

**PROTECTIVE PROVISIONS FOR THE PROTECTION OF RAILWAY
INTERESTS**

1. The provisions 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 Schedule, any other person on whom rights or obligations are conferred by that paragraph.

2.—(1) In this Schedule—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“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 their powers under section 8 (licences) of the Railways Act 1993;

“Network Rail” means Network Rail Infrastructure Limited (company number 02904587), whose registered office is at Waterloo General Office, London, United Kingdom, SE1 8SW 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 of the Companies Act 2006) 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 and any successor to Network Rail Infrastructure Limited’s railway undertaking;

“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;

“protective works” means any works specified by the engineer under paragraph 5(4);

“railway operational procedures” means procedures specified under any access agreement (as defined in Part 1, section 83(1) of the Railways Act 1993) or station lease;

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

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

“regulatory consents” means any consent or approval required under—

- (a) the Railways Act 1993;
- (b) the network licence; and/or
- (c) any other relevant statutory or regulatory provisions,

by either the Office of Rail and Road or the Secretary of State for Transport or any other competent body including change procedures and any other consents, approvals of any access or beneficiary that may be required in relation to the authorised development;

“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 and, for

the avoidance of doubt, includes the maintenance of such works under the powers conferred by article 5 (maintenance of authorised development); and

“undertaker” has the same meaning as in article 2 (interpretation) of this Order.

3.—(1) Where under 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) Insofar 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) cooperate 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. The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.

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 under article 46 (arbitration).

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(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 communicated their disapproval of those plans and the ground of such disapproval the undertaker may serve upon the engineer written notice requiring the engineer to communicate 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 communicated approval or disapproval, the engineer shall be 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 their approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's reasonable 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 decommissioning 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

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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 their reasonable satisfaction.

6.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 5(4) 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 shall be 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 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 they 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 employees, contractors or agents for access to any works carried out by Network Rail under 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 in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations or additions may be carried out by Network Rail and if Network Rail gives to the undertaker 56 days' notice (or in the event of an emergency or safety critical issue such notice as is reasonable in the circumstances) 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 or additions as are to be permanent, a capitalised sum representing the increase of the costs which are expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing 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 works is to

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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, 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), 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) or in constructing any protective works under the provisions of paragraph 5(4) 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 shall be 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
- (e) 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) 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)) 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 paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to 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) has effect subject to the sub-paragraph.

(6) Prior to the commencement of operation of the authorised development the undertaker shall test the use of the authorised development in a manner that shall first have been agreed with Network Rail and if, notwithstanding any measures adopted pursuant to sub-paragraph (3) the testing 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;
- (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; and
- (d) the undertaker shall not allow the use or operation of the authorised development in a manner that has caused or will cause EMI until measures have been taken in accordance with this paragraph to prevent EMI occurring.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraph (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) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 6.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) applies to the costs and expenses reasonably incurred or losses reasonably 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), 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 46 (arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Engineering and Technology.

12.—(1) 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.

(2) Regardless of anything in sub-paragraph (1), on receipt of a notice given by Network Rail pursuant to sub-paragraph (1), the undertaker may respond in writing to Network Rail requesting Network Rail to take the steps as may be reasonably necessary to put the specified work the subject of the notice in such state of maintenance as not adversely to affect railway property. If Network Rail agrees to undertake the steps it must give to the undertaker reasonable notice of its intention to carry out such steps, and the undertaker must pay to Network Rail the reasonable costs of doing so.

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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 Schedule which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction, maintenance or operation of a specified work or the failure thereof;
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others within the control of the undertaker whilst engaged upon a specified work;
- (c) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others with the control of the undertaker whilst accessing to or egressing from the authorised development;
- (d) in respect of any such damage caused to or additional maintenance required to railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others within the control of the undertaker; or
- (e) in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the carrying out or operation of the authorised development

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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 shall 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—

- (a) give the undertaker reasonable written notice of any such claims or demands;
- (b) not make any settlement or compromise of such a claim or demand without the prior consent of the undertaker; and
- (c) take such steps as are within its control and are reasonable in the circumstances to mitigate any liabilities relating to such claims or demands and to minimise any costs, expenses, loss, demands and penalties to which the indemnity under this paragraph 15 applies. If requested to do so by the undertaker, Network Rail is to provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker is to only be liable under this paragraph 15 for claims reasonably incurred by Network Rail.

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(3) If the undertaker withholds consent pursuant to sub-paragraph (2)(b) it may have sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand, and the undertaker must give Network Rail notice of it having sole conduct at the same time as refusing consent.

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(4) In no circumstances is the undertaker liable to Network Rail under sub-paragraph (1) for any indirect or consequential loss or loss of profits, save that the sums payable by the undertaker under sub-paragraph (1) shall if relevant include a sum equivalent to the relevant costs.

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(5) 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 (1) which relates to the relevant costs of that train operator.

(6) The obligation under sub-paragraph (1) to pay Network Rail the relevant costs shall, 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 (5).

(7) 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 specified work including but not limited to 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

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“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 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 pursuant to this Schedule (including the amount of the relevant costs mentioned in paragraph 15) 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 Schedule (including any claim relating to those relevant costs).

17. In the assessment of any sums payable to Network Rail under 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 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 no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 44 (certification of plans etc.) are certified by the Secretary of State provide a set of those plans and documents to Network Rail in a format specified by Network Rail.

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21. In relation to any dispute arising between the undertaker and Network Rail under this Schedule, it must, unless otherwise agreed in writing between the undertaker and Network Rail, be referred to and settled by arbitration in accordance with article 46 (arbitration).

