

**Application by Aquind Limited for an Order granting Development Consent for the Aquind Interconnector**

**Written representations submitted on behalf of Network Rail Infrastructure Limited**

**Planning Inspectorate Reference Number: EN020022  
Reference Number: 20025158**

## 1 Introduction

- 1.1 This written representation is submitted on behalf of Network Rail Infrastructure Limited (**Network Rail**) in response to the application by Aquind Limited (**Aquind**) for The Aquind Interconnector Order (the **DCO**).
- 1.2 The Book of Reference identifies Network Rail as the freehold owner of plot 7-11, described as "4018 square metres Railway (Hilsea and Bedhampton) and woodland (Eastern Road, Portsmouth)". The proposed onshore (underground) cable route, forming part of the authorised development described in Schedule 1 to the DCO, will, if authorised, cross under Network Rail's operational infrastructure in this location.
- 1.3 The railway affected by the proposals is the Brighton to Southampton line. The proposed onshore cable would cross the railway line between the stations of Farlington Junction and Bedhampton.
- 1.4 The DCO includes the power to:
- (a) compulsory acquire the New Connection Works Rights (as defined in the Book of Reference) over Plot 7-11; and
  - (b) extinguish any existing rights belonging to Network Rail.
- 1.5 Network Rail objects to any compulsory acquisition of rights over operational railway land or the extinguishment of the rights held by Network Rail over operational railway land. Network Rail also objects to the seeking of powers to carry out works in the vicinity of the operational railway without first securing appropriate protections for Network Rail's statutory undertaking.
- 1.6 Network Rail submitted a Section 56 Representation on 19 February 2020.
- 1.7 Network Rail welcomes the inclusion of protective provision in its favour in the submission draft of the DCO. Subject to some minor amendments detailed in section 5 of this written representation the form of those protective provisions is acceptable to Network Rail. To ensure the safe and efficient operation of the railway network, it is essential that the development proceeds in consultation and agreement with Network Rail and that the form of the protective provisions annexed to these written representations is included in the final form of the Order.
- 1.8 Network Rail is continuing to discuss with Aquind arrangements to ensure that the proposed development can be carried out while safeguarding Network Rail's undertaking. Any agreed arrangements are subject to the outcome of Network Rail's internal clearance process which is detail in section 3 below.
- 1.9 In order to ensure that interests are protected, Network Rail requests the examining authority recommend the attached form of protective provisions is included as Part 4 of Schedule 13 to the DCO.

## 2 The Status of Network Rail

- 2.1 Network Rail owns, operates and maintains the railway infrastructure of Great Britain. Network Rail operate the railway infrastructure pursuant to a network licence (the **Network**

**Licence**) granted under section 8 of the Railways Act 1993. The Network Licence contains a set of conditions under which Network Rail must operate. Network Rail's duties under the Network Licence are enforceable by the Office of Rail Regulation (**ORR**).

- 2.2 Under the terms of the Network Licence, Network Rail is under a duty to secure the operation, maintenance, renewal and enhancement of the network in order to satisfy the reasonable requirements of customers and funders. If the ORR were to find Network Rail in breach of its Licence obligations, including this core duty, then enforcement action could be taken against Network Rail.
- 2.3 Network Rail considers there is no compelling case in the public interest for the compulsory acquisition of rights over its land and Aquind should negotiate matters by private agreement to secure the necessary powers by consent.

### **3 Network Rail Clearance**

- 3.1 Clearance is a two stage process by which Network Rail's technical and asset protection engineers review a proposal before clearance can be granted for a proposal to proceed. Clearance may be granted to subject to conditions and requirements.
- 3.2 Network Rail is in the process of applying for clearance. Until the outcome of the clearance process is known Network Rail is unable to comment fully on the impact of the proposals on its operational railway.
- 3.3 Network Rail intends to keep the Examining Authority informed regarding the clearance process at the relevant examination deadlines.

