

From: [Johnson, Melissa](#)  
To: [Tilbury2](#)  
Cc: [Elsenaar, Marnix](#); [Hodge, Sarah](#)  
Subject: TR030003 - Tilbury2 DCO Application - Written Representations on behalf of Network Rail  
Date: 19 March 2018 11:25:28

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Dear Sirs

We act for Network Rail in relation to this matter.

Network Rail is not intending to speak at or attend the hearings on 16 – 20 April but reserves its right to attend and speak at hearings later in the examination process.

Written Representation

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Please see attached.

Responses to First Questions

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**1.18.1** Regarding Network Rail's need [RR-013] to have agreements in place to safeguard Network Rail's interests and the safety and integrity of the operational railway:

- a) What is the current position between Network Rail and the Applicant? ***Negotiations are progressing well but an agreement is yet to be concluded.***
- b) What matters remain to be resolved? ***An overriding/framework agreement which will allow NR to remove its objection, a draft has been circulated and is being considered and on three of the protective provisions (the rest are agreed).***
- c) Can Network Rail confirm that it will table a Statement of Common Ground with the Applicant at Deadline 1 (20 March 2018)? ***Yes this the intention. This document is almost agreed and will be submitted by the Applicant if the statement is in its final form by 20 March 2018.***
- d) Is Network Rail content with the Protective Provisions in dDCO Schedule 10 Part 6 *For the Protection of Railway Interests* ***No, although these are largely agreed, three points remain outstanding as detailed in NR's written representation but it hoped these will be resolved shortly.***

**1.18.3** Would the Applicant and NR state their response to Essex County Councils request for clarification on the cumulative impacts on the rail network, passenger and freight capacity, connectivity and network resilience between Essex and London? ***Subject to sufficient protection being put in place for the railway and internal clearance processes being completed and clearance conditions complied with as detailed in NR's written representation, NR does not believe there will be any significant impact on capacity, connectivity and or network resilience caused by the proposed development and that there is sufficient capacity in the relevant lines so that the envisaged level of traffic could be accommodated through better path utilisation and where required departures managed to avoid peak times.***

Finally, please can you acknowledge receipt of this email?

Yours faithfully

Addleshaw Goddard LLP

**Melissa Johnson**

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**Application by Port of Tilbury London Limited for an Order granting Development Consent for the Proposed Port Terminal at the Former Tilbury Power Station**

**Written Representation of Network Rail Infrastructure Limited**

**Planning Inspectorate Reference: – TR030003**

## 1 Introduction

- 1.1 This is the written representation (**Written Representation**) of Network Rail Infrastructure Limited (**Network Rail**) in response to the application by Port of Tilbury London Limited (**Applicant**) for a Development Consent Order (**Proposed DCO**) for a Proposed Port Terminal at the former Tilbury Power Station (**Tilbury 2**). The Proposed DCO seeks development consent for the expansion of the Port of Tilbury as specifically detailed in Schedule 1 to the Proposed DCO (**Proposed Development**).
- 1.2 Network Rail owns, operates and maintains the railway infrastructure of Great Britain. It does so pursuant to a network licence granted under section 8 of the Railways Act 1993 (**Network Licence**).
- 1.3 Network Rail does not object in principle to the Proposed DCO. However, Network Rail objects to the proposed compulsory acquisition of land (permanently and temporarily) owned by it and the acquisition of rights over land on which it relies for the carrying on of its statutory undertaking.
- 1.4 Network Rail also objects to the grant of powers to carry out works over and/or in the vicinity of the operational railway without appropriate provisions being included in the Proposed DCO that protect and safeguard Network Rail's statutory undertaking.
- 1.5 In order for Network Rail to be in a position to withdraw its objection to the Proposed DCO Network Rail requires an agreement with the Applicant to have been completed regulating the exercise of powers under the Proposed DCO insofar as they affect Network Rail including agreement that the Applicant will not exercise compulsory acquisition powers in respect of railway property.
- 1.6 Network Rail and the Applicant met on 19 December 2017 and are continuing to engage in detailed discussions about the interfaces between the Proposed Development and the railway.
- 1.7 The parties have agreed that the protective provisions currently attached to Proposed DCO for the protection of railway interests are not in an appropriate final form. Negotiations are progressing well on the final form of the protective provisions but these are yet to be agreed. Network Rail would like to see the protective provisions attached to this Written Representation at **Annex 1** included in the Proposed DCO.
- 1.8 Differences between the Network Rail suggested protective provisions and those currently proposed by the Applicant suggestion are shown in **Annex 2**
- 1.9 Network Rail is confident that agreement can be reached with the Applicant before the end of the Examination on the Protective Provisions and an appropriate overriding agreement. However, until an agreement has been completed, Network Rail maintains its obligation and reserves its right to be heard at future hearings.

