
The Norfolk County Council (Norwich Northern Distributor Road (A1067 to A47(T))) Order

Update on Compulsory Acquisition Issues following Compulsory Acquisition Hearing of 28 November 2014

Planning Act 2008

Infrastructure Planning

The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

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Author: Norfolk County Council

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Introduction

As requested at the Compulsory Acquisition Hearing held on 28 November 2014 this document provides the Applicant's position statement on the compulsory acquisition issues raised, including where relevant, further documentation from affected persons. It also includes the Applicant's Compulsory Acquisition summary of case.

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1.0. Compulsory Acquisition summary of case

1. This response provides a written summary of the oral case presented by the Applicant at the compulsory acquisition hearing held on 28 November 2014 on any outstanding matters relating to compulsory acquisition.
2. The Applicant presented the information set out in NCC/EX/92. The Applicant also drew attention to NCC/EX/100 which provides an update to that information, including responses relating to two additional landowners. Further updates to that information as requested by the Examining Authority are provided in paragraphs 1.1 to 1.6 below.
3. No persons present at the compulsory acquisition hearing wished to raise any additional matters relating to compulsory acquisition.
4. The Applicant summarised its overall case in relation to compulsory acquisition. The Applicant suggested that the evidence showed that all of the land and rights which were the subject of compulsory acquisition was required for the purposes of the DCO scheme and that no more land (or rights) than was reasonably required for the DCO scheme was sought to be acquired.
5. The Applicant suggested that the evidence demonstrated that, where there were outstanding or unresolved objections to compulsory acquisition, there was a compelling case in the public interest for the compulsory acquisition of the relevant land and rights and that there was a justification for the interference with the Human Rights of affected persons.
6. The detailed reasoning for compulsory acquisition in relation to each plot is set out in Appendices 1, 2, and 3 of the Statement of Reasons (Document Ref 4.1). Section 8 of the Statement of Reasons addresses the statutory and policy tests for compulsory acquisition. Section 13 of the Statement of Reasons addresses the question of interference with the Human Rights of those affected by the compulsory acquisition of land or rights.

7. The negotiations with landowners, and the extent to which matters raised have been resolved or remain outstanding, and so will require a determination by the Examining Authority are set out successively in Appendix 2 of the Statement of Reasons, the Compulsory Acquisition Report (NCC/EX/1), the Applicant's Comments on Relevant Representations (NCC/EX/4), the Applicant's Comments on Written Representations by Landowners (NCC/EX/7), the Position Statement on Landowner Raised Issues (NCC/EX/57), the Update to Compulsory Acquisition Report (NCC/EX/70), the Report on Additional Land and Owners' Consent (NCC/EX/86), the Final Report on Compulsory Acquisition Issues (NCC/EX/92), the Final Report on Compulsory Acquisition Issues – Update to reflect additional representation (NCC/EX/100) and this document.
8. In addition, Statements of Common Ground have been agreed with selected landowners, as set out in NCC/EX/6, NCC/EX/44, and NCC/EX/49.
9. The Applicant has entered into an undertaking with Network Rail in relation to the acquisition of rights to construct works affecting the operational railway (and a separate undertaking in relation to the effects of the NDR on existing level crossings). Copies of these documents are provided in paragraph 1.6. All objections by Network Rail have been withdrawn.
10. Replacement land is being provided for the special category land at Marriott's Way, as set out in paragraph 10.1 of the Statement of Reasons (Document Ref 4.1). The email from Broadland District Council in paragraph 1.1 of this document confirms their acceptance to these proposals. The other special category land is Plot 10/45 and is 298 square metres in extent (having regard to the amendment to the DCO set out in Document Ref 5.14). There is no objection to the compulsory acquisition of this land by the owners (as set out in Appendix A of NCC/EX/48 and in section 1.44 of NCC/EX/92).

1.1. Broadland District Council

1. Further to the position statement set out in paragraph 1.8 of the Applicant's Final Report on Compulsory Acquisition Issues (Document Reference NCC/EX/92) at the Compulsory Acquisition hearing on 28 November 2014 the Examining Authority requested a statement from Broadland District Council concerning their affected land interests.

2. An email from Council in this regard is included below.

3. The Applicant confirms its agreement to the position submitted on behalf of the landowner and therefore considers that no issues remain to be resolved.

Dale, Victoria

From: Brewer, Grant [REDACTED]
Sent: 02 December 2014 10:43
To: Brewer, Grant - P & T
Subject: FW: NDR

From: Phil Courtier [REDACTED]
Sent: 02 December 2014 10:38
To: Brewer, Grant
Cc: Ben Burgess
Subject: NDR

Grant

Broadland District Council acknowledge that land is required from the Council for the Northern Distributor Road at Marriott's Way (Plots 2/26, 2/27, 2/28 and 2/29) and Newman Road, Rackheath (Plot 10/12).

In respect of Marriott's Way, as the land is classified as special category land, we are aware of and in agreement to the transfer to the Council of replacement land, namely Plots 2/23, 2/25, 2/27a, 2/34 and 2/37. However, it is anticipated that within the legal transfer of these areas to Broadland District Council rights will be reserved in favour of the County Council to undertake all future maintenance.

Discussions will continue to be held between our officers and the Applicant regarding the detailed design and practical consequences of these sites during the construction works.

We do not have any outstanding compulsory acquisition issues for the Examination in our capacity as landowner.

Regards
Phil Courtier

Phil Courtier
Head of Planning
Broadland District Council

Tel: [REDACTED]
Fax: 01603 430591
www.broadland.gov.uk
[REDACTED]

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1.2. Mr David Pulling

1. The Applicant's current position statement is set out in paragraph 1.19 of the Applicant's Final Report on Compulsory Acquisition Issues (Document Reference NCC/EX/92).
2. At the Compulsory Acquisition hearing on 28 November 2014 the Examining Authority referred to further correspondence received by them on 6 November 2014 from Mr David Pulling. The Applicant advised that it had not seen this correspondence. A copy was provided after the hearing in order for the Applicant to respond to the issues raised. Despite the comment made within the representation Mr Pulling did not attend the hearing.
3. Mr Pulling's representation includes a copy of his letter to the Applicant dated 4 November 2013 as part of the Applicant's pre-application statutory consultation exercise. Whilst it gives support to the NDR in general it detailed five areas of objection to the Council's proposals as to how it directly affected his property and in particular to the then proposed temporary widening area along Holt Road. These covered arboricultural, geographical, historical, environmental and long term effects.
4. As detailed in Change Reference 4.12 within Appendix V (Summary of Key Refinements made to Proposals) and Consultee Reference DC008 within Appendix X (Further Consultations Summary of Responses) of the Consultation Report (Document Reference 5.1) following Mr Pulling's response the design was amended to remove the land identified for temporary traffic management.

5. An area of 91 square metres of permanent land acquisition from Mr Pulling and Mr Clarke (Plot 4/16) and 592 square metres from their neighbour Mr & Mrs Palmer (Plot 4/18) remained for the construction of the Holt Road / Drayton Lane Roundabout. These were included in the Application Land Plans (Document Reference 2.2) and Book of Reference (Document Reference 4.3).

6. As detailed in paragraph 1.8 of the Position Statement on Landowner Raised Issues (Document Reference NCC/EX/57) following further detailed survey and design work these areas have been reduced to 54 square metres and 286 square metres respectively. These updates are shown within the Updated Plans (Document Reference NCC/EX/73) and Updated Book of Reference (NCC/EX/79). In respect of Mr Pulling and Mr Clarke this reduction is greater than the 68sqm indicated in the Applicant's email dated 11 September 2014 which is included in Mr Pulling's representation.

7. The submitted Arboricultural Impact Assessment (AIA) includes the areas owned by Mr Pulling, Mr Clarke and Mr & Mrs Palmer. The report, which includes detailed schedules of trees, tree constraints plans, tree protection plans etc. is located within Chapter 20 of the Volume 2 documents of the Environmental Statement (Document Reference 6.2).

8. The AIA is based on the version of the Proposed Scheme that included the temporary traffic lanes required during construction of the roundabout and as such the removal of a notable proportion of this tree belt. The case put forward in the AIA is very much worst case, as with the removal of the temporary traffic management proposals many of the trees identified in the document as being required for removal can now remain. The loss of trees is now restricted to just four or five, immediately adjacent to the proposed

roundabout itself, on the land owned by Mr Palmer. This is far less than was originally proposed.

9. The Environmental Statement (Document Reference 6.1) includes an assessment of the likely impacts on wildlife. It is based on a suite of protected species survey reports, which are located within Chapter 8 of Volume 2 of the Environmental Statement (Document Reference 6.2). This included, but is not restricted to, bats, birds, great crested newts, reptiles etc. These surveys included the footprint of the Proposed Scheme, and a wider Zone of Influence, to ensure that both direct and indirect impacts could be identified and assessed. No specific impacts on this area of the scheme are identified.
10. Horsford Hall itself, as a listed building, will also experience a slightly reduced adverse impact under the latest layout proposal, compared to the scheme as assessed in the Chapter 6 - Cultural Heritage of the Environmental Statement (Document Reference 6.1). This is because the visual intrusion of the Proposed Scheme will be reduced by virtue of the altered proposals to remove fewer trees both during construction and operation.
11. Despite the assertion made in the Applicant's email dated 11 September 2014 that the boundary line was to be staked out shortly this has not actually been undertaken, principally due to the overgrown nature of the area. Instead offset measurements from the existing highway boundary have been identified on site to enable the boundary line to be determined.
12. The Applicant has verbally agreed with Mr Palmer that a replacement closeboarded fence will be provided along the new boundary line to replace that affected. A similar provision for Mr Pulling will be made.

