

SCHEDULES

SCHEDULE 10

PROTECTIVE PROVISIONS

PART 4

FOR PROTECTION OF LONDON UNDERGROUND LIMITED

28.—(1) For the protection of the Company the following provisions shall, unless otherwise agreed in writing between Network Rail and LUL, have effect.

(2) In this Part of this Schedule—

“the Company” means—

- (a) LUL;
- (b) any subsidiary of LUL;
- (c) a PPP Company;
- (d) any wholly owned subsidiary of a PPP Company; and
- (e) any PPP related third party being treated as a PPP Company by reason of having entered into an agreement pursuant to section 215(3)(b) of the Greater London Authority Act 1999⁽¹⁾;

“the Company’s works and apparatus” includes any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised works) which are owned or used by the Company 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;

“construction” includes execution, demolition, placing and altering and “construct” and “constructed” shall be construed accordingly;

“designated works” means (for as long as such land continues to be identified as safeguarded land) so much of the authorised works as may be situated within 15 metres of safeguarded land or may in any way affect safeguarded land and includes the construction, reconstruction and maintenance of the authorised works;

“EMI” means electromagnetic interference with the Company’s works and apparatus generated by the operation of the authorised works (including the operation of trains using the new railways comprised in the authorised works) where such interference is of a level which affect the safe and efficient operation of the Company’s works and apparatus;

“the engineer” means an engineer to be appointed by LUL;

“LUL” means London Underground Limited;

“PPP Company” has the same meaning as section 210(5) of the Greater London Authority Act 1999;

(1) 1999 c. 29.

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“PPP related third party” has the same meaning as section 215(2)(b) of the Greater London Authority Act 1999;

“plans” includes sections, drawings, particulars and schedules of construction (including particulars as to the working methods and phases of the specified works) and “approved plans” means plans approved or deemed to be approved or settled by arbitration in accordance with the provisions of this Part of this Schedule;

“railway property” means any railway of LUL, and any works, apparatus and equipment of the Company connected therewith and includes any lands, premises, structures or erections held or used by the Company for the purposes of such railway or works, apparatus and equipment;

“safeguarded land” means the land within the zone specified in paragraph 2 of the safeguarding directions issued by the Secretary of State on 5th November 1990 as amended by further directions dated 10th October 1991 and 12th December 1991 pursuant to articles 14(1) and 18(3) of the Town and Country Planning General Development Order 1988(2) or any revised, reissued or amended directions issued pursuant to the Town and Country Planning (General Development Procedure) Order 1995(3) from time to time; and

“the specified works” means so much of the authorised works as may be situated upon, across, under, over or within 15 metres of railway property (including its operation and use) or may in any way affect railway property and includes the construction and maintenance of the authorised works and the designated works.

29. The provisions of Schedule 9 (provisions relating to statutory undertakers etc.) to this Order shall not apply to works, apparatus and equipment to which this Part of this Schedule applies.

30.—(1) Network Rail shall not in the exercise of the powers of this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of LUL.

(2) The consent of LUL under sub-paragraph (1) above shall not be unreasonably withheld but may be given subject to reasonable conditions.

31.—(1) Network Rail shall not under the powers of this Order, without the consent of LUL, which shall not be unreasonably withheld, acquire or enter upon, take or use, whether temporarily or permanently or acquire any new rights over any railway property.

(2) Sub-paragraph (1) shall not prevent Network Rail from acquiring the interest of any person other than the Company in the said land.

32. Network Rail shall, before commencing the construction of any part of the specified works, furnish to LUL such proper and sufficient plans relevant to the part of the specified works concerned (“the plans”) (including particulars as to the working methods and the regulation of traffic in the vicinity of those specified works) as may be reasonably required by the engineer and shall not commence those specified works until the plans have been approved in writing by the engineer or settled by arbitration under article 51 (arbitration).

33. The engineer’s approval under paragraph 32 shall not be unreasonably withheld and any question of whether it has been unreasonably withheld shall be settled by arbitration, and in any event if within 56 days after the plans have been furnished to LUL the engineer has not notified his disapproval thereof and the grounds of his disapproval, he shall be deemed to have approved the plans as submitted.

