

Written Representations by Network Rail Infrastructure Limited in relation to The Steeple Renewables Project 202[*] (DCO)

Planning Inspectorate Reference Number: EN1010163

Registration Identification Number: F39C2C1CE

Applicant: Steeple Solar Farm Limited

Application: The Steeple Renewables Project 202[*]

Introduction

We write further to Network Rail Infrastructure Limited's (**Network Rail/NR**) Section 56 Representation (submitted on 27 August 2025) which confirmed that Network Rail requires its standard protective provisions to be included in the draft Development Consent Order (**Order**). As currently drafted, the Draft Order (document reference number 4.3) does not afford any protective provisions for the protection of the railway, not least in a form that is considered by NR to sufficiently protect its assets and to ensure the safe and efficient operation of the railway (**Protective Provisions**).

Network Rail requires the form of Protective Provisions that are included at Appendix 2 to this representation. These Protective Provisions contain the necessary provisions that prevent compulsory acquisition of land and rights owned by Network Rail unless NR's prior consent is obtained. There is a longstanding principle that any exercise of compulsory acquisition powers pursuant to a DCO in respect of railway property must be subject to NR's prior consent and a restriction to this effect must be included in the Protective Provisions. Network Rail's position is that an absence of such protection in the Protective Provisions will cause a serious detriment to Network Rail's ability to:

- a) carry out its statutory undertaking;
- b) comply with its Network Licence; and
- c) safely operate the railway network.

Should NR and Steeple Renewables Project (together the **Parties**) not be able to reach an agreement as to the inclusion of the Protective Provisions as part of the Order (should the Inspectorate be minded to grant the same), NR must maintain its objection to the DCO.

We set out the reasons for Network Rail's position and a request for the inclusion of the necessary Protective Provisions on the Order in this representation.

Protective Provisions

The Application includes provisions which would, if granted, authorise the Applicant to carry out works on and in close proximity to operational railway land belonging to Network Rail, to use such land temporarily and to acquire permanent rights over such land. Network Rail must accordingly ensure that the Application is granted subject to the Protective Provisions which provide appropriate protection for the safe and efficient operation of the railway.

As there are currently no Protective Provisions that are afforded to NR in the current draft of the Order there is crucially no restriction on the Applicant's use of compulsory acquisition powers without NR's

prior consent (with such consent not being unreasonably withheld). NR requires the inclusion of the following provisions to form part of their Protective Provisions:

1. *(1) The undertaker must not exercise the powers conferred by—*
 - (a) article 3 (development consent granted by the Order);*
 - (b) article 4 (maintenance of authorised development);*
 - (c) article 14 (discharge of water);*
 - (d) article 16 (authority to survey and investigate the land);*
 - (e) article 17 (compulsory acquisition of land);*
 - (f) article 19 (compulsory acquisition of rights);*
 - (g) article 22 (acquisition of subsoil only);*
 - (h) article 23 (power to override easements and other rights);*
 - (i) article 26 (temporary use of land for carrying out the authorised development);*
 - (j) article 27 (temporary use of land for maintaining the authorised development);*
 - (k) article 28 (statutory undertakers);*
 - (l) article 20 (private rights);*
 - (m) article 36 (felling or lopping of trees or removal of hedgerows);*
 - (n) the powers conferred by section 11(3) (power of entry) of the 1965 Act;*
 - (o) the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016;*
 - (p) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016;*
 - (q) 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 undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.*
- (3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, article 28 (statutory undertakers), article 23 (power to override easements and other rights) or article 20 (private rights), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.*
- (4) The undertaker must not under the powers of 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.*

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

(6) 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 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).

(7) The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work.

Network Rail requires the inclusions of the above protections, for the following reasons:

Paragraph 4(1)

The Applicant proposes to compulsorily acquire permanent rights over the plots set out at Appendix 1.