13. In summary the Applicant believes that it has taken Mr Pulling's objections into account in its design by removing the temporary use proposals and minimising the permanent acquisition area as much as possible. As a result the impact on his and his neighbour's properties will be reduced from those considered in the Environmental Impact Assessment. The areas of land remaining in the Order limits are all required for the scheme.
14. The Applicant has contacted Mr Pulling again to make arrangements for a further site meeting to be held to explain the modifications, boundary proposals and implications for his property.

1.3. Mr & Mrs Keely

1. Further to the position statement set out in paragraph 1.21 of the Applicant's Final Report on Compulsory Acquisition Issues (Document Reference NCC/EX/92) the landowners have confirmed in writing their agreement to the amended design.
2. A copy of their email is included below. Through detailed design the Applicant will look to minimise the potential for unauthorised use of the access.

Dale, Victoria

From: Brewer, Grant [REDACTED]
Sent: 01 December 2014 12:11
To: Brewer, Grant - P & T
Subject: FW: Norwich Northern Distributor Road

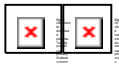
From: Andy [REDACTED]
Sent: 01 December 2014 11:25
To: Brewer, Grant
Subject: RE: Norwich Northern Distributor Road

Sorry for delay, Grant... I'm just back from holiday.

Yes, the revised arrangements are acceptable to me. My only concern being the vulnerability of the area to 'travellers' caravans.

Best regards

Andrew Keely



From: Brewer, Grant [REDACTED]
Sent: 17 November 2014 09:46
To: 'captaincurrent@tiscali.co.uk'
Subject: Norwich Northern Distributor Road

Dear Mr Keely

I refer to our meeting on 12 September 2014 when I showed you the revised design proposals for the access to your property off the realigned Drayton Lane.

At the meeting you confirmed that the revised arrangements were acceptable to you. I would be grateful if you could email me back to confirm this position in writing so that I can provide this information to the Examining Authority.

Your early response would be greatly appreciated.

Many thanks

Yours sincerely

Grant Brewer

Grant Brewer Senior Valuer

NPS Group

[REDACTED]
E [REDACTED] W nps.co.uk

Lancaster House 16 Central Avenue Norwich NR7 0HR

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1.4. Norwich Airport Limited

1. Further to the position statement set out in paragraph 1.25 of the Applicant's Final Report on Compulsory Acquisition Issues (Document Reference NCC/EX/92) at the Compulsory Acquisition hearing on 28 November 2014 the Examining Authority requested a statement from Norwich Airport Limited confirming that all issues are now resolved.
2. An email from Norwich Airport Limited in this regard is included below.
3. The Applicant confirms its agreement to the position submitted on behalf of the Airport and therefore considers that no issues remain to be resolved.

Dale, Victoria

From: Brewer, Grant [REDACTED]
Sent: 01 December 2014 09:49
To: Brewer, Grant - P & T
Subject: FW: NDR - Norwich Airport

Importance: High

From: Phil Gadd [REDACTED]
Sent: 28 November 2014 14:12
To: Brewer, Grant
Cc: Richard Pace; Allfrey, David
Subject: NDR - Norwich Airport

Dear Grant

Following the email exchange between myself and David Allfrey, culminating in my email dated 18 November 2014, I can confirm that all matters raised by Norwich Airport Limited have been satisfactorily resolved, or we have reached unequivocal agreement to resolve in advance of commencement of road construction, and that we have no outstanding issues for the Examination to consider.

Regards

Phil

Phil Gadd

Group Estates Manager

Rigby Group plc

[REDACTED]
[REDACTED]
email [REDACTED]

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1.5. Hilary Barratt and Michael Dewing on behalf of the Trustees of the Beeston Estate

1. Further to the position statement set out in paragraph 1.32 of the Applicant's Final Report on Compulsory Acquisition Issues (Document Reference NCC/EX/92) at the Compulsory Acquisition hearing on 28 November 2014 the Examining Authority requested clarification regarding the representation made concerning the reduction in landscaping areas.
2. An email exchange between the Applicant and Brown & Co regarding this issue is included below which confirms the position verbally presented by the Applicant at the Compulsory Acquisition hearing. In summary, the landowner confirms that they accept the extent of landscaping shown on their property and that during the construction and legal transfer stage discussions will be held to see whether further areas could become temporary use rather than permanent acquisition.

Dale, Victoria

From: Brewer, Grant [REDACTED]
Sent: 01 December 2014 09:50
To: Brewer, Grant - P & T
Subject: FW: NDR - Beeston Estate

From: Charles Birch [REDACTED]
Sent: 30 November 2014 09:38
To: Brewer, Grant
Cc: Dawn Moores
Subject: Re: NDR - Beeston Estate

Dear Grant

Unless we manage to speak, I write in response to your email regarding the extent of the landscape area at Beeston.

Our client has accepted the extent of landscaping shown on their property. Some areas of landscaping have been changed from freehold acquisition to temporary use only.

We have also discussed that in relation to other landscaping areas, which remain shown as being acquired permanently by the Council within the DCO proposals, we have agreed to investigate, during the construction and legal transfer stage, whether further areas could also become temporary use only and you have agreed that in so far as this is possible and desirable, it will be agreed.

I confirm therefore that the above is the position with regard to the "Reduction of landscaping land" issue.

Best wishes

Charles

Charles Birch FRICS FAAV
For Brown & Co LLP

On 28 Nov 2014, at 12:13, Brewer, Grant [REDACTED] wrote:

I understand that both you and your client now accept the extent of landscaping shown on their property.

You will be fully aware that some areas of landscaping have already been changed from freehold acquisition to temporary use only. We have also discussed and agreed that in relation to other landscaping areas, which remain shown as being acquired permanently by the Council within the DCO proposals, we would be willing to investigate, during the construction and legal transfer stage, whether further areas could also become temporary use only.

Could you please confirm to me that the above is indeed also your position with regard to the "Reduction of landscaping land" issue.

Charles Birch FRICS FAAV
Land Agent, Partner



For full details of all our services, please click on [SERVICES](#)

For and on behalf of Brown & Co - Property & Business Consultants LLP

T 01603 598226 [REDACTED] F 01603 616199   

Norwich Office, The Atrium,
St. Georges Street, Norwich, Norfolk, NR3 1AB

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1.6. Network Rail Infrastructure Limited

1. Further to the position statement set out in paragraph 1.43 of the Applicant's Final Report on Compulsory Acquisition Issues (Document Reference NCC/EX/92) the Examining Authority requested a copy of the completed undertaking given by the Applicant to Network Rail Infrastructure Limited concerning the level crossing issue.
2. A copy of the level crossing undertaking, dated 29 September 2014, is included below.
3. Following the hearing the Examining Authority also requested a copy of the subsequent Deed of Undertaking which enabled Network Rail Infrastructure Limited to withdraw its remaining objections.
4. A copy of the Deed of Undertaking in respect of land adjacent to the Norwich to Cromer and Sheringham Line in connection with The Norfolk County Council (Norwich Northern Distributor Road (A1067 to A47(T))) Order, dated 27 November 2014, is included below. Two identical parts are included as the document was executed in counterpart.

NORWICH NORTHERN DISTRIBUTOR ROAD

This undertaking is made on 29 September 2014 by Norfolk County Council

- 1 This undertaking is made by Norfolk County Council ("NCC") to Network Rail Infrastructure Limited ("Network Rail") (together "the parties") in connection with the present examination process into The Norfolk County Council (Norwich Northern Distributor Road (A1067 to A47 (T))) Order (the "DCO"). Network Rail has concerns about the effect of the NNDR on the following level crossings:
 - a. LC7 - Plumstead Road
 - b. LC9 - Broad Lane
 - c. LC11 - Salhouse Road (together the "level crossings")