## **2 Impacts on the Railway**

- 2.1 Network Rail has interests in a number of plots (**Plots**) identified in the Book of Reference and associated Land Plans submitted with the application for the Proposed DCO. The Plots include 7 sites where Network Rail own, let or occupy the land referred to, namely Plots 02/03, 02/04, 03/01, 03/02, 03/03, 03/12 and 03/16.
- 2.2 Particular concerns about how the Proposed Development will have a detrimental impact on the operation of the railway and will prevent Network Rail operating the railway safely and efficiently are:
- (a) the potential for trains having to queue on the London, Tilbury and Southend line (**Mainline**) following the proposed re-routing of the existing railhead which currently serves the Applicant's site, if an existing acceptance plunger is not removed;
  - (b) the proposed closure of a public footpath (Footpath 144) and unmanned pedestrian level crossing over the Mainline due to its potential impact on other crossings in the vicinity and the need to appropriately secure the area and access to the railway once such closure has taken place ; and
  - (c) the extension of a road overbridge at Fort Road that will cross the Mainline due to potential for damage to and debris falling on the existing Mainline and the impact such works may have on the ability to maintain and expand the Mainline.

## **3 Compulsory acquisition of rights over operational and third party land**

- 3.1 Network Rail considers that there is no compelling case in the public interest for the compulsory acquisition of freehold interests in, and rights over, the plots.
- 3.2 Network Rail also considers that the Secretary of State, in applying section 127 of the Planning Act 2008, cannot conclude that new rights and restrictions over railway land can be created without serious detriment to Network Rail's undertaking; and no other land is available to Network Rail which would allow the detriment to be made good by them.
- 3.3 Network Rail and the Applicant have begun discussions about the grant to the Applicant of the necessary rights over relevant, affected, Plots to enable the Proposed Development to proceed while safeguarding Network Rail's interests. The discussions are progressing well and Network Rail can see no reason why compulsory powers should be necessary to give effect to the Proposed Development.

## **4 Protective Provisions**

- 4.1 The protective provisions included within Part 6 of Schedule 10 to the Proposed DCO (Draft NR Protective Provisions) are not sufficient to protect the interests of Network Rail.

- 4.2 Network Rail submitted proposed amendments to the Draft NR Protective Provisions to the Applicant and the Planning Inspectorate on 12 February 2018.
- 4.3 The Applicant and Network Rail have now agreed elements of the protective provisions but three key issues remain outstanding as detailed in Annex 1 and 2. Network Rail will continue negotiations with the Applicant and is hopeful that an agreed set of protective provisions can be agreed before the close of the examination process.

## **5 Asset protection**

- 5.1 Network Rail will not be in a position to withdraw its objection to the Proposed DCO unless sufficient protections are put in place for the carrying out of work over and/or in the vicinity of the operational railway. Including internal clearance processes being completed and clearance conditions complied with. The Proposed DCO includes works which cross over and affect the operation of the Mainline. These works comprise both temporary use of Network Rail's land during the construction phase as well as works of a permanent nature.
- 5.2 In respect of all of these works, Network Rail requires asset protection agreements to be put in place to secure:
- (a) that no works shall be carried out without Network Rail's prior approval of the plans, specification, method statement and programme of works;
  - (b) full access rights, during both the construction and operation phases, are retained for the benefit of Network Rail to enable the carrying out of all necessary maintenance, repair, renewal, inspection and enhancement works;
  - (c) recovery of Network Rail's legal and professional fees, costs and disbursements incurred in connection with the proposals to carry out the works and any other costs incurred by Network Rail arising out of the construction, operation and maintenance of the works; and
  - (d) no work will be carried out unless and until all consents, licences, registrations and authorisations (including any statutory or regulatory consents) are in place.
- 5.3 Network Rail requires these protections to be secured prior to any third party works being undertaken on, or in proximity to, operational land.