If NR's consent is not required to be obtained prior to such acquisition and temporary use of this land, it would give rise to a significant, unacceptable risk that the Applicant could compulsorily acquire a right over or temporarily use (as applicable to the respective plots) railway land which would not be subject to the approvals, conditions, limitations and restrictions necessarily required by NR (including any conditions deemed to be required by NR's engineers through its business and technical clearance process) to facilitate and ensure the safe and efficient operation of the railway. Such processes and protocols are implemented by Network Rail to regulate third party interference with the railway and any such interference must be subject to the requisite approvals in order for Network Rail to be in compliance with its Network Licence (as described in further detail below). It is inconceivable that the Applicant should have the powers to circumvent such protocols by way of exercising powers of compulsory acquisition.

NR operates under a Network Licence granted by the Office of Rail and Road (ORR) (a copy of which is appended to this submission). Under its Network Licence, NR is obliged to ensure compliance with a wide number of standards imposed by the Rail Safety and Standards Board that pertain to maintaining the safe and efficient running of trains on the railway. In order to regulate its ability to comply with such standards, NR must retain stringent restrictions, controls and procedures over any interferences with the railway by third parties, including by reason of persons exercising rights on or over railway land. NR imposes such restrictions through a requirement to obtain its prior consent before rights are compulsorily acquired or railway land is temporarily used and by requiring third parties to enter into an asset protection agreement.

Accordingly, where a right is compulsorily acquired and may be exercised over railway land which is not subject to NR's prior consent, such a right is created outside of NR's control and would not be subject to the necessary restrictions and conditions that NR would regard as sufficient so as to enable it to comply with its Network Licence. For example, NR may require that rights granted to the Applicant are subject to reservations allowing NR to interrupt the exercise of such right in certain circumstances (such as enabling NR to deal with emergencies on the railway or carry out necessary works or the exercise of such rights or such temporary possession may not be safe to be exercised at certain times). Where NR's prior consent is not required before exercising these powers over railway land, there is a risk that any such rights or such temporary possession would not be subject to the required restrictions and as a result NR's control over its ability to appropriately manage the safety of the railway would be compromised. The consequences of NR not being able to effectively manage the safety of the railway could be catastrophic. Moreover, this could lead to a failure by NR to comply with its Network Licence

which is not position which can be accepted by NR, nor would it be acceptable to the ORR as NR's regulator.

Network Rail cannot relinquish control over rights being exercised on the railway where the consequences of doing so could be so significantly adverse. Network Rail have made contact with the Applicant's Solicitor to agree the grant of the necessary rights through private agreement, but these negotiations are still in the early stages and so the relevant agreements are not yet in place.

A restriction on the compulsory acquisition of rights over railway land is a widely accepted and longstanding principle which has been accepted by the Examining Authority and Secretary of State on numerous DCOs including but not limited to: the A47/A11 Thickthorn Junction DCO, Thurrock Flexible Generation Plant DCO, Yorkshire and Humber CCS Cross Country Pipeline DCO, Sunnica Energy Farm DCO, Longfield Solar Farm DCO and South Humber Bank Energy Centre DCO. The purpose of this restriction is not to impede the implementation of the Applicant's scheme, but to secure the necessary protection to NR as a statutory undertaker in order that it can properly regulate the rights to be exercised over its railway network and which is appropriate function and purpose of protective provisions.

Paragraph 4(2)

Network Rail is required to maintain strict safety protocols under its Network Licence that is granted by the ORR. As previously mentioned, NR is required to ensure compliance with a number of safety standards. For Network Rail to ensure compliance with such standards, Network Rail employees and contractors must have the ability to access to railway property and this access cannot be impeded without NR's consent as it could result in a breach of NR's Network Licence. Network Rail requires the inclusion of paragraph 4(2) in the Protective Provisions for this reason.

Paragraph 4(3)-(6)

Network Rail not only has a duty to ensure the safe and efficient running of the railway for employees, third parties, members of the public and all others who come into contact with the railway; it also has an overarching duty to preserve the integrity of the railway. Compulsory acquisition of land is for this reason not appropriate where said acquisition concerns operational railway land and must therefore be subject to Network Rail's prior written consent. Should rights be acquired over railway land without such consent being obtained then the right is created outside the control of Network Rail and may not be subject to the necessary restrictions and conditions that Network Rail would regard as sufficient so as to enable it to comply with the Network Licence and its wider statutory undertaker responsibilities.

