

**Application by Roxhill (Junction 15) Limited for an Order granting Development Consent for the Northampton Gateway Rail Freight Exchange**

**Summary of Written Representation submitted on behalf of Network Rail Infrastructure Limited**

**Planning Inspectorate Reference No: TR050006**

**Reference No. 20011154**

## **Summary of Written Representation**

- 1.1 Network Rail (**NR**) does not object in principle to the Proposed Development but objects to the proposed compulsory acquisition of land and rights over and adjacent to operational railway without first securing appropriate protections for NR's statutory undertaking.
- 1.2 NR is in ongoing discussions with the Applicant with regards the private agreements referred to in the Written Representations and the protective provisions to be included in the DCO but until such time as NR is given the assurances requested as detailed in this Written Representation, NR's objection to the DCO cannot be withdrawn.
- 1.3 NR requests that the protective provisions appended to the Written Representation be included in the DCO at Part 1 of Schedule 13.
- 1.4 NR is undertaking a risk assessment of the additional train movements arising from the operation of the SRFI on the footpath level crossing at Dallington and will revert when the results of the assessment are known.
- 1.5 The Statement of Common Ground and Answers to ExQ1 address questions regarding capacity and the freight pathing process requested by the ExA.
- 1.6 Further studies have been produced by the Applicant in relation to connection speeds and NR is considering the results and will update the ExA at the next appropriate Deadline.
- 1.7 For NR to be able to give a view as to whether both the DCO and the Rail Central SRFI scheme can be accommodated on the railway network at ISH4, further studies will have to be produced by the Applicants and verified by NR.

**Addleshaw Goddard LLP**

**6 November 2018**

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## 1 Introduction

- 1.1 This written representation (**Written Representation**) is submitted on behalf of Network Rail Infrastructure Limited (**Network Rail**) in response to the application by Roxhill (Junction 15) Limited (**Applicant**) for the Northampton Gateway Rail Freight Exchange Development Consent Order (**DCO**). The DCO seeks development consent for the authorised development described in Schedule 1 and any other development authorised by the DCO (**Proposed Development**).
- 1.2 Network Rail submitted a section 56 representation [**RR-572**] on 1 August 2018 and attended the Preliminary Meeting and the Issue Specific Hearing into the draft DCO [**ISH1**] on 9 October 2018.
- 1.3 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**).
- 1.4 Network Rail does not object in principle to the DCO. However, Network Rail objects to the compulsory acquisition and extinguishment of its rights in operational and third party land on which it relies for the carrying out of its statutory undertaking.
- 1.5 Network Rail also objects to the seeking of powers to carry out works over and/or in the vicinity of the operational railway without first securing appropriate protections for Network Rail's statutory undertaking.
- 1.6 In order for Network Rail to be in a position to withdraw its objection to the DCO Network Rail requires:
  - (a) agreement from the Applicant that the acquisition rights over operational and third party land (including the extinguishment of any rights and restrictions on such land) is on terms agreed with Network Rail for the protection of its statutory undertaking, and that compulsory powers will not be exercised in relation to such land; and
  - (b) that sufficient protection for Network Rail's statutory undertaking is put in place for the carrying out of works over and/or in the vicinity of the operational railway.
- 1.7 Whilst negotiations with the Applicant regarding the above are at an advanced stage and Network Rail is hopeful that these concerns can be resolved during the course of the Examination, in the absence of an agreement that safeguards its interests, Network Rail, as an interested party, seeks to be heard at any further issue specific hearings on the DCO.
- 1.8 Network Rail has also been asked by the Examining Authority (**ExA**) to report, during the course of the Examination, on the issue of the capacity of the railway network. Studies have been undertaken by Network Rail and the Applicant to inform Network Rail as to the impact of the SRFI on the railway network.
- 1.9 A Statement of Common Ground (**SoCG**) agreed with the Applicant addresses, among other issues, questions regarding capacity. Appendix 1 to the SoCG explains the

process involved in the identification and allocation of capacity on the national rail network. Answers to ExQ1 are also being submitted at Deadline 1.

- 1.10 As requested by the ExA, the inter-relationship of the DCO and the application for a DCO submitted by Ashfield Land Management Limited and Gazeley GL Northampton SRFI (**Rail Central SRFI**) is to be addressed at ISH4.
- 1.11 Network Rail notes the ExA's request that a Statement of Common Ground between the Applicant, the applicants for the Rail Central SRFI and Network Rail be submitted at Deadline 3 and Network Rail will work with the other parties to do so.