## **6 Conclusions**

- 6.1 Network Rail does not object in principle to the Proposed Development. However it strongly objects to the proposed compulsory and permanent acquisition of rights over operational land and the inadequate protective provisions currently contained in the Proposed DCO which should be replaced with the protective provisions at Annex 1.
- 6.2 Network Rail requests the Secretary of State not to grant the Proposed DCO without amendment to include the protective provisions at Annex 1 and believes that without

such amendment the test in section 127 of the Planning Act 2008 cannot be satisfied. The Proposed Development would result in serious detriment to Network Rail's undertaking and Network Rail does not have any other land available to it which could be used to avoid such detriment.

- 6.3 Network Rail is in discussions with the Applicant but until such time as Network Rail is given the protection and assurances requested as detailed in this Written Representation, Network Rail's objection to the Proposed DCO remains.

**Addleshaw Goddard LLP      19 March 2018**

## Annex 1

### Proposed Protective Provisions

#### PART 6

#### FOR THE PROTECTION OF RAILWAY INTERESTS

**55.** The following provisions of this Schedule have effect, unless otherwise agreed in writing between the Company and Network Rail and, in the case of paragraph 69, any other person on whom rights or obligations are conferred by that paragraph.

**56.** 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 powers under section 8 of the Railways Act 1993;

“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 59(4);

“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.

**57.—**(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) co-operate with the Company 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 its 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.

**58.—**(1) The Company must not exercise the powers conferred by articles

a) 12 (stopping up)

b) 13 (temporary stopping up)

c) 14 (access to works)

- d) 17 (level crossings)
- e) 18 (discharge of water);
- f) 20 (authority to survey and investigate the land);
- g) 21 (felling or lopping of trees or shrubs);
- h) 23 (compulsory purchase of land);
- i) 25 (compulsory purchase of rights);
- j) 26 (acquisition of subsoil);
- k) 27 (private rights of way)
- l) 28 (power to override easements and other rights);
- m) 32 (temporary use of land for carrying out the authorised development);
- n) 33 (temporary use of land for maintaining the authorised development);
- o) 34 (statutory undertakers);
- p) 41 (operation and maintenance)
- q) 42 (appropriation)

**NOTE:** Whist need for Network Rail to consent to works once the development has been completed for maintenance and operation of the development is unlikely to be necessary on a regular basis and appropriation in respect of Network Rails land in accordance with Article 42 may be unlikely, the extended port limits as shown on the Order plans do cover Network Rail land. Therefore, as appropriation further to Article 42 would not be acceptable to Network Rail in respect of its land, Network Rail is not willing to delete this Article or Article 41, in case any maintenance is required which could impact on the railway, for example, works not on the railway itself but adjacent to it.

The protective provisions confirm that the exercise of the powers listed above are only excluded without Network Rail's consent insofar as they relate to or impact on the railway property (see below), this will not otherwise affect PoTL's ability to use its powers in respect of other land pursuant to the Order.

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

(2) The Company 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 Company must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, as applied by article 35 (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 Company must not under the powers of 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.

**59.—**(1) The Company 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 59 (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 disapproval of those plans and the grounds of disapproval the Company 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 Company. 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 Company 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 Company desires such part of the specified work to be constructed, Network Rail must construct it without unreasonable delay on behalf of and to the reasonable satisfaction of the Company 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 Company.

(4) When signifying 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 Company, if Network Rail so desires, and such protective works must be carried out at the expense of the Company in either case without unreasonable delay and the Company must not commence the construction of the specified works until the engineer has notified the Company that the protective works have been completed to the engineer's reasonable satisfaction.

**60.**—(1) Any specified work and any protective works to be constructed by virtue of paragraph 59(4) must, when commenced, be constructed—

(a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 59;

(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 or a protective work, the Company 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 Company 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 Company or its servants, contractors or agents.

**61.** The Company must—

(a) at all times afford reasonable facilities to the engineer for access to a specified work or a protective work during its construction; and

(b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or a protective work or the method of constructing it.

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

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

**63.**—(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 a protective 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 Company reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the Company 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 or a protective work by the Company, Network Rail gives notice to the Company that Network Rail desires itself to construct that part of the specified work or the protective 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 Company decides that part of the specified work or the protective work is to be constructed, Network Rail must assume construction of that part of the specified work and the Company must, notwithstanding any such approval of a specified work or a protective work under paragraph 59(3), 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 or protective work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 64(a) provide such details of the formula by which those sums have been calculated as the Company 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 Company to Network Rail under this paragraph.