34. If within 56 days after the plans have been furnished to LUL, LUL gives notice to Network Rail that LUL desires to construct any part of the specified works, which in the opinion of the engineer will or may affect the stability of railway property or the safe and effective operation of the

(2) [S.I. 1988/1813](#).

(3) [S.I. 1995/419](#).

Company's railway undertaking or the services of operators using the same, then, if Network Rail desires such part of the specified works to be constructed, LUL shall construct it with all reasonable dispatch on behalf of, and to the reasonable satisfaction of Network Rail in accordance with the plans approved or deemed to be approved or settled as aforesaid.

35. Upon signifying his approval or disapproval of the plans the engineer may specify any protective works, whether temporary or permanent, which in his opinion should be carried out before the commencement of the construction of the specified works to ensure the stability of railway property, the continuation of the safe and effective operation of the Company's railway undertaking or the services of operators using the same and the comfort and safety of the passengers who may be affected by the specified works, and such protective works as may be reasonably necessary for those purposes shall be constructed by LUL with all reasonable dispatch, or, if LUL so desires, such protective works shall be carried out by Network Rail at its own expense and Network Rail shall not commence the construction of the specified works until the engineer has notified Network Rail that the protective works have been completed.

36. Network Rail shall, before commencing the construction of the designated works, furnish to LUL such proper and sufficient plans thereof as may reasonably be required by the engineer and shall not commence the designated works until plans thereof have been approved in writing by the engineer or settled by arbitration under article 51 (arbitration).

37. The engineer's approval under paragraph 36 shall not be unreasonably withheld and any question of whether it has been unreasonably withheld shall be settled by arbitration, and in any event if within 56 days after plans have been furnished to LUL the engineer has not notified his disapproval thereof and the grounds of his disapproval, he shall be deemed to have approved those plans as submitted.

38. Upon signifying his approval or disapproval of the plans the engineer may specify any protective works, whether temporary or permanent, which in his opinion should be carried out before the commencement of the construction of the designated works to safeguard the safe, economic and efficient construction, operation and maintenance of the ticket hall, ventilation shaft and running tunnels proposed to be constructed within the safeguarded land as part of the CrossRail Scheme and such protective works as may be reasonably necessary for those purposes shall be constructed by Network Rail with all reasonable dispatch, at its own expense and Network Rail shall not commence the construction of the specified works until the engineer is satisfied that any protective works so constructed have been completed to the reasonable satisfaction of the engineer.

39. Network Rail shall give to the engineer not less than 56 days' notice of its intention to commence the construction of any of the specified works and also except in emergency (when it shall give such notice as may be reasonably practicable), of its intention to carry out any works for the maintenance of the specified works in so far as such works of repair or maintenance affect or interfere with railway property.

40. The construction of the specified works, any protective works and any alterations and additions thereto carried out by Network Rail shall, when commenced, be carried out—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to be approved or settled as aforesaid;
- (b) under the supervision (if given), and to the reasonable satisfaction of the engineer; and
- (c) in such manner as to cause—
 - (i) as little damage as may be to railway property;
 - (ii) as little interference as may be with the conduct of traffic on the railways of LUL and the use by passengers of railway property,

and, if any damage to railway property or any such interference shall be caused by the carrying out of the specified works and any protective works carried out by Network

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Rail, Network Rail shall, notwithstanding any such approval as aforesaid, make good such damage and shall pay to LUL all reasonable expenses to which it may be put and compensation for any loss which it may sustain by reason of any such damage or interference.

41. Nothing in paragraph 40 shall impose any liability on Network Rail with respect to any damage, cost, expense or loss which is attributable to the act, neglect or default of the Company or any person in its employ, or of its contractors or agents and any liability of Network Rail under paragraph 40 shall be reduced proportionately to the extent to which any damage, cost, expense or loss is attributable to the act, neglect or default of the Company or of any person in its employ, or of its contractors or agents.