## **PART 1 – IMPACTS ON RAILWAY INFRASTRUCTURE**

### **2 Impacts on the Railway**

- 2.1 Network Rail has interests in a number of parcels of land (**Land Parcels**) on, and in the vicinity of, the WCML Northampton Loop railway line (**WCML Northampton Loop**) that are identified in the Book of Reference and the Land Plans submitted with the application for the DCO. The Land Parcels include 22 sites where Network Rail owns, lets or occupies the land referred to as being land inside the boundary of the DCO.
- 2.2 Network Rail's land and rights over land that are proposed to be used or acquired (pursuant to Articles 24 and 25 of the DCO) includes land that is on, under, over and directly adjacent to the WCML Northampton Loop. The affected Land Parcels are as follows:
  - (a) Land Parcels affected by the construction of the new railway line and its connection with the WCML Northampton Loop, including the formation of railway cuttings, embankments and necessary earthworks and alterations to WCML Northampton Loop tracks, signalling, overhead electrified line equipment and associated plant to facilitate the new railway line (**Works No. 1**): 1/1, 1/1a, 1/1b, 1/3, 1/6, 1/7, 1/8, 1/10, 1/11, 1/11a, 1/11b, 1/26, 1/30, 1/30a, 1/30b, 3/1, 3/2, 3/4;
  - (b) Land Parcel 1/39 is affected by the works to construct the warehousing and the railway line to serve the warehousing (**Works no 3 and 4**);
  - (c) Land Parcel 1/7 is affected by the structural landscaping works adjacent to the WCML Northampton Loop (**Works No. 6**); and
  - (d) Land Parcels affected by the construction of the new highway linking the A508 Northampton Road to the A508 Stratford Road (**Road Bypass**) and the related construction of a bridge over the West Coast Main Line railway (**Road Bridge**) (**Works No. 13**): Land Parcels 4/5a, 4/7 and 4/8.
- 2.3 In relation to the above-mentioned Works, unless the private agreements referred to in this Written Representation are agreed with the Applicant and completed, Network Rail confirms that 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 and in accordance with the Network Licence.

- 2.4 The issue of whether or not trains entering and operating from the Proposed Development can connect to and from the railway network at an acceptable speed is being considered further by Network Rail following receipt of studies produced by the Applicant and Network Rail will update the ExA at the next appropriate Deadline once the studies have been considered and validated.
- 2.5 Network Rail is undertaking a risk assessment of the additional train movements arising from the operation of the SRFI (up to 4 paths in each direction per day) on the footpath level crossing at Dallington on the WCML Northampton Loop. Once the results of the risk assessment are known, Network Rail will update the ExA and confirm whether a new Requirement needs to be inserted into the DCO to deal with any impacts arising.
- 2.6 Further, before the commencement of any works or the operation of the SRFI, various agreements are required to be in place and may need to be submitted to the Office of Rail and Road (**ORR**) for approval, including a depot access agreement and connection contract to ensure that the operation of the SRFI and its connection to the WCML Northampton Loop is ORR compliant.

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

- 3.1 Network Rail considers that there is no compelling case in the public interest for the compulsory acquisition of or the use by the Applicant of the Land Parcels as the Applicant and Network Rail should instead negotiate these matters by private agreement.
- 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 the railway land can be created without serious detriment to Network Rail's undertaking; and no other land is available to Network Rail which means that the detriment can be made good by them.
- 3.3 In order to avoid the compulsory acquisition of land and rights, Network Rail and the Applicant have begun discussions to ensure that appropriate property agreements are in place to provide the Applicant with the necessary rights over the Land Parcels. In relation to the Roade Bridge, an over bridge agreement in Network Rail's standard form, will be need to be entered into by the Applicant, Network Rail and the Highway Authority.
- 3.4 The Applicant and Network Rail will also be entering into private agreements regarding various structures belonging to Network Rail that are to be made redundant by the DCO.

### **4 Protective Provisions**

- 4.1 In its Schedule of issues and questions [**Table 1 to Annex G of the Agenda to ISH1**] the ExA provided its comments on the protective provisions included within Part 1 of Schedule 13 to the DCO for the benefit of Network Rail (**NR Protective Provisions**).