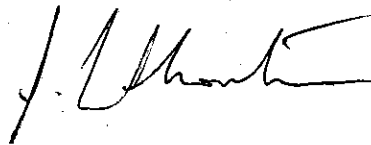
- 2 In consideration of Network Rail confirming to the DCO examination that it has no continuing concerns about the absence of measures in the DCO to address the consequences of changes in traffic flows on the level crossings NCC make the following irrevocable undertakings:
 - a) NCC undertakes at its own expense to carry out traffic surveys of vehicular and non-motorised traffic movements at the level crossings prior to the opening of the Norwich Northern Distributor Road ("NNDR"). The basis, period of and dates for traffic surveys will be agreed between the parties
 - b) NCC undertakes at its own expense to carry out further similar traffic surveys of vehicular and non-motorised traffic movements at the level crossings over at least two separate periods to be agreed between the parties following the completion and commencement of use of the NNDR with the objective being to identify whether there have been any material changes in the timing, levels or composition of traffic passing over the level crossings.
 - c) If, within a period of 2 years from the date of opening of the NNDR there is any material change in the risk profile of any of the level crossings, Network Rail will notify NCC and submit to NCC supporting evidence in the form of the traffic surveys together with any other supporting evidence which NR considers relevant. In these circumstances NCC undertakes to pay the costs of any feasibility work carried out by Network Rail to identify solutions to address the changed risk profile. If Network Rail decide to promote the closure of any of the level crossings the costs of obtaining any closure consents will be borne in full by NCC.
 - d) If the NNDR is closed for any reason then NCC will use all reasonable endeavours to ensure that
 - (i) traffic is directed on routes that do not result in a material increase in traffic across the level crossings;
 - (ii) traffic levels on the level crossings are monitored

- 3 NCC will not be responsible for the costs of carrying out any works to upgrade or close the level crossings

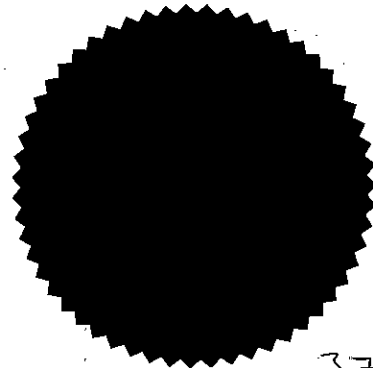
4 This undertaking shall be of no effect if the DCO is not given consent by the Secretary of State.

The Common Seal of Norfolk
County Council was affixed in
the presence of:

Authorised Signatory



authorised to sign
on behalf of: HEAD OF LAW



37077

DENTONS

26 November 2014
KJES/SJA/099161.00262/37293367.01

Deed of Undertaking

In respect of land adjacent to the Norwich to Cromer and Sheringham Line in connection with The Norfolk County Council (Norwich Northern Distributor Road (A1067 to A47(T))) Order

Dated 27 November 2014

Norfolk County Council
(the County Council)

Network Rail Infrastructure Limited
(Network Rail)

Dentons UKMEA LLP
One Fleet Place
London EC4M 7WS
United Kingdom
DX 242

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Deed of Undertaking

Dated

27 November 2014

Between

- (1) **NORFOLK COUNTY COUNCIL** of County Hall, Martineau Lane, Norwich, Norfolk NR1 2DH (the "County Council")
- (2) **NETWORK RAIL INFRASTRUCTURE LIMITED** (Company number 2904587) whose registered office is at Kings Place, 90 York Way, London N1 9AG ("Network Rail")

RECITALS

- A The County Council submitted an application for the Order to the Secretary of State on 6 January 2014. The Order authorises the construction, operation and maintenance of the NNDR.
- B The County Council's application for the Order was accepted by the Secretary of State on 4 February 2014.
- C Network Rail is the owner and operator of the national rail network, which will be affected by the design, construction, maintenance and operation of the works to be authorised by the Order. More particularly, Network Rail is the freeholder of property affected by the Order and enjoys rights over other land affected by the Order.
- D Network Rail has objected to the Secretary of State requesting that the Order not be confirmed.
- E The Parties wish to enter this Agreement to regulate certain aspects of the relationship between Network Rail and the County Council in relation to the application for the Order and general arrangements for the exercise by the County Council of powers under the Order
- F In consideration of the County Council entering into this Agreement Network Rail will withdraw its objection to the Order.

OPERATIVE PROVISIONS

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, these words and expressions have the following meanings:

"APA"

means an Asset Protection Agreement (dealing with matters such as the safe management of works, the discharge of obligations in relation to the safety of persons on or near the rail network, the protection of the operational integrity of train operations and other work being undertaken on the rail network, achieving good working practices in order to protect the condition and integrity of the assets and systems that make up the rail network and the prevention of any adverse impact or detrimental effect upon railway operational

matters) between Network Rail and the County Council in Network Rail's standard form (as the same is amended from time to time) which relates to the Bridge Works

"BAPA"

means a Basic Asset Protection Agreement (a short form APA) between Network Rail and the County Council in Network Rail's standard form (as the same is amended from time to time) which relates to the Bridge Works

"the Bridge Works"

means the construction of the Rackheath Overbridge and works in connection with the Plumstead Road Bridge authorised by the Order and any other works authorised by the Order that Network Rail has determined might reasonably affect the safety, structure and operation of the Network and/or safety of persons and/or property on or near the Network

"the Bridge Works Agreement"

means the agreement or agreements entered into between Network Rail and the County Council which govern the carrying out of the Bridge Works and the maintenance and operation following the completion of the Bridge Works

"Clearance Conditions"

means the conditions detailed at Schedule 1

"Compensation"

means a monetary payment to Network Rail reflecting the full value to the County Council of the right granted together with any increase in value of surrounding land as a consequence of the grant of that right

"the Deed of Easement"

means a deed in Network Rail's standard form (as the same is amended from time to time) granted by Network Rail in favour of the County Council to oversail the Norwich to Cromer and Sheringham Line with a bridge structure as shown on the Plan

'Group Standards"

means:

- (a) technical standards to which railway assets or equipment used on or as part of the Network must conform; and
- (b) operating procedures with which the operators of railway assets must comply,

in each case as issued by the Rail Safety and Standards Board Limited pursuant to the Railway Group Standard Code

"Legal Requirement"

means any of the following:

- (a) any enactment to the extent that it applies to that Party;
- (b) any regulation made by the Council of the European Union or the Commission of the European Union to the extent that it applies to that Party or a decision taken by the Commission of the European Union which is binding on that Party to the extent that it is so binding; and
- (c) any interpretation of law, or finding, contained in any judgement given by a court or tribunal of competent jurisdiction in respect of which the period for making an appeal has expired which requires any legal requirement falling within paragraphs (a) and (b) above to have effect in a way which is different to that in which it previously had effect

"Network"

means the railway network and facilities of which Network Rail or an Operator is the facility owner (as defined in section 17(6) of the Railways Act 1993) (including without limitation all bridge, viaducts and other structures)

"Network Licence"

means the licence to operate the Network granted to Network Rail pursuant to section 8 of the Railways Act 1993

"Network Rail's Engineer"

such person as Network Rail may appoint in this capacity and whose name and address are notified to the Council from time to time

"Network Rail Property"

means:

- (a) the Network;
- (b) stations (as defined in the Railways Act 1993) owned by Network Rail; and
- (c) any land in which Network Rail has a real property interest, right or

entitlement to use or occupy

"Network Rail Standard"

means a standards document (or the equivalent of such document) issued by Network Rail from time to time in relation to the Network as a whole and which applies to the performance of the Bridge Works

"NDR"

means the Norwich Northern Distributor Road being a dual carriageway all-purpose strategic distributor road approximately 20.4km in length linking the A1067 Fakenham Road near Attlebridge to the A47 Trunk Road (T) at Postwick

"Operator"

means an operator of passenger or freight trains which has entered into a track access agreement or freight access agreement (as appropriate) with Network Rail

"the Order"

means the Norfolk County Council (Norwich Northern Distributor Road (A1067 to A47(T))) Order

"Party"

means a party to this Agreement and "Parties" shall be construed accordingly

"Plan"

means the plan annexed to this Agreement numbered R1C093-R1-4668 and annexed hereto

"Protective Provisions"

means the protective provisions set out in Schedule 2 to this Agreement

"Regulatory Consent"

any consent or approval required under (a) the Railways Act 1993 or (b) the Station Access Conditions or (c) the Network Licence by (i) the Office of Rail Regulation or by, (ii) the Secretary of State for Transport or (iii) any other competent body or any other consents or approvals of any access beneficiary that may be required for any disposition involving Network Rail contemplated by this Agreement or any works to be carried out in accordance with this Agreement or any agreement entered into pursuant to it

"Station Access Conditions"

means the National Station Access Conditions 2013 (England and Wales) (incorporating amendments with effect from 1 April 2014)

"Standards"

means Group Standards, Network Rail Standards and any equivalent standards or any standards replacing or superseding any

of them

- 1.2 References to a schedule, annexure or clause are references respectively to a schedule or annexure to or clause of this Agreement and references in a schedule to a paragraph are to a paragraph of that schedule.
- 1.3 References to any statute or statutory section shall include any statutory amendment, modification or re-enactment of it for the time being in force and all subordinate legislation made under it.
- 1.4 Any reference to persons or Parties shall include the successors in title, permitted assigns and permitted transferees and assigns of such persons or Parties.

2 NETWORK RAIL'S COVENANTS

In consideration of the County Council's covenants at clause 3 below, Network Rail will on the date of this Agreement withdraw its objection to the Order.