Similarly, where proposed compulsory acquisition is of rights over railway land where Network Rail has the benefit of easements and other rights, such acquisition would not be subject to Network Rail's usual process of obtaining both business and technical clearance (a process by which network rail engineers assess the detriment to the railway). If such rights are acquired outside of this process implications are that Network Rail could be in a position where the railway is unsafe (with catastrophic consequences), and Network Rail are compromised in both its position as statutory undertaker and ability to ensure the safe and efficient running of trains on the railway.

Network Rail are willing to engage with the Applicant to agree the terms and extent of the rights being sought. In doing so (and discussed above), Network Rail are under a duty to act reasonably in their role as statutory undertaker. However, Network Rail cannot be placed in a position where they are to relinquish the degree of control over the railway being sought by the Applicant as the consequences of doing so are significantly adverse.

Paragraph 4(7)

An Asset Protection Agreement (APA) is required to be entered into in order to support the review of the design of a specified work and to facilitate access on to railway land. An APA is a contracting agreement between Network Rail and an outside party to allow interaction and to establish roles, responsibilities and liabilities of a project over, under or adjacent to the railway. The APA enables NR's Asset Protection Team to regulate managing access, site safety management, engineering services, and possession arrangements as necessary. The Protective Provisions must include a requirement for the Applicant to enter into an APA in order for NR to fulfil its statutory duty to protect the railway in accordance with the terms of its Network Licence. It is therefore submitted that Network Rail would be acting reasonably in requiring that any such required APA be entered in to before any specified work is carried out. For the reasons set out above, NR must maintain its objection to the application for the DCO and must insist on the inclusion of the form of Network Rail's Protective Provisions as set out in this submission and the DCO should not be granted in its current form.

S.127 of the Planning Act 2008

In addition to the points set out above, without the inclusion of Network Rail's standard Protective Provisions, NR must also maintain its objection to the DCO on the basis that the proposed compulsory acquisition of rights over railway property does not satisfy the test in section 127 of the Planning Act 2008 in that:

- (a) the right cannot be acquired without serious detriment to the carrying on of the undertaking; and
- (b) such detriment cannot be made good by Network Rail by use of other railway property.

The reason for which is that:

- 1) a substantial number of the plots (over which rights are proposed to be compulsorily acquired and temporary possession is proposed to be taken) comprise an operational railway line, or is in respect of railway or equipment or is in respect of a restriction on title against disposition by reason of the same;
- 2) unless NR has the ability to require its prior consent and/or require the Applicant to enter into an asset protection agreement prior to the acquisition of such rights/temporary possession in order to ensure any such rights can be carried out in harmony with the operational railway (as is provided for in provision 4), the compulsory acquisition of such rights/temporary use would be adverse to the operational railway and would cause a serious detriment to the carrying on of NR's undertaking as it could interfere with the operational railway line and the safe running of trains out of Network Rail's control; and
- 3) as this is an operational railway line such detriment cannot be made good as the line cannot be relocated to other land in the possession of NR (and not least to say requiring NR to relocate its operational railway to facilitate such rights would be entirely disproportionate both in cost and nature).

Accordingly, in order for such proposed compulsory acquisition and temporary possession of the plots referred to at Appendix 1 below to satisfy the test in section 127 Planning Act 2008, paragraph 4 of Network Rail's standard Protective Provisions (and particularly paragraph 4(1) requiring NR's consent to be sought before powers authorising the compulsory acquisition of such rights are exercised) must be included in the draft Order. Network Rail's position is that in the absence of their Protective Provisions, the test in section 127 is not satisfied.