### **4 Powers sought by Aquind and the impact on Network Rail**

- 4.1 The draft Order seeks powers to compulsorily acquire 'New Connection Works Rights' over Plot 7-11 which is land owned by Network Rail for the purpose of its statutory undertaking and is used for that purpose. Those rights are wide ranging, and include:
- (a) the right to install, construct, operate and use the underground electricity cables and all ancillary apparatus;
  - (b) the right to remove any structures, buildings or items on the land;
  - (c) the right to pass and re-pass with or without vehicles for any purpose in connection with the construction, use and decommissioning of the proposed works;
  - (d) rights of vertical and lateral support;
  - (e) a restriction on the construction of any works or the carrying out of any operations which may obstruct or interfere with the rights of the proposed development.
- 4.2 Network Rail does not consider that the scope of those rights is acceptable. The precise impact of the works on the railway line is being assessed and the carrying out of any works is subject to the clearance process as explained above. Even if the impact of the physical works is considered acceptable, the rights sought are very wide-ranging and exercisable over the entirety of Plot 7-11.. For example, they are not limited to subsoil, or the subterranean tunnel within which the cable will be located. The extent of the rights and the land over which they are sought would compromise Network Rail's ability to ensure the safe and efficient operation of its railway network.

- 4.3 Network Rail considers that the Secretary of State, in applying section 127 of the Planning Act 2008, cannot conclude that the New Connection Works Rights can be purchased without serious detriment to the carrying on of Network Rail's undertaking, nor can any detriment to the carrying on of the undertaking, in consequence of the acquisition of the rights, be made good by the use of other land belonging to, or available for acquisition by, Network Rail.
- 4.4 Network Rail is concerned that Article 7(7)(e) enables the benefit of the provisions of the Order to be transferred or leased to any person without the approval of the Secretary of State where the timeframe for all compensation claims has passed and all claims have been settled. After that point the benefit of the powers could be transferred without any scrutiny of the standing of the transferee by Secretary of State. However, that overlooks that there are provisions in the DCO and Network Rail's protective provisions (including paragraph 12 (maintenance of the authorised development), 13 (illuminated signs etc) and 15 (indemnity) for which there is an on-going liability. Network Rail request that Article 7(7)(e) is deleted.

## **5 Protective Provisions**

- 5.1 Network Rail engaged with Aquind prior to submission of the Order regarding Network Rail's required form of protective provisions. As highlighted in Network Rail's section 56 response, following the submission of the DCO there were some minor updates to the Network Rail's standard form protective provision to modernise the language. These were shared with Aquind in March 2020. These amendments include the use of gender neutral pronouns. None of the amendments change the substance of the protective provisions..
- 5.2 In order to properly protect its undertaking Network Rail requires the form of protective provisions at Annex A to this document to be included in the final form of the Order. For reference, the amendments against the submitted draft of the Order are shown on the comparison document at Annex B.

## **6 Conclusion**

- 6.1 Network Rail is liaising closely with Aquind, and subject to the clearance being obtained, is willing to enter into private agreements to govern the carrying out of the proposed works.
- 6.2 The discussions relate to the following documents:
- (a) protective provisions for inclusion in the DCO;
  - (b) a property agreement to govern the installation, operation and maintenance of the cable (subject to Network Rail's clearance process); and
  - (c) a framework agreement that describes and attaches the document referred to above, the protective provisions, clearance conditions and any necessary basic asset protection agreement, asset protection agreement or other engineering documents required for the benefit and protection of Network Rail's assets.
- 6.3 Without those agreements and satisfactory protective provisions being in place Network Rail considers the proposed development, if carried out in relation to Plot 7-11, would have serious detrimental impact on the operation of the railway and would prevent Network Rail from operating the railway safely and efficiently and in accordance with its Network Licence. Until such agreements are in place, and clearance has been obtained, Network Rail is unable to withdraw its objection to the DCO.

- 6.4 In the event that insufficient progress is made regarding the protective provisions and private agreements, Network Rail will request to be heard in an appropriate hearing to explain the impact of the proposals on its railway undertaking.