**64.** The Company 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 Company as provided by paragraph 59(3) or in constructing any protective works under the provisions of paragraph 59(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 Company and the supervision by the engineer of the construction of a specified work or a protective work;

(c) in respect of the employment or procurement of the services of any inspectors, signallers, watchkeepers 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 or a protective 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 a protective work or from the substitution of 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 or a protective work.

**65.—(1)** In this paragraph—

"Completion" means the completion of the authorised development so that regular revenue operations can be undertaken pursuant to this Order.

"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 59(1) for the relevant part of the authorised development giving rise to EMI (unless the Company 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 Company 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 Company's compliance with sub-paragraph (3)—

(a) the Company 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 59(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 Company all information in the possession of Network Rail reasonably requested by the Company in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and

(c) Network Rail must allow the Company 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 at the reasonable discretion of Network Rail, and in relation to such modifications paragraph 59(1) has effect subject to the sub-paragraph.

(6) If at any time prior to the Completion of 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 Company 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 Company'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.

**NOTE: The Applicant's proposed wording is accepted, subject final instructions from Network Rail and a new definition of Completion at Para 65(1) being agreed with the Applicant.**

(7) In the event of EMI having occurred –

(a) the Company must afford reasonable facilities to Network Rail for access to the Company's apparatus in the investigation of such EMI;

- (b) Network Rail must afford reasonable facilities to the Company for access to Network Rail's apparatus in the investigation of such EMI; and
- (c) Network Rail must make available to the Company any additional material information in its possession reasonably requested by the Company 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 Company reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;
- (b) any modifications to Network Rail's apparatus approved pursuant to those subparagraphs must be carried out and completed by the Company in accordance with paragraph 60.
- (9) To the extent that it would not otherwise do so, the indemnity in paragraph 69(1) 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 (6) applies.
- (10) For the purpose of paragraph 64(a) 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 article 59 (arbitration) to the Institution of Civil Engineers is to be read as a reference to an arbitrator being a member of the Institution of Engineering and Technology.

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

**67.** The Company must not provide any illumination or illuminated sign or signal on or in connection with a specified work or a protective work in the vicinity of any railway belonging to Network Rail unless the Company 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.

**68.** 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 or a protective work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the Company, be repaid by the Company to Network Rail.

**69.—(1)** The Company 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 or maintenance of a specified work or the failure thereof or

(b) by reason of any act or omission of the Company or of any person in its employ or of its contractors or others whilst engaged upon a specified work or a protective work;

and the Company 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 Company 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 Company from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give the Company 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 Company.

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

[ (4) In no circumstances is the Company liable to Network Rail under sub-paragraph (1) for any indirect or consequential loss or loss of profits, except that the sums payable by the Company under that sub-paragraph include a sum equivalent to the relevant costs in circumstances where—

(a) Network Rail is liable to make payment of the relevant costs pursuant to the terms of an agreement between Network Rail and a train operator; and

(b) the existence of that agreement and the extent of Network Rail's liability to make payment of the relevant costs pursuant to its terms has previously been disclosed in writing to the Company, but not otherwise.]

**NOTE: Network Rail cannot accept this new addition to its standard protective provisions, it should not be liable for any losses associated with the DCO development, even if those losses are unforeseeable. This wording was not included in the recent A14 DCO protective provisions.**

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

(6) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs is, 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).

(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 restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or a protective 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 of the Railways Act 1993.

**70.** Network Rail must, on receipt of a request from the Company, at a frequency to be agreed between the parties, provide the Company free of charge with written estimates of the costs, charges, expenses, future costs forecasts and other liabilities for which the Company is or will become liable under this Schedule (including the amount of the relevant costs mentioned in paragraph 69) and with such information as may reasonably enable the Company 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).

**71.** 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 Company under this Schedule or increasing the sums so payable.

**72.** The Company 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 Company of—

(a) any railway property shown on the works plans or land, special category land and crown 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.

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

**74.** The Company must give written notice to Network Rail if any application is proposed to be made by the Company for the Secretary of State's consent, under article 50 (consent to transfer benefit of 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.

**75.** The Company must no later than 28 days from the date that the documents submitted to and certified by the Secretary of State in accordance with article 57 (certification of documents) are certified by the Secretary of State, provide a set of those documents to Network Rail in the form of a computer disc with read only memory.