42. Network Rail shall at all times afford reasonable facilities to the engineer for access to the specified works during their construction and the construction of any protective works carried out by Network Rail pursuant to the provisions of paragraph 35 and shall supply him with all such information as he may reasonably require with regard to the specified works or any such protective works or to the method of construction thereof.

43. During the construction of any works by LUL under this Part of this Schedule LUL shall at all times afford reasonable facilities to Network Rail and its agents for access to those works, and shall supply Network Rail with such information as Network Rail may reasonably require with regard to such works or the method of construction thereof.

44. If any alterations or additions, either permanent or temporary, to railway property shall be reasonably necessary during the construction of the specified works, or during a period of 12 months after the completion thereof, in consequence of the construction of the specified works, such alterations and additions may be carried out by LUL and, if LUL gives to Network Rail reasonable notice of its intention to carry out such alterations or additions, Network Rail shall pay to LUL the reasonable cost thereof including, in respect of permanent alterations and additions, a capitalised sum representing any increase in the costs which may be expected to be reasonably incurred by the Company in maintaining, working and, when necessary, renewing any such alterations or additions.

45. If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions referred to in paragraph 44 a capitalised sum representing such saving shall be set off against any sum payable by Network Rail to LUL under this Part of this Schedule.

46. Network Rail shall repay to LUL all reasonable costs, charges and expenses reasonably incurred by the Company—

- (a) in constructing any part of the specified works on behalf of Network Rail as provided by paragraph 34 or in constructing any protective works under the provisions of paragraph 35, including, in respect of any permanent protective works, a capitalised sum representing the cost which may be expected to be reasonably incurred by the Company in maintaining and renewing such works;
- (b) in respect of the employment or procurement of the services of any inspectors, supervisory staff, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, monitoring, 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 the specified works and to ensure the continued safe and effective operation of the Company's railway undertaking or the services of operators using the same (including any relocation of works, apparatus and equipment necessitated by the specified works) and the comfort and safety of passengers;
- (c) 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

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construction or failure of the specified works, or from the substitution or diversion of railway services of LUL which may be reasonably necessary for the same reason;

- (d) 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 the specified works; and
- (e) in respect of the approval of plans and any supervision by the engineer of the construction of the specified works and the designated works.

47. Network Rail shall in the design and construction of the authorised works take all measures necessary to prevent EMI and shall establish with LUL (both parties acting reasonably) appropriate arrangements to test and verify the effectiveness of works proposed to be constructed by Network Rail to prevent EMI.

48. If at any time after the completion of a specified work, not being a work vested in the Company, LUL gives notice to Network Rail informing it that the state of maintenance of the specified work appears to be such as may affect the safe and effective operation of railway property, Network Rail shall, on receipt of such a notice, take such steps as may be reasonably necessary to put that specified work in such state of repair as may not so affect railway property.

49. Network Rail shall be responsible for, and make good to LUL all reasonable costs, charges, damages and expenses not otherwise provided for in paragraph 46 which may be occasioned to, or reasonably incurred by, the Company—

- (a) by reason of the specified works or the failure thereof; or
- (b) by reason of any act or omission of Network Rail or of any person in its employ, or of its contractors or others whilst engaged upon the construction of the specified works;

and Network Rail shall indemnify the Company from and against all claims and demands arising out of or in connection with the construction of the specified works or any failure, act or omissions as aforesaid, and the fact that any act or thing may have been done in accordance with any requirement of the engineer or under his supervision, shall not (if it was not attributable to the act, neglect or default of the Company or of any person in its employ, or of its contractors or agents) excuse Network Rail from any liability under the provisions of this Part of this Schedule.

50.—(1) Any liability of Network Rail under paragraph 49 shall be reduced proportionately to the extent to which any costs, charges, damages and expenses are attributable to the act, neglect or default of the Company or of any person in its employ, or of its contractors or agents.

(2) The Company shall give to Network Rail immediate notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of Network Rail.

51. Any difference arising between Network Rail and the Company under this Part of this Schedule shall be referred to and settled by arbitration under article 51 (arbitration).