3 THE COUNTY COUNCIL'S COVENANTS

- 3.1 The County Council covenants:
 - 3.1.1 not to exercise any powers of compulsory purchase or entry under the Order to:
 - (a) acquire;
 - (b) occupy;
 - (c) interfere with any rights in on under or over; or
 - (d) exercise any rights in on under or over
 - any Network Rail Property or rights over Network Rail Property;
 - 3.1.2 prior to the carrying out of any Bridge Works to enter into the Bridge Works Agreement;
 - 3.1.3 to comply at all times with the provisions of the Bridge Works Agreement;
 - 3.1.4 to comply at all times with the Clearance Conditions and all relevant Standards and any other conditions deemed necessary and relevant by Network Rail;
 - 3.1.5 to comply with any Regulatory Consent and any conditions attaching to such consent;
 - 3.1.6 before the Bridge Works begin, to discuss the railway safety management of the Bridge Works with Network Rail's Asset Protection Team and if required by Network Rail enter into a BAPA and/or APA (or (if applicable) enter into such agreement as Network Rail may require in order to vary or modify the provisions of any existing BAPA entered into between the Parties prior to the date of this Agreement) under the terms of which associated Network Rail costs will be reimbursed; and
 - 3.1.7 not to compromise or put at risk Network Rail's track and operational railway during the Bridge Works nor affect Network Rail's ability to maintain the same
 - 3.1.8 to enter into such agreements or other assurance as may be reasonably required by Network Rail to give effect to the conditions set out in Schedule 1 hereto and such other conditions as Network Rail may require (taking into account the requirements of any

applicable Regulatory Consent) for the safety protection and operation of its railway undertaking

4 DEED OF EASEMENT

- 4.1 Network Rail and the County Council shall proceed as soon as reasonably practicable and in any event prior to the commencement of any part of the Bridge Works to enter into the Deed of Easement
- 4.2 The County Council will be responsible for the costs and expenses (including legal, surveying and engineering costs, internal administrative overheads and disbursements) properly and reasonably incurred by Network Rail in connection with the Deed of Easement

5 AMENDMENTS TO THE ORDER

- 5.1 The County Council shall not without the consent of Network Rail:
- (a) propose any further modifications to the Order relating to, or which in any way may affect Network Rail Property; and/or
 - (b) accept any further modifications to the Order put forward by any third party relating to or which in any way may affect Network Rail Property.
- 5.2 Where the Secretary of State proposes to impose a modification to the Order relating to or affecting any Network Rail Property, the County Council shall consult Network Rail as to the proposal's consistency with this Agreement, the Protective Provisions and any other agreement between the Parties as to its general acceptability, and the County Council shall:
- 5.2.1 make such representations to the Secretary of State as are necessary to support this Agreement, the Protective Provisions and any other agreement between the Parties and their operation; and
- 5.2.2 convey to the Secretary of State any opinion given by Network Rail in the course of such consultation as to the general acceptability of the Secretary of State's proposal with a view to maximising the opportunity for any modification to the Order to be consistent with the terms of this Agreement.

- 5.3 The County Council shall not without the consent of Network Rail enter into an agreement or commitment in favour of any third party after the date of this Agreement in connection with the Order that imposes any obligation or restriction on Network Rail in respect of any rights enjoyed by, or otherwise exercisable by Network Rail over Network Rail Property.

- 5.4 The Parties agree that the Protective Provisions shall have effect between the Parties.

6 COMPENSATION

- 6.1 In consideration of the grant of the Deed of Easement the County Council shall pay to Network Rail the Compensation in a sum to be agreed between the Parties.
- 6.2 In the event that the Parties fail to agree the Compensation to be paid for the grant of the Deed of Easement then within a period of six years from the date twelve months after the

date upon which the Order is confirmed either Party may trigger a reference to the Upper Tribunal by consent and the Compensation payable shall be decided as if the statutory compulsory purchase compensation code applied. If such action is triggered both Parties agree to cooperate in the referral process.

- 6.3 If requested by Network Rail, the Council shall make an advance payment of compensation to Network Rail, and such payment shall be made in accordance with Sections 52 and 52A of the Land Compensation Act 1973.

7 NOTICES

- 7.1 Any notice or approval under this Agreement shall be delivered by hand or email transmission or by post to the relevant address set out in clause 7.1.1 and 7.1.2 below and shall be deemed to have been received at the time of delivery if sent by hand or by email transmission or if sent by post, three business days after posting:

- 7.1.1 if to the County Council at:

County Hall, Martineau Lane, Norwich, Norfolk NR1 2DH (addressed to: David Allfrey)

Email: david.allfrey@norfolk.gov.uk

- 7.1.2 if to Network Rail Infrastructure Limited at:

Kings Place, 90 York Way, London N1 9AG (addressed to: the Company Secretary)

Email: notices@networkrail.co.uk

and copied to Stephen Sprei: stephen.sprei@networkrail.co.uk

John Onugha: john.onugha@networkrail.co.uk

8 CO-OPERATION AND GOOD FAITH

- 8.1 Subject to Clauses 8.2 and 8.3 the Parties agree:

- 8.1.1 to act reasonably and in good faith in all dealings with each other in connection with the Deed of Easement Bridge Works Agreement compliance with the Clearance Conditions and any other documentation to be entered into between the Parties pursuant to this Agreement (including the preparation of any plans required in connection with any documentation (which plans for the avoidance of doubt are to be prepared or approved by Network Rail));

- 8.1.2 to respond to communications from the other Party within a reasonable period of time;

- 8.1.3 to use reasonable endeavours not to cause the other Party any unnecessary delay or expense and (subject always to clause 3.1.4) to consult with Network Rail in regard to the timing and programming of the Bridge Works; and

- 8.1.4 the County Council will provide such information and assistance as Network Rail may reasonably require to facilitate the obtaining of any Regulatory Consent which may be required in relation to any matters arising under this Agreement or any agreement entered into pursuant to this Agreement.

- 8.2 It would not be unreasonable for Network Rail to withhold or delay such agreement or giving of consent or approval if Network Rail would be in breach of any Legal Requirement, any requirement of the Network Licence or Standards if such agreement, consent or approval were given or conditions were imposed.

8.3 Notwithstanding any other provisions in this Agreement in performing its obligations and exercising its right under this Agreement Network Rail shall retain sole discretion in relation to safety issues as the owner and operator of the Network.

9 INDEMNITY

9.1 The County Council covenants to indemnify and to keep indemnified Network Rail against all expenses, costs, claims, damages, and loss or any liabilities whatsoever arising directly or indirectly out of the construction, maintenance or operation of the Bridge Works including any, expenses, costs, claims, damages and loss or any liabilities whatsoever incurred by any train operating company, freight operating company or other Operator or users of the railway which are passed on to and payable by Network Rail.

10 COSTS

10.1 The County Council shall pay the costs and expenses (including legal, surveying and engineering costs, internal administrative overheads and disbursements) properly and reasonably incurred by Network Rail in connection with this Agreement and any other documentation to be entered into between the Parties pursuant to this Agreement (including but not limited to the Deed of Easement).

11 DISPUTES

11.1 Any dispute or difference arising between the Parties as to their respective rights, duties and obligations under this Agreement or as to any matters arising out of it or in connection with the subject matter of this Agreement (other than a dispute as to land compensation) shall, in the first instance, be referred to a representative of Network Rail and a representative of the County Council, each of whom holds a senior management position. Those representatives shall meet as soon as possible and shall endeavour in good faith to resolve any dispute or difference amicably.

11.2 For the purpose of clause 11.1 the representative of the County Council shall be David Alfrey and the representative of Network Rail shall be Network Rail's Engineer or, in either case, such as other person as may be notified to the other Party from time to time.

11.3 Any dispute or difference arising between the Parties as to their respective rights, duties and obligations under this Agreement (other than a dispute as to land compensation which shall be referred to the Upper Tribunal), which cannot be resolved under clause 11.1, shall be referred to and determined by an independent person acting as an expert who has been professionally qualified for not less than 10 years and who is a specialist in relation to such subject matter, such independent person to be agreed between the Parties or failing such agreement to be nominated by the President or Vice President or other duly qualified officer of the Royal Institution of Chartered Surveyors or of such new professional body as the Parties agree is appropriate on the application of either Party, who shall be asked to nominate an expert within 7 days of the request.

11.4 The terms of reference of the expert shall be as follows:

11.4.1 the expert is to reach a decision within 28 days of the dispute being referred to him or within such longer period (if any) as may be agreed by the Parties after the dispute has been referred to him;

11.4.2 the expert may extend that period by up to 28 days without the agreement of the Parties to the dispute if the Party referring the dispute consents.

11.5 The determination of the expert shall be binding on both Parties and the expert shall have the power to award costs in his discretion.

12 MISCELLANEOUS

12.1 If any provision of this Agreement shall be held to be void, illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part shall to that extent be deemed not to form part of this Agreement but the legality, validity and enforceability of the remainder of this Agreement shall not be affected.

12.2 No waiver by either Party to this Agreement of any default by the other Party in the performance of any of the provisions of this Agreement shall operate or be construed as a waiver of any other or further default, whether of a like or different character.

12.3 The parties may execute this Agreement in any number of counterparts, each of which is an original. A set of counterparts, executed by all the parties, together forms one and the same agreement.