**Dentons UK and Middle East LLP**

6 October 2020

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## **Annex A – Network Rail Protective Provisions**

## SCHEDULE 13

### Part 4

#### FOR PROTECTION OF RAILWAY INTERESTS

1. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 15 of this Part of this Schedule, any other person on whom rights or obligations are conferred by that paragraph.

2. In this Part of this Schedule—

“construction” includes execution, placing, alteration and reconstruction, and “construct” and “constructed” are to be construed accordingly;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of powers under section 8 (licences) of the Railways Act 1993<sup>1</sup>;

“Network Rail” means Network Rail Infrastructure Limited (registered company number 2904587) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 (meaning of “subsidiary” etc.) of the Companies Act 2006<sup>2</sup>) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail Infrastructure Limited and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail Infrastructure Limited or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail Infrastructure Limited for the purposes of such railway or works, apparatus or equipment; and

“specified work” means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property,

3.—(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies

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<sup>1</sup>

<sup>2</sup>

with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

4.—(1) The undertaker must not exercise the powers conferred by—

- (a) article 3 (development consent etc. granted by the Order);
- (b) article 4 (authorisation of use);
- (c) article 5 (power to maintain authorised development);
- (d) article 14 (access to works);
- (e) article 17 (discharge of water);
- (f) article 18 (protective works to buildings);
- (g) article 19 (authority to survey and investigate the land);
- (h) article 20 (compulsory acquisition of land);
- (i) article 21 (statutory authority to override easements and other rights);
- (j) article 23 (compulsory acquisition of rights and the imposition of restrictive covenants);
- (k) article 24 (private rights of way);
- (l) article 27 (acquisition of subsoil and airspace only);
- (m) article 30 (temporary use of land for carrying out the authorised development);
- (n) article 32 (temporary use of land for maintaining the authorised development);
- (o) article 33 (statutory undertakers);
- (p) article 41 (felling or lopping of trees and removal of hedgerows);
- (q) article 42 (trees subject to tree preservation orders)

or the powers conferred by section 11(3) (powers of entry) of the 1965 Act in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.



(2) The undertaker must not, in the exercise of the powers conferred by this Order, prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, article 21 (statutory authority to override easements and other rights), article 24 (private rights of way) or article 33 (statutory undertakers), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers conferred by this Order acquire or use or acquire new rights over any railway property except with the consent Network Rail.

(5) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions.

5.—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated his or her disapproval of those plans and the grounds of such disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer is deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying his or her approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to his or her reasonable satisfaction.

6.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 5(4) of this Part of this Schedule must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

7. The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as he or she may reasonably require with regard to a specified work or the method of constructing it.

8. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

9.—(1) If any permanent or temporary alterations or additions to railway property, are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 5(3) of this Part of this Schedule, pay to Network Rail all reasonable expenses to which Network Rail may be put

and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 10(a) of this Part of this Schedule provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

10. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 5(3) of this Part of this Schedule or in constructing any protective works under the provisions of paragraph 5(4) of this Part of this Schedule including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watch-persons and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work; (d) in respect of any special traffic working resulting from any speed restrictions which may, in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (d) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

11.—(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 5(1) of this Part of this Schedule for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker's compliance with sub-paragraph (3)—

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail's apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(1)) of this Part of this Schedule in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 5(1) of this Part of this Schedule have effect subject to this sub-paragraph.

(6) If at any time prior to the commencement of regular revenue-earning operations comprised in the authorised development and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI; and (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to subparagraphs (5) or (6)—

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and
- (b) such modifications must be carried out and completed by the undertaker in accordance with paragraph 6 of this Part of this Schedule.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) of this Part of this Schedule applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 10(a) of this Part of this Schedule any modifications to Network Rail's apparatus under this paragraph are deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in paragraph 22 of this Part of this Schedule to the President of the Institution of Civil Engineers shall be read as a reference to the President of the Institution of Engineering and Technology.

12. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

13. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

14. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

15.—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction or maintenance of a specified work or the failure thereof or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission; and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision does not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) is to include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs is, in the event of default, enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail’s railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 (licences) of the Railways Act 1993.

16. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 15 of this Part of this Schedule) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

17. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

18. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the works and land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

19. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part 1 of the Railways Act 1993.

20. The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State’s consent, under article 7 (benefit of the Order) of this

Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)— (a) the nature of the application to be made; (b) the extent of the geographical area to which the application relates; and (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

21. The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 43 (certification of plans etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in a format specified by Network Rail.

22. Any dispute arising under this Part of this Schedule (except for those disputes referred to in paragraph 11(11) of this Part), unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) to the President of the Institution of Civil Engineers

**Annex B – Comparison showing changes against form of provisions in the draft Order**



## SCHEDULE 13

### Part 4

#### FOR PROTECTION OF RAILWAY INTERESTS

##### **Application**

1. The ~~following~~ provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph ~~15~~, 15 of this Part of this Schedule, any other person on whom rights or obligations are conferred by that paragraph.

##### **Interpretation**

2. In this ~~part~~ Part of this Schedule—

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“construction” includes execution, placing, alteration and reconstruction, and “construct” and “constructed” ~~have corresponding meanings;~~ are to be construed accordingly;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of ~~his~~ powers under section 8 (licences) of the Railways Act ~~1993~~ 1993<sup>1</sup>;

“Network Rail” means Network Rail Infrastructure Limited (registered company number 2904587) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 (meaning of “subsidiary” etc.) of the Companies Act ~~2006~~ 2006<sup>2</sup>) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail Infrastructure Limited and—

(a) ~~(a)~~ any station, land, works, apparatus and equipment belonging to Network Rail Infrastructure Limited or connected with any such railway; and ~~(b)~~

(b) any easement or other property interest held or used by Network Rail Infrastructure Limited for the purposes of such railway or works, apparatus or equipment; and

“specified work” means so much of any of the authorised ~~works~~ development as is situated upon, across, under, over or within ~~15m~~ metres of, or may in any way adversely affect, railway property~~;~~.

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### ~~Railway operational procedures~~

3.—(1) Where under this [Part of this](#) Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—~~(a)~~

- [\(a\)](#) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and ~~(b)~~
- [\(b\)](#) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised ~~works~~[development](#) pursuant to this Order.

### ~~Acquisition of land~~

4.—(1) The undertaker must not exercise the powers conferred by     

- [\(a\)](#) article ~~20 (Compulsory~~[3 \(development consent etc. granted by the Order\)](#);
- [\(b\)](#) [article 4 \(authorisation of use\)](#);
- [\(c\)](#) [article 5 \(power to maintain authorised development\)](#);
- [\(d\)](#) [article 14 \(access to works\)](#);
- [\(e\)](#) [article 17 \(discharge of water\)](#);
- [\(f\)](#) [article 18 \(protective works to buildings\)](#);
- [\(g\)](#) [article 19 \(authority to survey and investigate the land\)](#);
- [\(h\)](#) [article 20 \(compulsory acquisition of land\)](#) ;
- [\(i\)](#) [article 21 \(statutory authority to override easements and other rights\)](#);
- [\(j\)](#) article 23 (~~Compulsory~~[compulsory](#) acquisition of rights and the imposition of restrictive covenants);
- [\(k\)](#) [article 24 \(private rights of way\)](#);
- [\(l\)](#) article ~~26 (Acquisition~~[27 \(acquisition](#) of subsoil [and airspace](#) only)and   ;
- [\(m\)](#) article ~~29 (Temporary~~[30 \(temporary](#) use of land for carrying out [the](#) authorised development)   ;
- [\(n\)](#) [article 32 \(temporary use of land for maintaining the authorised development\)](#);
- [\(o\)](#) [article 33 \(statutory undertakers\)](#);
- [\(p\)](#) [article 41 \(felling or lopping of trees and removal of hedgerows\)](#);

[\(g\) article 42 \(trees subject to tree preservation orders\)](#)

or the powers conferred by section 11(3) [\(powers of entry\)](#) of the 1965 Act in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

~~(a) 2006 c.46~~

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(2) The undertaker must not, in the exercise of the powers conferred by this Order, prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, article ~~33 (Statutory Undertakers)~~ [21 \(statutory authority to override easements and other rights\)](#), [article 24 \(private rights of way\)](#) or [article 33 \(statutory undertakers\)](#), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers ~~of~~ [conferred by](#) this Order acquire or use or acquire new rights over any railway property except with the consent ~~of~~ Network Rail.

