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Subject: Deadline 9: Network Rail Infrastructure Limited, Interested Party Number: 20037258 [ADDGDD-LIVE.FID3979359]
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[Immingham RoRo, Network Rail Protective Provisions agreed between Applicant and NR.DOCX](#)

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Dear Examining Authority

Network Rail has agreed with the Applicant Protective Provisions for its (Network Rail's) benefit for inclusion in the Development Consent Order and asks that they are included in the DCO if made by the Secretary of State. The agreed protective provisions are attached.

Please do let us know if you have any questions.

Kind regards

Marnix Elsenaar

Partner

[Addleshaw Goddard LLP](#)

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PART 1

FOR THE PROTECTION OF NETWORK RAIL

Application

—(1) The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the Company and Network Rail and, in the case of paragraph 77, any other person on whom rights or obligations are conferred by that paragraph.

Interpretation

64.—(1) In this Part of this Schedule—

“asset protection agreement” means an agreement, should such be required, to regulate the construction and maintenance of the specified work in a form to be agreed from time to time between the undertaker and Network Rail; “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 by the Secretary of State in exercise of their powers under section 8 of the Railways Act 1993;

“Network Rail” means Network Rail Infrastructure Limited company number 02904587, registered at Waterloo General Office, London 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 72 (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 and—

(a) any station, land, works, apparatus and equipment belonging to Network Rail or a tenant or licensee of 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 works, apparatus or equipment; and

“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 or is to be 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 6 (maintenance of authorised development) in respect of such works.

65.—(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 or rights over 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.

66.—(1) The Company must not exercise the powers conferred by

- (a) article 5 (development consent granted by the Order);
- (b) article 6 (maintenance of the authorised development);
- (c) article 13 (power to override easements and other rights);
- (d) article 16 (statutory undertakers etc);
- (e) article 27 (authority to survey and investigate the land);
- (f) the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016;
- (g) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016;
- (h) any powers under in respect of the temporary possession of land under the Neighbourhood Planning Act 2017,

in respect of any 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 (extinguishment of rights of statutory undertakers: preliminary notices) or 272 (extinguishment of rights of electronic communications code network operators: preliminary notices) of the 1990 Act or article 17 (statutory undertakers) article 14 (power to override easements and other rights or private rights of way) in relation to any right of access of Network Rail to railway property, but such right of access may be extinguished or diverted with the consent of Network Rail.

(4) No powers of compulsory acquisition are being sought in relation to railway property.

(5) The Company must not under the powers of this Order acquire or use or acquire new rights over or seek to impose any restrictive covenants over, any railway property, or extinguish any existing rights of Network Rail in respect of any third party property except with the consent of Network Rail.

(6) The Company 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.

(7) Where Network Rail is asked to give its consent under this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions but it shall never be unreasonable to withhold consent for reasons of operational or railway safety (such matters to be in Network Rail's absolute discretion). The Company must enter into an asset protection agreement prior to the carrying out of any specified work.

67.(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 37 (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 communicated disapproval of those plans and the grounds of disapproval the Company 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 Company. If by the expiry of the further 28 days the engineer has not communicated 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 unnecessary 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 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 Company, if Network Rail so desires, and such protective works must be carried out at the expense of the Company in either case without unnecessary delay and the Company must not commence the construction of the specified works in question until the engineer has notified the Company that the protective works have been completed to the engineer's reasonable satisfaction.

68.—

(1) Any specified work and any protective works to be constructed by virtue of paragraph 72 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 72;
 - (i) under the supervision (where appropriate) and to the reasonable satisfaction of the engineer;
 - (ii) in such manner as to cause as little damage as is possible to railway property; and
 - (iii) 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 on it 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, regardless of 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.

69. Nothing in this Part of 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 employees, contractors or agents or any liability on Network Rail with respect to any damage, costs, expenses or loss attributable to the negligence of the Company or its employees, contractors or agents. (1) 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.

70. Network Rail must at all times afford reasonable facilities to the Company and its employees, contractors or agents for access to any works carried out by Network Rail under this Part of this Schedule during their

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

71.—(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 or additions may be carried out by Network Rail and if Network Rail gives to the Company 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 Company 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 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 because which in the opinion of the engineer it 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 or protective work and the Company must, regardless of any approval of the specified work or protective work in question under paragraph 72(3)65, 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 77(a), provide such details of the formula or method of calculation 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.

72. 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 72(3)(1) or in constructing any protective works under the provisions of paragraph 72(4)(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 reasonable opinion of the engineer be required 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 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 or a protective work.

73. 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 protective work in such state of maintenance as not adversely to affect railway property.

74. 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 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.

75. 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 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.

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

- (a) by reason of the construction or maintenance or operation of a specified work or a protective work or the failure of it;
- (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,
- (c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to or egressing from the authorised development;
 - in respect of any 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;
 - 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;

and the Company indemnify and keep indemnified Network Rail in respect of such costs from and against all claims and demands arising out of or in connection with a specified work or protective 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 will not (if it was done without negligence on the part of Network Rail or its employees, contractors or agents) excuse the undertaker 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 written consent of the Company.

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

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

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

(6) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any 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 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.

78. Network Rail must, on receipt of a request from the Company, from time to time provide the Company free of charge with written estimates of the costs, charges, expenses and other liabilities for which the Company is or will become liable pursuant to this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 77(3) 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 Part of this Schedule (including any claim relating to those relevant costs).

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

80. 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.

81. The Company must give written notice to Network Rail where any application is proposed to be made by the Company for the Secretary of State's consent under article 9 (consent to transfer benefit of 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.

82. The Company must no later than 28 days from the date that the plans and documents referred to in article 34 (certification of plans etc.) are certified by the Secretary of State provide a set of those plans and documents to Network Rail.

83. Any dispute arising between the Company and Network Rail under this Part of this Schedule is to be determined by arbitration in accordance with article 37 (Arbitration).