- 4.2 The Applicant and Network Rail have amended the NR Protective Provisions to take the ExA's comments on board. Further minor amendments have also been agreed between the Applicant and Network Rail to ensure that the NR Protective Provisions reflect Network Rail's standard requirements.
- 4.3 Appended to this document are the Protective Provisions that Network Rail wishes to be included in the DCO (**Appendix 1**) and a comparison version showing the proposed amendments to the NR Protective Provisions (**Appendix 2**).
- 4.4 The only outstanding issue that has not been agreed with the Applicant relates to the extent and method of dispute resolution to be applied by the Protective Provisions. The Applicant has requested that disputes, rather than being determined in accordance with Article 49 (arbitration), are subject to fast-track expert determination with the decision of the expert being final. However, because of its statutory duties concerning the safe operation of the railway, Network Rail requires matters of dispute to be dealt with by way of arbitration, as provided by Article 49 of the DCO (amended as appropriate in relation to matters of dispute relating to electromagnetic interference, so that the arbitrator is appointed, failing agreement between the parties, by the Institution of Engineering and Technology). Without agreement on this issue, Roxhill is unwilling to accept the list of powers requested by Network Rail for inclusion at Paragraph 4 of the Protective Provisions. Paragraph 4 lists those powers which will not be exercised in respect of Network Rail's interests without Network Rail's consent. The ExA will note that in relation to matters of safety, Network Rail's engineers must have the final say and matters of disagreement cannot readily be determined by a fast-track expert determination provision. Network Rail hopes to resolve this matter with the Applicant soon and will update the ExA at Deadline 3.
- 4.5 Network Rail will also require, by private agreement with the Applicant, that notwithstanding the wording of the NR Protective Provisions that may be confirmed by the Secretary of State, the NR Protective Provisions that are agreed between the parties during the course of the Examination will be complied with in any event.

## **5 Asset protection agreements**

- 5.1 Network Rail will not be in a position to withdraw its objection to the DCO unless sufficient protections are put in place for the carrying out of work over and/or in the vicinity of the operational railway. The DCO includes works to, and works that cross over, the WCML Northampton Loop and, in the case of the Roade Bridge works, the West Coast Main Line. 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) that 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 and its objection to the DCO shall remain in place until such an agreement has been entered into.

## **PART 2 – NETWORK CAPACITY ISSUES**

### **6 Capacity of the railway network to accommodate the Proposed Development - alone and in combination with the Rail Central SRFI**

- 6.1 As the ExA is aware, an application has been made to the Planning Inspectorate for a development consent order for the Rail Central SRFI which has not yet been accepted for Examination.
- 6.2 Studies considering the effects of both schemes on the railway network in capacity terms have not been undertaken to enable Network Rail to validate the cumulative effects.
- 6.3 The ExA has requested that ISH4 deal with the inter-relationship matters between both schemes.
- 6.4 In order to be able to give a view as to whether both schemes could be accommodated on the railway network, if consent was obtained for both, further capacity studies will have to be undertaken by the Applicants for both schemes and reviewed by Network Rail.
- 6.5 The ExA has asked Network Rail a number of questions relating to rail freight use and the capacity of the rail network to serve the Proposed Development [ExQ1]. Network Rail has responded to these questions in its Answers to ExQ1, submitted at Deadline 1, and also in its Statement of Common Ground with the Applicant, in particular Appendix 1, which explains the process involved in the identification and allocation of capacity on the national rail network.

### **7 Conclusions**

- 7.1 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 requests that the protective provisions appended to this document be included in the DCO at Part 1 of Schedule 13.

- 7.2 Network Rail considers that the Secretary of State cannot allow the DCO to be granted without amendment, as 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.
- 7.3 Network Rail is in ongoing 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 DCO will not be withdrawn.
- 7.4 Regarding capacity, in relation to the Proposed Development, the Statement of Common Ground and Answers to ExQ1 address the questions asked by the ExA. Further studies have been produced by the Applicant in relation to connection speeds and Network Rail is considering the results of these studies and will update the ExA at the next appropriate Deadline.
- 7.5 In order for Network Rail to be able to give a view as to whether both the DCO and the Rail Central SRFI scheme can be accommodated on the railway network at ISH4, further studies will have to be produced by the Applicants and verified by Network Rail.

**Addleshaw Goddard LLP**  
**6 November 2018**

## **Appendix 1**

### **Protective Provisions requested by Network Rail**

## PROTECTIVE PROVISIONS

## PART 1

## FOR PROTECTION OF RAILWAY INTERESTS

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

2. 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 his or her powers under section 8 of the Railways Act 1993;

“Network Rail” means Network Rail Infrastructure Limited 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<sup>(a)</sup>) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

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

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

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

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

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

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

3.—(1) Where under this 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 undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and

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(a) 2006 c. 46.

(b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised works pursuant to this Order.