**Annex 2**  
**Showing changes between Applicant's and Network Rail's Protective Provisions**

PART 6  
FOR THE PROTECTION OF RAILWAY INTERESTS

**55.** The following provisions of this Schedule have effect, unless otherwise agreed in writing between the Company and Network Rail and, in the case of paragraph 69, any other person on whom rights or obligations are conferred by that paragraph.

**56.** 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 powers under section 8 of the Railways Act 1993;

“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 59(4);**

“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.

**57.—**(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) co-operate with the Company 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 its 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.

**58.—**(1) The Company must not exercise the powers conferred by articles

- a) 12 (stopping up)
- b) 13 (temporary stopping up)
- c) 14 (access to works)
- d) 17 (level crossings)

- e) 18 (discharge of water);
- f) 20 (authority to survey and investigate the land);
- g) 21 (felling or lopping of trees or shrubs);
- h) 23 (compulsory purchase of land);
- i) 25 (compulsory purchase of rights);
- j) 26 (acquisition of subsoil);
- k) 27 (private rights of way)
- l) 28 (power to override easements and other rights);
- m) 32 (temporary use of land for carrying out the authorised development);
- n) 33 (temporary use of land for maintaining the authorised development);
- o) 34 (statutory undertakers);
- p) 41 (operation and maintenance)
- q) 42 (appropriation)

NOTE: Whilst need for Network Rail to consent to works once the development has been completed for maintenance and operation of the development is unlikely to be necessary on a regular basis and appropriation in respect of Network Rails land in accordance with Article 42 may be unlikely, the extended port limits as shown on the Order plans do cover Network Rail land. Therefore, as appropriation further to Article 42 would not be acceptable to Network Rail in respect of its land, Network Rail is not willing to delete this Article or Article 41, in case any maintenance is required which could impact on the railway, for example, works not on the railway itself but adjacent to it.

The protective provisions confirm that the exercise of the powers listed above are only excluded without Network Rail's consent insofar as they relate to or impact on the railway property (see below), this will not otherwise affect PoTL's ability to use its powers in respect of other land pursuant to the Order.

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

(2) The Company 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 Company must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, as applied by article 35 (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 Company must not under the powers of 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.

**59.**—(1) The Company 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 59 (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 disapproval of those plans and the grounds of disapproval the Company 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 Company. 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 Company 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 Company desires such part of the specified work to be constructed, Network Rail must construct it without unreasonable delay on behalf of and to the reasonable satisfaction of the Company 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 Company.

(4) When signifying 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 Company, if Network Rail so desires, and such protective works must be carried out at the expense of the Company in either case without unreasonable delay and the Company must not commence the construction of the specified works until the engineer has notified the Company that the protective works have been completed to the engineer's reasonable satisfaction.

**60.**—(1) Any specified work and any protective works to be constructed by virtue of paragraph 59(4) must, when commenced, be constructed—

(a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 59;

(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 or a protective work, the Company 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 Company 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 Company or its servants, contractors or agents.

**61.** The Company must—

(a) at all times afford reasonable facilities to the engineer for access to a specified work or a protective work during its construction; and

(b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or a protective work or the method of constructing it.

**62.** Network Rail must at all times afford reasonable facilities to the Company and its agents for

access to any works carried out by Network Rail under this Schedule during their construction and must supply the Company with such information as the Company may reasonably require with regard to such works or the method of constructing them.

**63.**—(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 a protective 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 Company reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the Company 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 or a protective work by the Company, Network Rail gives notice to

the Company that Network Rail desires itself to construct that part of the specified work or the protective 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 Company decides that part of the specified

work or the protective work is to be constructed, Network Rail must assume construction of that part of the specified

work and the Company must, notwithstanding any such approval of a specified work or a protective work under

paragraph 59(3), 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 or protective work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 64(a) provide such details of the formula by which those sums have been calculated as the Company 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 Company to Network Rail under this paragraph.

**64.** The Company 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 Company as provided by paragraph 59(3) or in constructing any protective works under the provisions of paragraph 59(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 Company and the supervision by the engineer of the construction of a specified work or a protective work;

(c) in respect of the employment or procurement of the services of any inspectors, signallers, watchkeepers 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 or a protective 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 a protective work or from the substitution of 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 or a protective work.