IN WITNESS of which this Agreement is executed as a deed and is hereby delivered on the date specified above

Schedule 1- Clearance Conditions

Engineering Conditions

Exercise by the County Council of any rights are subject to the following requirements:

- 1 The County Council must submit fully detailed drawings (three copies) of any physical alterations and developments for Network Rail's written approval prior to any work commencing.
2. The County Council must not construct any building within 2 (two) metres of the railway boundary fence or railway infrastructure (depending on which is closer).
3. Except with the prior written agreement of Network Rail's Engineer, no surcharging of cutting slopes, retaining structures, embankments or deep continuous excavations (such as for foundations), or any general lowering or raising of ground levels or water tables is to take place adjacent to the railway boundary.
4. Any cranes, scaffolding, or other plant used in connection with the works are to be positioned and work such that in the event of failure, such equipment will not move or fall within 3 metres of any operational Network Rail infrastructure without the prior written approval of Network Rail's Senior Asset Protective Engineer .
- 5 Cranes are not to over sail any operational Network Rail Property.
- 6 All proposals must comply with all relevant standards (including not but limited to Network Rail Standards and British Standards)
- 7 All costs incurred by Network Rail in giving approvals shall be reimbursed by the County Council. All costs incurred by Network Rail for works supervision (protection of the railway infrastructure), track possessions, current isolations, etc. shall to be borne by the County Council.
- 8 During the carrying out of any works there will be no interference or obstruction of the Network
- 9 Network Rail reserves the right for unrestricted vehicular and pedestrian access at all times over Network Rail Property (free from any cost or liability)
- 10 Prior to any development/construction or alterations by an external body, further site specific safety requirements engineering technical approval and detailed conditions will need to be sought from Network Rail's Territory Asset Protection Engineer. The process for obtaining approval is outlined on Network Rail's web page.
<http://www.networkrail.co.uk.aspx/1538.aspx>. All costs incurred by Network Rail in giving approvals and any site safety supervision are chargeable to the applicant. A Basic Asset Protection Agreement must be put in placed an signed by the external body prior to any work commencing. A representative from the Anglia Asset Protection Team will oversee the works.

Utility services Signalling, Data, Telecoms, Electrification and Plant

- 11 Prior to the land being used, the County Council is responsible for a detailed services survey to locate the position of both operational and utility services. Any utility services identified should be brought to the attention of Network Rail who shall satisfy themselves

on the accuracy and any omissions. Should the survey identify Network Rail services the County Council should refer to Network Rail's Senior Asset Protection Engineer ("SAPE"). The SAPE will ascertain and specify what measures, including possible relocation cost, along with any other asset protection measures shall be implemented by the County Council.

- 12 The County Council will ensure that the protection of telecoms cables, fibre and route and cables not contained within protected routes (i.e. DISAC Fibre) is implemented where required.

Drainage

- 13 All surface and foul water drainage should be directed away from Network Rail's retained land/structures into suitable drainage systems details of which are to be approved by Network Rail. The construction of soakaways for storm or surface water drainage shall not be sited within 10 metres of Network Rail Property. Any new drains are to be constructed and maintained so as not to have any adverse affect upon the stability of any Network Rail equipment, structure, cutting or embankment.

Overhead Line Electrification Equipment

- 14 If the site is adjacent to the operational railway with overhead electrification at 25kv Network Rail will accept no responsibility for any electrical interference due to the railway equipment. All development must be a minimum of 3 meters from the Overland Line Electrification Equipment.
- 15 The Council will allow 4.0m clearance from the Overhead Line Electrification Equipment when undertaking construction works. The Council will ensure that the effect of the overhead line electrification is considered in the construction planning.

Noise and Vibration

- 16 The Council will take into consideration the associated effects of noise and vibration that may emanate from the passage of trains and the operation of infrastructure equipment.
- 17 Network Rail reserves the right to alter any aspect of its operational infrastructure without providing notice to the neighbouring land owners and the County Council. The County Council acknowledges the possibility that trains may stop at signals adjacent to the works and that the majority of railway maintenance works are undertaken at night.

Vegetation

- 18 No trees or climbing shrubs should be planted such that they could create a nuisance through falling leaves or penetration of roots or provide a means of gaining access to the railway. Removal and disposal of Japanese Knot Weed shall be undertaken in accordance with the current standards and approved by the Network Rail Asset Protection Engineer.
- 19 The Council shall ensure lineside planting etc, does not interfere with sighting lines, clearances, drainage and other Network Rail services.
- 20 Maintenance and management of all vegetation shall be the responsibility of the County Council. Any plants introduced shall comply with Network Rail preferred plants. The list of Network Rail approved plants is available on request.

Infrastructure Maintenance Conditions

- 21 Any Network Rail maintenance requirements shall be implemented at the expense of the County Council. After the finalisation of the scope of the works the County Council shall contact Network Rail to determine the required maintenance conditions.

Schedule 2- Protective Provisions

PROTECTIVE PROVISIONS

Article 40

PART I

FOR THE PROTECTION OF RAILWAY INTERESTS

1. The following provisions of this Part of the 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 Part of 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 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) 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 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 for the purposes of such railway or works, apparatus or equipment; and

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

3. (1) Where under this Part of the Schedule Network Rail is required to give its consent, agreement or approval in respect of any matter, that consent, agreement 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 article 18 (Protective work to buildings), 19 (Authority to survey and investigate land), 20 (Compulsory acquisition of land), 22 (Power to override easements and other rights), 24 (Compulsory acquisition of rights), 25 (Private rights), 30 (Temporary use of land for carrying out the authorised development) or 31 (Temporary use of land for maintaining authorised development) or the powers conferred by section 11(3) of the 1965 Act (powers of entry) 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 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 any railway property except with the consent of Network Rail.
- (5) Prior to commencement of construction of the authorised development the undertaker must have obtained the approval of Network Rail to the design, specification, programme of works and method statement for the implementation of any works in respect of the railway crossing of the Norwich to Cromer and Sheringham railway line at Rackheath, Norwich, approximately 110 metres (measured along the railway line) north of the level crossing on the C874 Plumstead Road and the undertaker will thereafter comply with the provisions of the approved design, specification, programme of works and method statement.
- (6) Prior to commencement of construction of the authorised development the undertaker must have obtained the approval of Network Rail to the design, specification, programme of works and method statement for the implementation of any works in respect of the bridge crossing the C874 Plumstead Road, Norwich (approximately 80 metres east of the railway crossing referred to in paragraph 4(5) provided that Network Rail may only approve those aspects of the design and specification that could affect the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property and the undertaker will thereafter comply with the provisions of the approved design, specification, programme of works and method statement.

(7) Where Network Rail is asked to give its consent or agreement pursuant to this paragraph, such consent or agreement 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 disapproval of those plans and the grounds of 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 is to 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 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 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 are to be carried out at the expense of the undertaker in either case with all reasonable dispatch 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 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) with all reasonable dispatch 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 is 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 the 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 the engineer 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 will 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 is to 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 of the construction of a specified work;

(c) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;

(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 diversion or 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 construction and 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 will apply 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 is to be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 5(1) is to have effect subject to this sub-paragraph.

(6) If at any time prior to the opening for traffic of the authorised development and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised development causes EMI then the 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) will apply 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 are to be deemed to be protective works referred to in that paragraph.

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 supervision does not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the 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 is to be made without the prior consent of the undertaker.

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

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

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

(6) In this paragraph—

"the relevant costs" means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any 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 the Schedule (including the amount of the relevant costs mentioned in paragraph 14) 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 the 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 no account is to be taken of 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 the 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 when any application is proposed to be made by the undertaker for the Secretary of State's certification, under article 42 (Certification of plans etc.) 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 the Secretary of State in accordance with article 42 (Certification of plans etc) are certified, provide a set of those plans to Network Rail in the form of a computer disc with read only memory.

The Common Seal of
NORFOLK COUNTY COUNCIL was affixed
in the presence of:
)
)
)
)
)
)

Head of Law

EXECUTED as a deed by affixing
The COMMON SEAL of NETWORK RAIL
INFRASTRUCTURE LIMITED
In the presence of:
)
)
)
)



Natalie Jobling
General Counsel (Corporate)

Authorised Signatory as approved
by a resolution of the board of
Network Rail Infrastructure Limited
on 21 February 2013

Seal No. 35366



26 November 2014
KJES/SJA/099161.00262/37293367.01

Deed of Undertaking

In respect of land adjacent to the Norwich to Cromer and Sheringham Line in connection with The Norfolk County Council (Norwich Northern Distributor Road (A1067 to A47(T))) Order

Dated 27 November 2014

Norfolk County Council
(the County Council)

Network Rail Infrastructure Limited
(Network Rail)

Dentons UKMEA LLP
One Fleet Place
London EC4M 7WS
United Kingdom
DX 242

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Deed of Undertaking

Dated 27 November 2014

Between

- (1) **NORFOLK COUNTY COUNCIL** of County Hall, Martineau Lane, Norwich, Norfolk NR1 2DH (the "County Council")
- (2) **NETWORK RAIL INFRASTRUCTURE LIMITED** (Company number 2904587) whose registered office is at Kings Place, 90 York Way, London N1 9AG ("Network Rail")

RECITALS

- A The County Council submitted an application for the Order to the Secretary of State on 6 January 2014. The Order authorises the construction, operation and maintenance of the NNRD.
- B The County Council's application for the Order was accepted by the Secretary of State on 4 February 2014.
- C Network Rail is the owner and operator of the national rail network, which will be affected by the design, construction, maintenance and operation of the works to be authorised by the Order. More particularly, Network Rail is the freeholder of property affected by the Order and enjoys rights over other land affected by the Order.
- D Network Rail has objected to the Secretary of State requesting that the Order not be confirmed.
- E The Parties wish to enter this Agreement to regulate certain aspects of the relationship between Network Rail and the County Council in relation to the application for the Order and general arrangements for the exercise by the County Council of powers under the Order
- F In consideration of the County Council entering into this Agreement Network Rail will withdraw its objection to the Order.

