Cap and Exposure Level) delete paragraph 11.1.3.
- 3.31 In Schedule 8 paragraph 11.2 (Level of Incident Cap, Exposure Level and Incident Cap Access Charge Supplement Rate) amend the title by deleting “Exposure Level”.
- 3.32 In Schedule 8 paragraph 11.2 (Level of Incident Cap, Exposure Level and Incident Cap Access Charge Supplement Rate) delete:

“ and, in respect of the relevant Incident Cap , the Exposure Level as set out in either Column B or C.”

3.33 In Schedule 8 paragraph 11.2 (Level of Incident Cap, Exposure Level and Incident Cap Access Charge Supplement Rate) delete the title and replace with the following title:

**“Level of Incident Cap and Incident Cap Access Charge Supplement Rate”**

3.34 In Schedule 8 paragraph 11.2 (Level of Incident Cap, Exposure Level and Incident Cap Access Charge Supplement Rate) delete the table and replace with the table shown below:

**“11.2 Level of Incident Cap and Incident Cap Access Charge Supplement Rate**

For the purposes of paragraph 11.1, the Train Operator shall select one of the following Incident Caps:

Incident Cap	Incident Cap Access Charge Supplement Rate (£ per Contract Mile operated in a Charging Period) expressed in pounds sterling and rounded to four decimal places
1,000 minutes	[To be determined]
2,000 minutes	[To be determined]
3,000 minutes	[To be determined]
4,000 minutes	[To be determined]
5,000 minutes	[To be determined]
6,000 minutes	[To be determined]
7,000 minutes	[To be determined]
8,000 minutes	[To be determined]
9,000 minutes	[To be determined]
10,000 minutes	[To be determined]
No Incident Cap	[To be determined]

<b>Incident Cap</b>	<b>Incident Cap Access Charge Supplement Rate (£ per Contract Mile operated in a Charging Period)</b> expressed in pounds sterling and rounded to four decimal places

3.35 In Schedule 8 insert the following new paragraphs after the table in paragraph 11.2 (Level of Incident Cap, Exposure Level and Incident Cap Access Charge Supplement Rate):

“ 12. Not used.

3.36 In Schedule 8 delete Appendix 1 and replace with the following Appendix 1:

**“Appendix 1**

**Performance**

**Train Operator Performance**

<b>Train Operator Payment Rate</b>	[To be determined] per Minutes Delay to Third Party Trains which are Attributable to the Train Operator.
<b>Train Operator Cap</b>	[To be determined]
<b>Disruption Sum</b>	[To be determined]

**CVL IM Performance**

<b>CVL IM Payment Rate</b>	[To be determined] per Minutes Delay to Services which are Attributable to the CVL IM.
<b>CVL IM Cap</b>	[To be determined]



## **Benchmarks**

### **Train Operator Benchmark**

The Train Operator Benchmark (TOB) in relation to each Charging Period shall be [To be determined] Minutes Delay per 100 Train Operator Miles.

### **The CVL IM Benchmark**

The CVL IM Benchmark (CB) in relation to a Charging Period shall be [To be determined] Minutes Delay per 100 Train Operator Miles;

### **Cancellation Sum**

The Cancellation Sum shall be calculated as follows:

- (a) the Cancellation Sum shall be £ [To be determined] for each Cancellation below the Cancellation Threshold;
- (a) the Cancellation Sum shall be £ [To be determined] for each Cancellation equal to or above the Cancellation Threshold; and
- (b) the "**Cancellation Threshold**" in any Charging Period shall be [To be determined] per cent of the total number of Services operated by the Train Operator in that Charging Period.

### **Late Notice Cancellation Sum**

The Late Notice Cancellation Sum in respect of each Late Notice Cancellation shall be £ [to be determined]

### **Baseline Annual Contract Mileage**

The Baseline Annual Contract Mileage shall be that number approved or determined by ORR in due course and which shall take effect from 1 April 2024"

- 3.37 In Schedule 8 Appendix 3 Paragraph 4 (a) (Performance Statements) add “and” after “of Schedule 8;”.
- 3.38 In Schedule 8 Appendix 3 (Performance Statements) delete paragraph 4 (b) and replace with the following:  
“(b) an interim statement listing all Service Variations arising during that Week for which the Train Operator considers it is entitled to a Service Variation Sum under Schedule 4.”.
- 3.39 In Schedule 8 Appendix 3 (Performance Statements) delete paragraph 4 (c).
- 3.40 In Schedule 8 Appendix 3 (Period Final Statements) delete paragraph 9 (e).
- 3.41 In Schedule 8 Appendix 3 (Statement of Adjustment ) delete paragraph 11 and replace with the following:  
“11. If Condition B3.3 of the CVL Network Code (Adjustment to prior results) applies in respect of all or part of a Charging Period, the CVL IM shall promptly issue to the Train Operator a statement showing the necessary adjustments (if any) to any Performance Sums, Cancellation Sums, Late Notice Cancellation Sums, Normal Planned Disruption Sums, Enhanced Planned Disruption Sums and Disruption Sums already paid in respect of the Charging Period.”

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

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

#### **5. LAW**

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

#### **6. COUNTERPARTS**

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

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

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

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

SIGNED BY )  
for and on behalf of )  
**SEILWAITH AMEY CYMRU /** )  
**AMEY INFRASTRUCTURE** ) **Simon Rhoden**  
**WALES LIMITED** ) **Infrastructure Services Director**  
 ) **29th May 2024**

SIGNED BY )  
for and on behalf of )  
**Freightliner (Heavy Haul) Limited** ) **Dave Penney, MD Rail Services**  
 ) **14.05.2024**