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

- (a) article 5 (Authorisation of use)
- (b) article 6 (Maintenance of the authorised development)
- (c) article 12 (Public rights of way – creation, substitution and stopping up)
- (d) article 13 (Accesses)
- (e) article 22 (Authority to survey and investigate the land)
- (f) article 24 (Compulsory Acquisition of land)
- (g) article 25 (Compulsory Acquisition of rights)
- (h) article 26 (Acquisition of part of certain properties)
- (i) article 27 (Private rights)
- (j) article 28 (Power to override easements and other rights)
- (k) article 33 (Statutory undertakers and operators of the electronic communications code network)
- (l) article 35 (Temporary use of land for carrying out the authorised development)
- (m) article 36 (Temporary use of land for maintaining the authorised development)
- (n) article 43 (Felling or lopping of trees and removal of hedgerows)

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

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

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act or, article 33 (Statutory Undertakers), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

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

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

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

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

(4) When signifying his or her approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as

may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to his or her reasonable satisfaction.

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

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

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

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

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

**7.** The undertaker must—

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

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

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

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

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

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

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

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 5(3) or in constructing any protective works under the provisions of paragraph

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

**11.—(1)** In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised works 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 works) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

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

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

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

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

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

(6) If at any time prior to the commencement of regular revenue-earning operations on the authorised railway comprised in the authorised works and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised works causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI

either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

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

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

- (a) Network Rail must allow the undertaker 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 sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 6.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) applies to the costs and expenses reasonably incurred or losses 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 10(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 49 (Arbitration) to the Lands Chamber of the Upper Tribunal shall be read as a reference to the Institution of Engineering and Technology.

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

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

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



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

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

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

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

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

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

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

(6) In this paragraph—

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

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

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

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

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

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

**20.** The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 7 (Benefit of Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

**21.** The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 49 (Certification of plans and documents) are certified by the Secretary of State, provide a set of those plans to Network Rail in a format specified by Network Rail.

## **Appendix 2**

### **Amendments to the NR Protective Provisions in the DCO**



SCHEDULE 13  
PROTECTIVE PROVISIONS

Article 44

PART 1  
FOR PROTECTION OF RAILWAY INTERESTS

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

2. 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 his or her powers under section 8 of the Railways Act 1993;

“Network Rail” means Network Rail Infrastructure Limited 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(a)) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

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

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

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

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

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

3.—(1) Where under this 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 undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and

(b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised works pursuant to this Order.

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

- (a) article 5 (Authorisation of use)
- (b) article 6 (Maintenance of the authorised development)
- (c) article 12 (Public rights of way – creation, substitution and stopping up)
- (d) article 13 (Accesses)
- (e) article 22 (Authority to survey and investigate the land)
- (f) article 24 (Compulsory Acquisition of land)
- (g) article 25 (Compulsory Acquisition of rights)
- (h) article 26 (Acquisition of part of certain properties)
- (i) article 27 (Private rights)
- (j) article 28 (Power to override easements and other rights)
- (k) article 33 (Statutory undertakers and operators of the electronic communications code network)
- (l) article 35 (Temporary use of land for carrying out the authorised development)
- (m) article 36 (Temporary use of land for maintaining the authorised development)
- (n) article 43 (Felling or lopping of trees and removal of hedgerows)

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

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

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act or, article 33 (Statutory Undertakers), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

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

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

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

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

(4) When signifying his or her approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in ~~his~~the engineer's opinion should ~~be~~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 by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case ~~with all reasonable dispatch~~without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to his or her reasonable satisfaction.

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

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

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

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

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

7. The undertaker must—

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

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

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

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

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

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

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

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 5(3) or in constructing any protective works under the provisions of paragraph



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

11.—(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised works 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 works) 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 ~~signaling~~signalling or other communications.

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

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

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

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

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

(6) If at any time prior to the commencement of regular revenue-earning operations on the authorised railway comprised in the authorised works and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised works causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI

either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

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

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

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;
- (b) any modifications to Network Rail's apparatus approved pursuant to those subparagraphs must be carried out and completed by the undertaker in accordance with paragraph 6.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) applies to the costs and expenses reasonably incurred or losses 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 10(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 49 (Arbitration) to the ~~Institution of Civil Engineers~~ Lands Chamber of the Upper Tribunal shall be read as a reference to the ~~Institution of Electrical Engineers~~ Engineering and Technology.

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

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

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

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

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

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

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

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

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

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

(6) In this paragraph—

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

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

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

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

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

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

20. The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 7 (Benefit of Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

21. The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 49 (Certification of plans and documents) are certified by the Secretary of State, provide a set of those plans to Network Rail in ~~the form of a computer disc with read only memory~~ a format specified by Network Rail.