(5) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions.

~~Approval of plans etc.~~

5.—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated his [or her](#) disapproval of those plans and the grounds of ~~his~~ [such](#) disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate ~~his~~ approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated ~~his~~ approval or disapproval, ~~he shall be~~ [the engineer is](#) deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it ~~with all reasonable dispatch~~ [without unnecessary delay](#) on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying his [or her](#) approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in ~~his~~ [the engineer's](#) opinion should ~~he~~ [be](#) carried out before the commencement of the construction of a specified work to ensure the safety or stability of

railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case ~~with all reasonable dispatch~~without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to his or her reasonable satisfaction.

#### ~~Carrying out of works~~

6.—(1) Any specified work and any protective works to ~~be~~be constructed by virtue of paragraph 5(4) of this Part of this Schedule must, when commenced, be constructed—

- (a) ~~(a) with all reasonable dispatch~~without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 5; ~~(b)~~
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;

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- (c) ~~(c)~~ in such manner as to cause as little damage as is possible to railway property; and ~~(d)~~
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction ~~shall be~~is caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

#### ~~Facilities~~

7.—(1) The undertaker must ~~(a)~~—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and ~~(b)~~
- (b) supply the engineer with all such information as he or she may reasonably require with regard to a specified work or the method of constructing it.

8. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and

must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

### ~~Network Rail Apparatus~~

9.—(1) If any permanent or temporary alterations or additions to railway property, are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 5(3) of this Part of this Schedule, pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 10(a) of this Part of this Schedule provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

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### ~~Expenses~~

10.—~~(1)~~ The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—~~(a)~~

- ~~(a)~~ in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 5(3) of this Part of this Schedule or in constructing any protective works under the provisions of paragraph 5(4) of this Part of this Schedule including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;~~(b)~~
- ~~(b)~~ in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by ~~him~~ the engineer of the construction of a specified work;~~(c)~~
- ~~(c)~~ in respect of the employment or procurement of the services of any inspectors, ~~signalmen, watchmen~~ signallers, watch-persons and other persons whom it ~~shall be~~ is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable,

interference, obstruction, danger or accident arising from the construction or failure of a specified work; (d) in respect of any special traffic working resulting from any speed restrictions which may, in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution ~~efor~~ diversion of services which may be reasonably necessary for the same reason; and ~~(e)~~

(d) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

### Electromagnetic interference

11.—(1) In this paragraph ~~—~~

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised ~~works (including the operation of tramcars using the tramway comprised in the works)~~ development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised worksdevelopment) which are owned or used by ~~7~~ Network Rail for the purpose of transmitting or receiving electrical energy or of radio, ~~telegraphic,~~ telegraphic, telephonic, electric, electronic or other like means of ~~signaling~~ signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 5(1) ~~for of this~~ Part of this Schedule for the relevant part of the authorised worksdevelopment giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised worksdevelopment take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker’s compliance with sub-paragraph (3) ~~(a)~~ —

(a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(1)) of this Part of this Schedule in order to identify all potential causes of EMI and the measures required to eliminate them; ~~(b)~~

(b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail’s apparatus identified pursuant to sub-paragraph (a); and ~~(c)~~

(c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail’s apparatus identified pursuant to sub-paragraph (a).

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(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 5(1) [of this Part of this Schedule](#) have effect subject to ~~the~~[this](#) sub-paragraph.