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Issue 1 – restriction of exercise of DCO powers

1.1 NRIL have sought to prohibit the Applicant exercising the powers contained in articles 4, 5, 17, 20, 22, 25, 28, 23, 32 to 34, 26, 18 as well as a number of other land related powers without NRIL consent; and requiring an asset protection agreement to be entered into. .

1.2 The controls in place in the Protective Provisions in respect of controlling impacts of works on NRIL's assets and operations ensures that impacts to its infrastructure are sufficiently able to be managed (including if NRIL felt necessary, proposing an asset protection agreement as part of the approval process). With these measures in place, the Applicant ensures that there is no realistic prospect that the exercise of compulsory land powers would have a detrimental impact on NRIL's assets and operations. As such, the Applicant strongly refutes restrictions on the use of these powers as they would jeopardise the delivery of the authorised development. These powers are required to ensure the authorised development can be constructed, operated and maintained and also to ensure that the authorised development's nationally significant public benefits can be realised, including supporting the Government's policies in relation to the timely delivery of new generating capacity and achieving ambitious net zero targets. The Applicant considers that the balance lies clearly in favour of the grant of compulsory acquisition powers, taking into account the measures to avoid, minimise or mitigate the effects of such powers, and noting the substantial public benefits that it considers exist for the authorised development.

1.3 The Applicant also refers to the justification for compulsory acquisition powers that is outlined in the Statement of Reasons [CR1-013].

1.4 The Applicant notes that paragraph 4 of NRIL's preferred protective provisions, which deals with this matter, is excluded in its entirety from the Net Zero Teesside Order 2024. As with NZT, the Proposed Development does not directly interface with the railway network (in that it goes over and under it) and thus there is no reason why a different approach should be taken for H2Teesside compared to NZT.

Issue 2 – reasonableness of engineer's opinion

2.1 The requirement that the engineer's opinion be reasonable is precedent in the Net Zero Teesside Order 2024 (see for example paragraph 115(4) (Railway Interests) of Part 11 to Schedule 12). The Applicant considers it as standard commercial practice that approval under Protective Provisions must be reasonably exercised. .

Issue 3 – payments by the undertaker to Network Rail for increase of costs

3.1 NRIL's inclusion of "may be" in regard to increase of costs expected to be incurred by NRIL is not sufficiently certain to provide commercial and legal justification. The Applicant suggests "are" provides such clarity for both parties and reduces the possibility of a dispute regarding NRIL's costs.

Issue 4 – undertaker response to Network Rail on specified work requesting Network Rail to take steps as may be reasonably necessary

4.1 The Applicant argues that the inclusion of sub-paragraph (2) follows standard commercial and legal principles that would ensure NRIL mitigates loss and damage, particularly to railway property. The sub-paragraph ensures the Applicant must pay NRIL reasonable costs of doing so. This has precedent in paragraph 122(2) (Railway Interests) of Part 11 of Schedule 12 of the Net Zero Teesside Order 2024.

Issue 5 – payment from the undertaker to Network Rail not otherwise provided for in this Schedule incurred by Network Rail or others within the control of the undertaker

5.1 The Applicant's position is that it should only be liable to pay NRIL under paragraph 15 for other parties within the control of the undertaker in order to restrict its liability to a reasonable and proportionate scope with regard to third parties. This has precedent in paragraph 125(1)(b)(c) and (d) (Railway Interests) of Part 11 Schedule 12 of the Net Zero Teesside Order 2024.

Issue 6 – mitigation of indemnity of the undertaker and indirect or consequential loss

6.1 NRIL should be required to take such steps within its control and are reasonable in the circumstances to minimise any costs, expenses, loss, demands and penalties to which the indemnity under paragraph 15 applies. This follows normal contractual principles of mitigation and is preceded within development consent orders such as the Net Zero Teesside Order 2024 (see for example, paragraph 125(2)(c), 141(4), 157(4) respectively of Schedule 12).

6.2 The Applicant should not be liable for consequential loss, indirect loss or loss of profits as these losses are far too remote from, and lack a causal link to, the damage or interruption to service of supply of goods contemplated by paragraph 15(1). As such, the exclusion in paragraph 15(2) is appropriate. Paragraph 15(2) is preceded in with the bespoke protective provisions in development consent orders, such as the Net Zero Teesside Order 2024 (see for example, paragraphs 109(2)(b), 125(3), 255(2)(b), 295(2)(b) and 361(4)(b) of Parts 10-11, 19, 21 and 26 respectively of Schedule 12 to the Net Zero Teesside Order 2024).

Issue 7 – conduct of settlement, compromise or other proceedings under sub-paragraph (2)(b)

7.1 This sole conduct wording is well preceded in other DCOs, and is included across the vast majority of the Protective Provisions within the Net Zero Teesside Order 2024. Given that paragraph 15(2)(b) provides for conduct of claims to be subject to the consent of the undertaker (which NRIL do not dispute), this additional paragraph makes clear what the consequences of that refusal of consent will be.

Issue 8 – liability of the undertaker to Network Rail for indirect or consequential loss or loss of profits

8.1 Please refer to the rationale at 9.2 above.

Issue 9 – definition of “the relevant costs” under sub-paragraph 15(7)

9.1 Please refer to the rationale at 9.2 above.

Issue 10 – notice from the undertaker to Network Rail where an application is made under article 8 (Consent to transfer of benefit of Order) of the DCO

10.1 NRIL has not provided any justification for the requirement that the Applicant must give written notice if any application is proposed to be made under article 8.

Issue 11 – application of article 46 (Arbitration) of the DCO to disputes between the undertaker and Network Rail

11.1 NRIL has not provided any justification for the disapplication of arbitration provisions under article 46 of the DCO for disputes under this part of the Schedule, which are the standard process for disputes under Protective Provisions both in this Order and the vast majority of made DCOs.