Network Rail is investigating the extent of rights and restrictions for the benefit of Network Rail which are proposed to be extinguished in delivering the proposed development. On this basis, Network Rail reserves its position in regards to whether or not the test in section 138 of the Planning Act 2008 is satisfied. Network Rail hopes to confirm its position on these matters within the next 28 days.

Permanent Acquisition

1. Rights in respect of beneficiary of title NT353866 - Permanent acquisition of new rights 5010.38 square metres of private road (Wood Lane) and restricted byway (Sturton Le Steeple RB30), adjoining public highway (Wheatley Road), Sturton Le Steeple, Retford (Plot 2-016);
2. Freehold Owner and Occupier in respect of railway line Sheffield to Lincoln - Permanent acquisition of new rights 10701.58 square metres of land being railway line (Sheffield to Lincoln line), Sturton Le Steeple, Retford (Plot 2-022);
3. Freehold Owner and Occupier in respect of railway line Sheffield to Lincoln - Permanent acquisition of new rights 343.41 square metres of land being public highway (Wheatley Road), trees, verge and bridge structure over railway line (Plot 2-024);
4. Freehold Owner and Occupier in respect of railway line Sheffield to Lincoln - Permanent acquisition of new rights 15198.78 square metres of land being railway line (Sheffield to Lincoln line), trees and shrubbery, east of Maumhill Wood, Sturton le Steeple, Retford (Plot 3-009);
5. Freehold Owner and Occupier in respect of mines and minerals - Permanent acquisition of new rights 51.50 square metres of land being part of an access track (Rose Street), adjoining public highway (Gainsborough Road), Sturton Le Steeple, Retford (Plot 5-005);
6. Freehold Owner and Occupier in respect of mines and minerals - Permanent acquisition of new rights 1005.15 square metres of land being part of an access track (Rose Street), north of Gainsborough Road, Sturton Le Steeple, Retford (Plot 5-006);
7. Freehold Owner and Occupier in respect of mines and minerals - Permanent acquisition of new rights 2934.72 square metres of land being part of an access track (Rose Street), trees, verge, east of public highway (Gainsborough Road), Sturton Le Steeple, Retford (Plot 5-007);
8. Freehold Owner and Occupier in respect of mines and minerals - Permanent acquisition of new rights 63521.25 square metres of land being part of West Burton power station, buildings, pylons, overhead electricity cables, handstanding, hedges, shrubbery, unnamed drain and private right of way (South Road), east of public highway (Gainsborough Road), Sturton Le Steeple, Retford (Plot 5-010);
9. Freehold Owner and Occupier in respect of mines and minerals - Permanent acquisition of new rights over 41322.59 square metres of land being part of West Burton power station, buildings, pylons, overhead electricity cables, east of public highway (Gainsborough Road), Sturton le Steeple, Retford (Plot 5-012);
10. Freehold Owner and Occupier in respect of mines and minerals - Permanent acquisition of new rights over 38.28 square metres of land at West Burton substation, grassland, adjoining unnamed private access track and east of public highway (Gainsborough Road), Sturton le Steeple, Retford (Plot 5-017); and
11. Freehold Owner and Occupier in respect of mines and minerals - Permanent acquisition of new rights over 2230.91 square metres of land being part of West Burton power station, buildings, apparatus, pylons, overhead electricity cables, east of public highway (Gainsborough Road), Sturton le Steeple, Retford (Plot 5-019).

Protective Provisions

Protective Provisions for the benefit of Network Rail

SCHEDULE 10 PART 10

PROTECTIVE PROVISIONS

FOR THE PROTECTION OF RAILWAY INTERESTS

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

2. In this Part of this Schedule—

"asset protection agreement" means an agreement to regulate the construction and maintenance of the specified work in a form prescribed from time to time by 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 Infrastructure Limited by the Secretary of State in exercise of their powers under section 8 (licences) of the Railways Act 1993;

"Network Rail" means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at Waterloo General Office, London 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;

"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 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;

"regulatory consents" means any consent or approval required under:

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

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

"specified work" means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property and, for the avoidance of doubt, includes the maintenance of such works under the powers conferred by article 5 (maintenance of authorised development) in respect of such works.