(6) If at any time prior to the commencement of regular revenue-earning operations ~~on the authorised railway~~ comprised in the authorised [works development](#) and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised [works development](#) causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred ~~—~~ —

[\(a\)](#) ~~(a)~~ the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI; ~~(b)~~

[\(b\)](#) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI; and (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to subparagraphs (5) or (6) ~~—(a)~~ —

[\(a\)](#) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; ~~and~~

[\(b\)](#) ~~(b) any such~~ modifications ~~to Network Rail's apparatus approved pursuant to those subparagraphs~~ must be carried out and completed by the undertaker in accordance with paragraph ~~6-6~~ [of this Part of this Schedule](#).

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) [of this Part of this Schedule](#) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which ~~subparagraph~~[sub-paragraph](#) (6) applies.

(10) For the purpose of paragraph 10(a) [of this Part of this Schedule](#) any modifications to Network Rail's apparatus under this paragraph ~~shall be~~[deemed](#) to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in ~~article 45(Arbitration)~~ ~~to~~ [paragraph 22 of this Part of this Schedule to the President of](#) the Institution of Civil Engineers shall be read as a reference to the [President of the](#) Institution of ~~Electrical Engineers~~ [Engineering and Technology](#).

### ~~Maintenance of the authorised development~~

12. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

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### ~~Illuminated signs etc.~~

13. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

### ~~Additional expenses~~

14. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

### ~~indemnity~~

15.—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this [Part of this Schedule](#) which may ~~be~~ [be](#) occasioned to or reasonably incurred by Network Rail—~~(a)~~

- ~~(a)~~ by reason of the construction or maintenance of a specified work or the failure thereof or ~~(b)~~
- ~~(b)~~ by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission; and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under ~~his~~ [the engineer's](#) supervision ~~shall~~ [does](#) not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand ~~shall~~ [is to](#) be made without the prior consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) ~~shall~~ [is to](#) include a sum equivalent to the relevant costs.



(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs ~~shall~~<sup>is</sup>, in the event of default, ~~be~~ enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail’s railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in ~~subparagraph~~<sup>sub-paragraph</sup> (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 (licences) of the Railways Act 1993.

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#### ~~Cost estimates~~

16. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 15 of this Part of this Schedule) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to ~~be~~<sup>be</sup> made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

17. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

#### ~~Agreements relating to the transfer of land etc.~~

18. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—~~(1)~~

- (a) any railway property shown on the works and land plans and described in the book of reference;~~(2)~~
- (b) any lands, works or other property held in connection with any such railway property; and~~(3)~~
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

#### ~~Enactments~~

19. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part [1](#) of the Railways Act 1993.

#### ~~Notice in relation to transfer~~

20. The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 7 (~~Consent to transfer~~ benefit of [the](#) Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)— (~~1a~~) the nature of the application to be made; (~~2b~~) the extent of the geographical area to which the application relates; and (~~3c~~) the name and address of the person acting for the Secretary of State to whom the application is to be made.

#### ~~Provision of plans~~

21. The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 43 (~~Certification of Plans~~[certification of plans etc.](#)) are certified by the Secretary of State, provide a set of those plans to Network Rail in ~~the form of a~~ [format specified by Network Rail.](#)

~~computer disc with read-only memory.]~~

[22. Any dispute arising under this Part of this Schedule \(except for those disputes referred to in paragraph 11\(11\) of this Part\), unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party \(after giving notice in writing to the other\) to the President of the Institution of Civil Engineers](#)

Document comparison by Workshare 9.5 on 06 October 2020 11:30:11

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Description	#74066001v1<UK_ACTIVE> - Form of pps in submitted order
Document 2 ID	interwovenSite://UK-DMS/UK_ACTIVE/74066000/2
Description	#74066000v2<UK_ACTIVE> - Protective provisions to be provided with written reps
Rendering set	Underline Strikethrough

Legend:	
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<u>Moved to</u>	
Style change	
Format change	
<del>Moved deletion</del>	
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Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

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Deletions	137
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	304