65.—(1) In this paragraph—

"Completion" means the completion of the authorised development so that regular revenue operations can be undertaken pursuant to this Order.

"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 59(1) for the relevant part of the authorised development giving rise to EMI (unless the Company 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 Company 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 Company's compliance with sub-paragraph (3)—

(a) the Company 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 59(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 Company all information in the possession of Network Rail reasonably requested by the Company in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and

(c) Network Rail must allow the Company 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 at the reasonable discretion of Network Rail, and in relation to such modifications paragraph 59(1) has effect subject to the sub-paragraph.

(6) If at any time prior to the ~~completion~~Completion of 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 Company 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 Company'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.

NOTE: The Applicant's proposed wording is accepted, subject final instructions from Network Rail and a new definition of Completion at Para 65(1) being agreed with the Applicant.

(7) In the event of EMI having occurred –

(a) the Company must afford reasonable facilities to Network Rail for access to the Company's apparatus in the investigation of such EMI;

(b) Network Rail must afford reasonable facilities to the Company for access to Network Rail's apparatus in the investigation of such EMI; and

(c) Network Rail must make available to the Company any additional material information in its possession reasonably requested by the Company 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 Company reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;

(b) any modifications to Network Rail's apparatus approved pursuant to those subparagraphs must be carried out and completed by the Company in accordance with paragraph 60.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 69(1) 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 (6) applies.

(10) For the purpose of paragraph 64(a) 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 article 59 (arbitration) to the Institution of Civil Engineers is to be read as a reference to an arbitrator being a member of the Institution of Engineering and Technology.

**66.** If at any time after the completion of a specified work or a protective work, not being a work vested in Network

Rail, Network Rail gives notice to the Company informing it that the state of maintenance of any

part of the specified work or the protective work appears to be such as adversely affects the operation of railway

property, the Company must, on receipt of such notice, take such steps as may be reasonably

necessary to put that specified work or that protective work in such state of maintenance as not adversely to affect railway

property.

**67.** The Company must not provide any illumination or illuminated sign or signal on or in

connection with a specified work or a protective work in the vicinity of any railway belonging to Network Rail unless

the Company 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.

**68.** 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 or a protective work must, provided that 56 days' previous notice

of the commencement of such alteration, reconstruction or maintenance has been given to the Company, be repaid by the Company to Network Rail.

**69.**—(1) The Company 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 or maintenance of a specified work or the failure thereof or

(b) by reason of any act or omission of the Company or of any person in its employ or of its

contractors or others whilst engaged upon a specified work or a protective work;

and the Company 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 Company 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 Company from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give the Company 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 Company.

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

**[**(4) In no circumstances is the Company liable to Network Rail under sub-paragraph (1) for any indirect or consequential loss or loss of profits, except that the sums payable by the Company under that sub-paragraph include a sum equivalent to the relevant costs in circumstances where—

(a) Network Rail is liable to make payment of the relevant costs pursuant to the terms of an agreement between Network Rail and a train operator; and

(b) the existence of that agreement and the extent of Network Rail's liability to make payment of the relevant costs pursuant to its terms has previously been disclosed in writing to the Company,

but not otherwise.]

NOTE: Network Rail cannot accept this new addition to its standard protective provisions, it should not be liable for any losses associated with the DCO development, even if those losses are unforeseeable. This wording was not included in the recent A14 DCO protective provisions.

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

(6) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs is, 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).

(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 restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a

specified work or a protective 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 of the Railways Act 1993.

**70.** Network Rail must, on receipt of a request from the Company, at a frequency to be agreed

between the parties, provide the Company free of charge with written estimates of the costs, charges, expenses, future costs forecasts and other liabilities for which the Company is or will become liable under this Schedule (including the amount of the relevant costs mentioned in paragraph 69) and with such information as may reasonably enable the Company 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).

**71.** 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 Company under this Schedule or increasing the sums so payable.

**72.** The Company 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 Company of—

- (a) any railway property shown on the works plans or land, special category land and crown 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.

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

**74.** The Company must give written notice to Network Rail if any application is proposed to be made by the Company for the Secretary of State's consent, under article 50 (consent to transfer benefit of 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.

**75.** The Company must no later than 28 days from the date that the documents submitted to and certified by the Secretary of State in accordance with article 57 (certification of documents) are certified by the Secretary of State, provide a set of those documents to Network Rail in the form of a computer disc with read only memory.