OPERATIVE PROVISIONS

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, these words and expressions have the following meanings:

"APA"

means an Asset Protection Agreement (dealing with matters such as the safe management of works, the discharge of obligations in relation to the safety of persons on or near the rail network, the protection of the operational integrity of train operations and other work being undertaken on the rail network, achieving good working practices in order to protect the condition and integrity of the assets and systems that make up the rail network and the prevention of any adverse impact or detrimental effect upon railway operational

matters) between Network Rail and the County Council in Network Rail's standard form (as the same is amended from time to time) which relates to the Bridge Works

"BAPA"

means a Basic Asset Protection Agreement (a short form APA) between Network Rail and the County Council in Network Rail's standard form (as the same is amended from time to time) which relates to the Bridge Works

"the Bridge Works"

means the construction of the Rackheath Overbridge and works in connection with the Plumstead Road Bridge authorised by the Order and any other works authorised by the Order that Network Rail has determined might reasonably affect the safety, structure and operation of the Network and/or safety of persons and/or property on or near the Network

"the Bridge Works Agreement"

means the agreement or agreements entered into between Network Rail and the County Council which govern the carrying out of the Bridge Works and the maintenance and operation following the completion of the Bridge Works

"Clearance Conditions"

means the conditions detailed at Schedule 1

"Compensation"

means a monetary payment to Network Rail reflecting the full value to the County Council of the right granted together with any increase in value of surrounding land as a consequence of the grant of that right

"the Deed of Easement"

means a deed in Network Rail's standard form (as the same is amended from time to time) granted by Network Rail in favour of the County Council to oversail the Norwich to Cromer and Sheringham Line with a bridge structure as shown on the Plan

'Group Standards"

means:

- (a) technical standards to which railway assets or equipment used on or as part of the Network must conform; and
- (b) operating procedures with which the operators of railway assets must comply,

in each case as issued by the Rail Safety and Standards Board Limited pursuant to the Railway Group Standard Code

"Legal Requirement"

means any of the following:

- (a) any enactment to the extent that it applies to that Party;
- (b) any regulation made by the Council of the European Union or the Commission of the European Union to the extent that it applies to that Party or a decision taken by the Commission of the European Union which is binding on that Party to the extent that it is so binding; and
- (c) any interpretation of law, or finding, contained in any judgement given by a court or tribunal of competent jurisdiction in respect of which the period for making an appeal has expired which requires any legal requirement falling within paragraphs (a) and (b) above to have effect in a way which is different to that in which it previously had effect

"Network"

means the railway network and facilities of which Network Rail or an Operator is the facility owner (as defined in section 17(6) of the Railways Act 1993) (including without limitation all bridge, viaducts and other structures)

"Network Licence"

means the licence to operate the Network granted to Network Rail pursuant to section 8 of the Railways Act 1993

"Network Rail's Engineer"

such person as Network Rail may appoint in this capacity and whose name and address are notified to the Council from time to time

"Network Rail Property"

means:

- (a) the Network;
- (b) stations (as defined in the Railways Act 1993) owned by Network Rail; and
- (c) any land in which Network Rail has a real property interest, right or

entitlement to use or occupy

"Network Rail Standard"

means a standards document (or the equivalent of such document) issued by Network Rail from time to time in relation to the Network as a whole and which applies to the performance of the Bridge Works

"NDR"

means the Norwich Northern Distributor Road being a dual carriageway all-purpose strategic distributor road approximately 20.4km in length linking the A1067 Fakenham Road near Attlebridge to the A47 Trunk Road (T) at Postwick

"Operator"

means an operator of passenger or freight trains which has entered into a track access agreement or freight access agreement (as appropriate) with Network Rail

"the Order"

means the Norfolk County Council (Norwich Northern Distributor Road (A1067 to A47(T))) Order

"Party"

means a party to this Agreement and "Parties" shall be construed accordingly

"Plan"

means the plan annexed to this Agreement numbered R1C093-R1-4668 and annexed hereto

"Protective Provisions"

means the protective provisions set out in Schedule 2 to this Agreement

"Regulatory Consent"

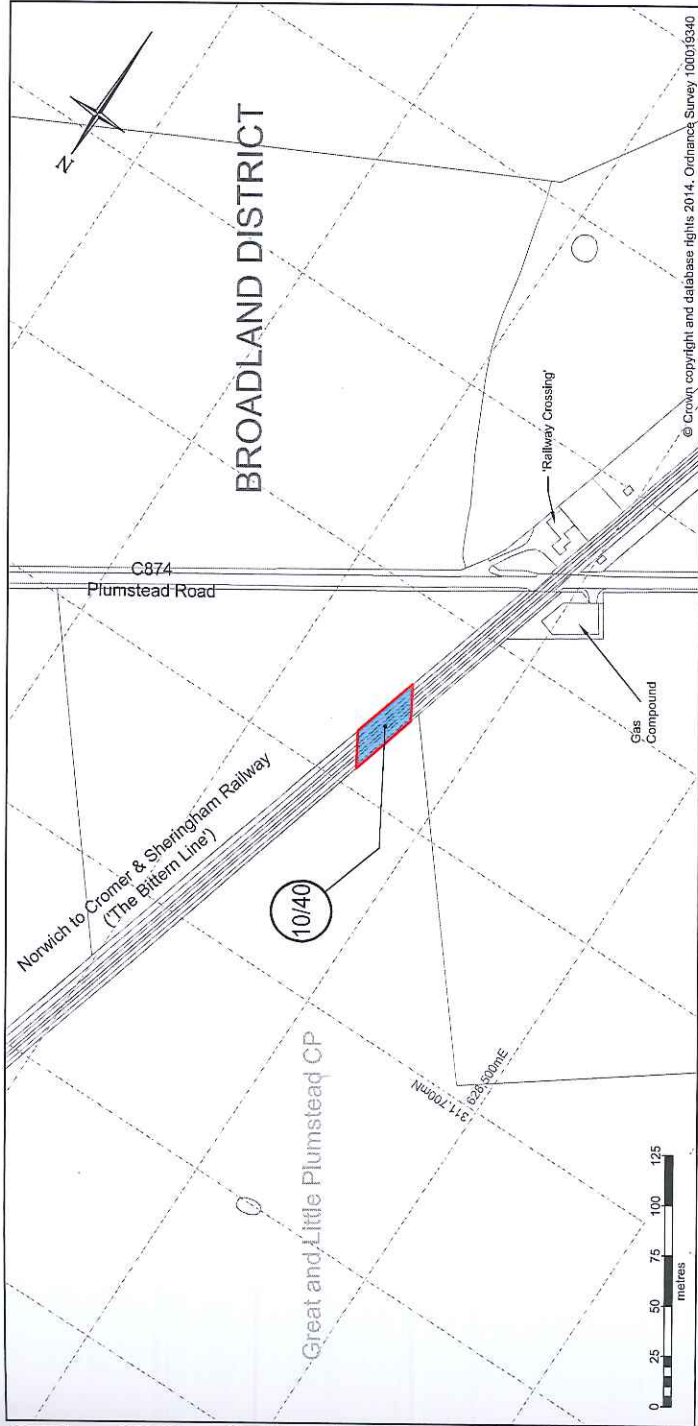
any consent or approval required under (a) the Railways Act 1993 or (b) the Station Access Conditions or (c) the Network Licence by (i) the Office of Rail Regulation or by, (ii) the Secretary of State for Transport or (iii) any other competent body or any other consents or approvals of any access beneficiary that may be required for any disposition involving Network Rail contemplated by this Agreement or any works to be carried out in accordance with this Agreement or any agreement entered into pursuant to it

"Station Access Conditions"

means the National Station Access Conditions 2013 (England and Wales) (incorporating amendments with effect from 1 April 2014)

"Standards"

means Group Standards, Network Rail Standards and any equivalent standards or any standards replacing or superseding any



Norwich Northern Distributor Road

Owner:
Network Rail Infrastructure
Limited
Kings Place
80 York Way
London
N1 5AG

Occupier:
Owners

Plot Ref:	Requirement:	Area (m ²):	Date:
10/40	Rights to be acquired	477	May 2014
			Scale & Dwg. Size: 1:2,500 (at A4)
Total area (m ²):			Dwg. No. & Revision: R1C093-R1-4668

C. Sumner

of them

- 1.2 References to a schedule, annexure or clause are references respectively to a schedule or annexure to or clause of this Agreement and references in a schedule to a paragraph are to a paragraph of that schedule.
- 1.3 References to any statute or statutory section shall include any statutory amendment, modification or re-enactment of it for the time being in force and all subordinate legislation made under it.
- 1.4 Any reference to persons or Parties shall include the successors in title, permitted assigns and permitted transferees and assigns of such persons or Parties.