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

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

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

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

- (r) article 3 (*development consent granted by the Order*);
- (s) article 4 (*power to maintain the authorised development*);
- (t) article 14 (*discharge of water*);
- (u) article 16 (*authority to survey and investigate the land*);

- (v) article 17 (*compulsory acquisition of land*);
 - (w) article 19 (*compulsory acquisition of rights*);
 - (x) article 20 (*private rights*);
 - (y) article 22 (*acquisition of subsoil only*);
 - (z) article 23 (*power to override easements and other rights*);
 - (aa) article 26 (*temporary use of land for constructing the authorised development*);
 - (bb) article 27 (*temporary use of land for maintaining the authorised development*);
 - (cc) article 28 (*statutory undertakers*);
 - (dd) article 36 (*felling or lopping of trees and removal of hedgerows*);
 - (ee) the powers conferred by section 11(3) (power of entry) of the 1965 Act;
 - (ff) the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016;
 - (gg) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016;
 - (hh) 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 undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, article 28 (*statutory undertakers*), article 23 (*power to override easements and other rights*) or article 20 (*private rights*), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of 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.

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

(6) 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 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).

(7) The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work.

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 their 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 their 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 their reasonable satisfaction.

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

(a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;

(b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;

(c) in such manner as to cause as little damage as is possible to railway property; and

(d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

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

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

7. The undertaker must-

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

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

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

9. (1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction or completion of a specified work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker 56 days' notice (or in the event of an emergency or safety critical issue such notice as is reasonable in the circumstances) of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations 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 development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

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

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

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

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

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

(b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail’s apparatus identified pursuant to 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) has effect subject to the sub-paragraph.

(6) Prior to the commencement of operation of the authorised development the undertaker shall test the use of the authorised development in a manner that shall first have been agreed with Network Rail and if, notwithstanding any measures adopted pursuant to sub-paragraph (3), the

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

(7) In the event of EMI having occurred –

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

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

(c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI; and

(d) the undertaker shall not allow the use or operation of the authorised development in a manner that has caused or will cause EMI until measures have been taken in accordance with this paragraph to prevent EMI occurring.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-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 sub-paragraph (6) applies.

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

(11) In relation to any dispute arising under this paragraph the reference in article 37 (*Arbitration*) to the Institution of Civil Engineers 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 Part of this Schedule (subject to article 43 (*no double recovery*)) which may be occasioned to or reasonably incurred by Network Rail—
 - (a) by reason of the construction, maintenance or operation of a specified work or the failure thereof; 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;
 - (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;
 - (d) 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;
 - (e) in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the carrying out or operation of the authorised development;and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision shall not (if it was done

without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must –

- (a) give the undertaker reasonable written notice of any such claims or demands
- (b) not make any settlement or compromise of such a claim or demand without the prior consent of the undertaker; and
- (c) take such steps as are within its control and are reasonable in the circumstances to mitigate any liabilities relating to such claims or demands.

(3) The sums payable by the undertaker 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 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, losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any specified work including but not limited to any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in 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 Part of 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 Part of this Schedule (including any claim relating to those relevant costs).
17. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was

not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

18. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—
 - (a) any railway property shown on the works and land plans and described in the book of reference;
 - (b) any lands, works or other property held in connection with any such railway property; and
 - (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.
19. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part 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 5 (*consent to transfer of benefit of the Order*) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—
 - (a) the nature of the application to be made;
 - (b) the extent of the geographical area to which the application relates; and
 - (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.
21. The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 34 (*certification of plans and documents etc.*) are certified by the Secretary of State, provide a set of those plans to Network Rail in a format specified by Network Rail.
22. In relation to any dispute arising under this part of this Part of this Schedule (except for those disputes referred to in paragraph 11(11)) the provisions of article 37 (Arbitration) shall not apply and any such dispute, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) to the President of the Institution of Civil Engineers.

Appendix 3

Network Licence