2 NETWORK RAIL'S COVENANTS

In consideration of the County Council's covenants at clause 3 below, Network Rail will on the date of this Agreement withdraw its objection to the Order.

3 THE COUNTY COUNCIL'S COVENANTS

- 3.1 The County Council covenants:
 - 3.1.1 not to exercise any powers of compulsory purchase or entry under the Order to:
 - (a) acquire;
 - (b) occupy;
 - (c) interfere with any rights in on under or over; or
 - (d) exercise any rights in on under or over
 - any Network Rail Property or rights over Network Rail Property;
 - 3.1.2 prior to the carrying out of any Bridge Works to enter into the Bridge Works Agreement;
 - 3.1.3 to comply at all times with the provisions of the Bridge Works Agreement;
 - 3.1.4 to comply at all times with the Clearance Conditions and all relevant Standards and any other conditions deemed necessary and relevant by Network Rail;
 - 3.1.5 to comply with any Regulatory Consent and any conditions attaching to such consent;
 - 3.1.6 before the Bridge Works begin, to discuss the railway safety management of the Bridge Works with Network Rail's Asset Protection Team and if required by Network Rail enter into a BAPA and/or APA (or (if applicable) enter into such agreement as Network Rail may require in order to vary or modify the provisions of any existing BAPA entered into between the Parties prior to the date of this Agreement) under the terms of which associated Network Rail costs will be reimbursed; and
 - 3.1.7 not to compromise or put at risk Network Rail's track and operational railway during the Bridge Works nor affect Network Rail's ability to maintain the same
 - 3.1.8 to enter into such agreements or other assurance as may be reasonably required by Network Rail to give effect to the conditions set out in Schedule 1 hereto and such other conditions as Network Rail may require (taking into account the requirements of any

applicable Regulatory Consent) for the safety protection and operation of its railway undertaking

4 DEED OF EASEMENT

- 4.1 Network Rail and the County Council shall proceed as soon as reasonably practicable and in any event prior to the commencement of any part of the Bridge Works to enter into the Deed of Easement
- 4.2 The County Council will be responsible for the costs and expenses (including legal, surveying and engineering costs, internal administrative overheads and disbursements) properly and reasonably incurred by Network Rail in connection with the Deed of Easement

5 AMENDMENTS TO THE ORDER

- 5.1 The County Council shall not without the consent of Network Rail:
- (a) propose any further modifications to the Order relating to, or which in any way may affect Network Rail Property; and/or
 - (b) accept any further modifications to the Order put forward by any third party relating to or which in any way may affect Network Rail Property.
- 5.2 Where the Secretary of State proposes to impose a modification to the Order relating to or affecting any Network Rail Property, the County Council shall consult Network Rail as to the proposal's consistency with this Agreement, the Protective Provisions and any other agreement between the Parties as to its general acceptability, and the County Council shall:
- 5.2.1 make such representations to the Secretary of State as are necessary to support this Agreement, the Protective Provisions and any other agreement between the Parties and their operation; and
- 5.2.2 convey to the Secretary of State any opinion given by Network Rail in the course of such consultation as to the general acceptability of the Secretary of State's proposal with a view to maximising the opportunity for any modification to the Order to be consistent with the terms of this Agreement.
- 5.3 The County Council shall not without the consent of Network Rail enter into an agreement or commitment in favour of any third party after the date of this Agreement in connection with the Order that imposes any obligation or restriction on Network Rail in respect of any rights enjoyed by, or otherwise exercisable by Network Rail over Network Rail Property.
- 5.4 The Parties agree that the Protective Provisions shall have effect between the Parties.

6 COMPENSATION

- 6.1 In consideration of the grant of the Deed of Easement the County Council shall pay to Network Rail the Compensation in a sum to be agreed between the Parties.
- 6.2 In the event that the Parties fail to agree the Compensation to be paid for the grant of the Deed of Easement then within a period of six years from the date twelve months after the

date upon which the Order is confirmed either Party may trigger a reference to the Upper Tribunal by consent and the Compensation payable shall be decided as if the statutory compulsory purchase compensation code applied. If such action is triggered both Parties agree to cooperate in the referral process.

- 6.3 If requested by Network Rail, the Council shall make an advance payment of compensation to Network Rail, and such payment shall be made in accordance with Sections 52 and 52A of the Land Compensation Act 1973.

7 NOTICES

- 7.1 Any notice or approval under this Agreement shall be delivered by hand or email transmission or by post to the relevant address set out in clause 7.1.1 and 7.1.2 below and shall be deemed to have been received at the time of delivery if sent by hand or by email transmission or if sent by post, three business days after posting:

- 7.1.1 if to the County Council at:

County Hall, Martineau Lane, Norwich, Norfolk NR1 2DH (addressed to: David Allfrey)

Email: david.allfrey@norfolk.gov.uk

- 7.1.2 if to Network Rail Infrastructure Limited at:

Kings Place, 90 York Way, London N1 9AG (addressed to: the Company Secretary)

Email: notices@networkrail.co.uk

and copied to Stephen Sprei: stephen.sprei@networkrail.co.uk
John Onugha: john.onugha@networkrail.co.uk

8 CO-OPERATION AND GOOD FAITH

- 8.1 Subject to Clauses 8.2 and 8.3 the Parties agree:

- 8.1.1 to act reasonably and in good faith in all dealings with each other in connection with the Deed of Easement Bridge Works Agreement compliance with the Clearance Conditions and any other documentation to be entered into between the Parties pursuant to this Agreement (including the preparation of any plans required in connection with any documentation (which plans for the avoidance of doubt are to be prepared or approved by Network Rail));

- 8.1.2 to respond to communications from the other Party within a reasonable period of time;

- 8.1.3 to use reasonable endeavours not to cause the other Party any unnecessary delay or expense and (subject always to clause 3.1.4) to consult with Network Rail in regard to the timing and programming of the Bridge Works; and

- 8.1.4 the County Council will provide such information and assistance as Network Rail may reasonably require to facilitate the obtaining of any Regulatory Consent which may be required in relation to any matters arising under this Agreement or any agreement entered into pursuant to this Agreement.

- 8.2 It would not be unreasonable for Network Rail to withhold or delay such agreement or giving of consent or approval if Network Rail would be in breach of any Legal Requirement, any requirement of the Network Licence or Standards if such agreement, consent or approval were given or conditions were imposed.

8.3 Notwithstanding any other provisions in this Agreement in performing its obligations and exercising its right under this Agreement Network Rail shall retain sole discretion in relation to safety issues as the owner and operator of the Network.

9 INDEMNITY

9.1 The County Council covenants to indemnify and to keep indemnified Network Rail against all expenses, costs, claims, damages, and loss or any liabilities whatsoever arising directly or indirectly out of the construction, maintenance or operation of the Bridge Works including any, expenses, costs, claims, damages and loss or any liabilities whatsoever incurred by any train operating company, freight operating company or other Operator or users of the railway which are passed on to and payable by Network Rail.

10 COSTS

10.1 The County Council shall pay the costs and expenses (including legal, surveying and engineering costs, internal administrative overheads and disbursements) properly and reasonably incurred by Network Rail in connection with this Agreement and any other documentation to be entered into between the Parties pursuant to this Agreement (including but not limited to the Deed of Easement).

11 DISPUTES

11.1 Any dispute or difference arising between the Parties as to their respective rights, duties and obligations under this Agreement or as to any matters arising out of it or in connection with the subject matter of this Agreement (other than a dispute as to land compensation) shall, in the first instance, be referred to a representative of Network Rail and a representative of the County Council, each of whom holds a senior management position. Those representatives shall meet as soon as possible and shall endeavour in good faith to resolve any dispute or difference amicably.

11.2 For the purpose of clause 11.1 the representative of the County Council shall be David Alfrey and the representative of Network Rail shall be Network Rail's Engineer or, in either case, such as other person as may be notified to the other Party from time to time.

11.3 Any dispute or difference arising between the Parties as to their respective rights, duties and obligations under this Agreement (other than a dispute as to land compensation which shall be referred to the Upper Tribunal), which cannot be resolved under clause 11.1, shall be referred to and determined by an independent person acting as an expert who has been professionally qualified for not less than 10 years and who is a specialist in relation to such subject matter, such independent person to be agreed between the Parties or failing such agreement to be nominated by the President or Vice President or other duly qualified officer of the Royal Institution of Chartered Surveyors or of such new professional body as the Parties agree is appropriate on the application of either Party, who shall be asked to nominate an expert within 7 days of the request.

11.4 The terms of reference of the expert shall be as follows:

11.4.1 the expert is to reach a decision within 28 days of the dispute being referred to him or within such longer period (if any) as may be agreed by the Parties after the dispute has been referred to him;

11.4.2 the expert may extend that period by up to 28 days without the agreement of the Parties to the dispute if the Party referring the dispute consents.

11.5 The determination of the expert shall be binding on both Parties and the expert shall have the power to award costs in his discretion.

12 MISCELLANEOUS

12.1 If any provision of this Agreement shall be held to be void, illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part shall to that extent be deemed not to form part of this Agreement but the legality, validity and enforceability of the remainder of this Agreement shall not be affected.

12.2 No waiver by either Party to this Agreement of any default by the other Party in the performance of any of the provisions of this Agreement shall operate or be construed as a waiver of any other or further default, whether of a like or different character.

12.3 The parties may execute this Agreement in any number of counterparts, each of which is an original. A set of counterparts, executed by all the parties, together forms one and the same agreement.

IN WITNESS of which this Agreement is executed as a deed and is hereby delivered on the date specified above

Schedule 1- Clearance Conditions

Engineering Conditions

Exercise by the County Council of any rights are subject to the following requirements:

- 1 The County Council must submit fully detailed drawings (three copies) of any physical alterations and developments for Network Rail's written approval prior to any work commencing.
2. The County Council must not construct any building within 2 (two) metres of the railway boundary fence or railway infrastructure (depending on which is closer).
3. Except with the prior written agreement of Network Rail's Engineer, no surcharging of cutting slopes, retaining structures, embankments or deep continuous excavations (such as for foundations), or any general lowering or raising of ground levels or water tables is to take place adjacent to the railway boundary.
4. Any cranes, scaffolding, or other plant used in connection with the works are to be positioned and work such that in the event of failure, such equipment will not move or fall within 3 metres of any operational Network Rail infrastructure without the prior written approval of Network Rail's Senior Asset Protective Engineer .
- 5 Cranes are not to over sail any operational Network Rail Property.
- 6 All proposals must comply with all relevant standards (including not but limited to Network Rail Standards and British Standards)
- 7 All costs incurred by Network Rail in giving approvals shall be reimbursed by the County Council. All costs incurred by Network Rail for works supervision (protection of the railway infrastructure), track possessions, current isolations, etc. shall to be borne by the County Council.
- 8 During the carrying out of any works there will be no interference or obstruction of the Network
- 9 Network Rail reserves the right for unrestricted vehicular and pedestrian access at all times over Network Rail Property (free from any cost or liability)
- 10 Prior to any development/construction or alterations by an external body, further site specific safety requirements engineering technical approval and detailed conditions will need to be sought from Network Rail's Territory Asset Protection Engineer. The process for obtaining approval is outlined on Network Rail's web page. <http://www.networkrail.co.uk.aspx/1538.aspx>. All costs incurred by Network Rail in giving approvals and any site safety supervision are chargeable to the applicant. A Basic Asset Protection Agreement must be put in placed a signed by the external body prior to any work commencing. A representative from the Anglia Asset Protection Team will oversee the works.

Utility services Signalling, Data, Telecoms, Electrification and Plant

- 11 Prior to the land being used, the County Council is responsible for a detailed services survey to locate the position of both operational and utility services. Any utility services identified should be brought to the attention of Network Rail who shall satisfy themselves

on the accuracy and any omissions. Should the survey identify Network Rail services the County Council should refer to Network Rail's Senior Asset Protection Engineer ("SAPE"). The SAPE will ascertain and specify what measures, including possible relocation cost, along with any other asset protection measures shall be implemented by the County Council.

- 12 The County Council will ensure that the protection of telecoms cables, fibre and route and cables not contained within protected routes (i.e. DISAC Fibre) is implemented where required.

Drainage

- 13 All surface and foul water drainage should be directed away from Network Rail's retained land/structures into suitable drainage systems details of which are to be approved by Network Rail. The construction of soakaways for storm or surface water drainage shall not be sited within 10 metres of Network Rail Property. Any new drains are to be constructed and maintained so as not to have any adverse affect upon the stability of any Network Rail equipment, structure, cutting or embankment.

Overhead Line Electrification Equipment

- 14 If the site is adjacent to the operational railway with overhead electrification at 25kv Network Rail will accept no responsibility for any electrical interference due to the railway equipment. All development must be a minimum of 3 meters from the Overland Line Electrification Equipment.
- 15 The Council will allow 4.0m clearance from the Overhead Line Electrification Equipment when undertaking construction works. The Council will ensure that the effect of the overhead line electrification is considered in the construction planning.

Noise and Vibration

- 16 The Council will take into consideration the associated effects of noise and vibration that may emanate from the passage of trains and the operation of infrastructure equipment.
- 17 Network Rail reserves the right to alter any aspect of its operational infrastructure without providing notice to the neighbouring land owners and the County Council. The County Council acknowledges the possibility that trains may stop at signals adjacent to the works and that the majority of railway maintenance works are undertaken at night.

Vegetation

- 18 No trees or climbing shrubs should be planted such that they could create a nuisance through falling leaves or penetration of roots or provide a means of gaining access to the railway. Removal and disposal of Japanese Knot Weed shall be undertaken in accordance with the current standards and approved by the Network Rail Asset Protection Engineer.
- 19 The Council shall ensure lineside planting etc, does not interfere with sighting lines, clearances, drainage and other Network Rail services.
- 20 Maintenance and management of all vegetation shall be the responsibility of the County Council. Any plants introduced shall comply with Network Rail preferred plants. The list of Network Rail approved plants is available on request.

Infrastructure Maintenance Conditions

- 21 Any Network Rail maintenance requirements shall be implemented at the expense of the County Council. After the finalisation of the scope of the works the County Council shall contact Network Rail to determine the required maintenance conditions.

Schedule 2- Protective Provisions

PROTECTIVE PROVISIONS

Article 40

PART I

FOR THE PROTECTION OF RAILWAY INTERESTS

1. The following provisions of this Part of the 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 Part of 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 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) 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 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 for the purposes of such railway or works, apparatus or equipment; and
 - "specified work" means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.
3. (1) Where under this Part of the Schedule Network Rail is required to give its consent, agreement or approval in respect of any matter, that consent, agreement 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 article 18 (Protective work to buildings), 19 (Authority to survey and investigate land), 20 (Compulsory acquisition of land), 22 (Power to override easements and other rights), 24 (Compulsory acquisition of rights), 25 (Private rights), 30 (Temporary use of land for carrying out the authorised development) or 31 (Temporary use of land for maintaining authorised development) or the powers conferred by section 11(3) of the 1965 Act (powers of entry) 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 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 any railway property except with the consent of Network Rail.

(5) Prior to commencement of construction of the authorised development the undertaker must have obtained the approval of Network Rail to the design, specification, programme of works and method statement for the implementation of any works in respect of the railway crossing of the Norwich to Cromer and Sheringham railway line at Rackheath, Norwich, approximately 110 metres (measured along the railway line) north of the level crossing on the C874 Plumstead Road and the undertaker will thereafter comply with the provisions of the approved design, specification, programme of works and method statement.

(6) Prior to commencement of construction of the authorised development the undertaker must have obtained the approval of Network Rail to the design, specification, programme of works and method statement for the implementation of any works in respect of the bridge crossing the C874 Plumstead Road, Norwich (approximately 80 metres east of the railway crossing referred to in paragraph 4(5)) provided that Network Rail may only approve those aspects of the design and specification that could affect the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property and the undertaker will thereafter comply with the provisions of the approved design, specification, programme of works and method statement.

(7) Where Network Rail is asked to give its consent or agreement pursuant to this paragraph, such consent or agreement 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 disapproval of those plans and the grounds of 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 is to 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 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 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 are to be carried out at the expense of the undertaker in either case with all reasonable dispatch 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 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) with all reasonable dispatch 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 is 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 the 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 the engineer 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 will 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 is to 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 of the construction of a specified work;

(c) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;

(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 diversion or 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 construction and 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 will apply 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 is to be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 5(1) is to have effect subject to this sub-paragraph.

(6) If at any time prior to the opening for traffic of the authorised development and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised development causes EMI then the 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) will apply 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 are to be deemed to be protective works referred to in that paragraph.

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 supervision does not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the 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 is to be made without the prior consent of the undertaker.

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

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

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

(6) In this paragraph—

"the relevant costs" means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any 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 the Schedule (including the amount of the relevant costs mentioned in paragraph 14) 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 the 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 no account is to be taken of 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 the 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 when any application is proposed to be made by the undertaker for the Secretary of State's certification, under article 42 (Certification of plans etc.) 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 the Secretary of State in accordance with article 42 (Certification of plans etc) are certified, provide a set of those plans to Network Rail in the form of a computer disc with read only memory.

37263



The Common Seal of
NORFOLK COUNTY COUNCIL was affixed
in the presence of: [REDACTED]
authorised to sign
on behalf of: HEAD OF LAW

Head of Law

EXECUTED as a deed by affixing
The COMMON SEAL of NETWORK RAIL
INFRASTRUCTURE LIMITED
In the presence of:

