

## SCHEDULES

### SCHEDULE 9

#### PROTECTIVE PROVISIONS

#### PART 4

#### PROTECTION FOR LUL

**33.** The following provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the Council and LUL.

**34.** In this Part of this Schedule—

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

“EMI” means electromagnetic interference with LUL’s works and apparatus generated by the operation of the authorised works (including the operation of trains using the Croxley Rail Link) where such interference is of a level which affects the safe and efficient operation of LUL’s works and apparatus;

“the engineer” means an engineer appointed by LUL for the purposes of this Order;

“LUL’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 LUL 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;

“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 settled by arbitration under article 47 (arbitration) and in accordance with the provisions of this Part of this Schedule;

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

**35.** The provisions of Schedule 8 (provisions relating to statutory undertakers etc.) do not apply to works, apparatus and equipment to which this Part of this Schedule applies.

**36.—(1)** The Council 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 LUL.

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

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**37.—(1)** The Council must not under the powers of this Order, without the consent of LUL, which is not to 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) is not to prevent the Council from acquiring the interest of any person other than LUL in the said land unless existing provisions governing the transfer of such interest prevent such interest being transferred.

**38.** The Council must, before commencing the construction of any part of the specified works, supply to LUL such proper and sufficient plans relevant to the part of the specified works concerned (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 must not commence those specified works until the plans have been approved in writing by the engineer or settled by arbitration under article 47 (arbitration).

**39.** The engineer's approval under paragraph 38 must not be unreasonably withheld and any question of whether it has been unreasonably withheld is to be settled by arbitration under article 47 (arbitration) and the engineer's approval or disapproval of the plans must be notified within 56 days of their submission.

**40.** If within 56 days after the plans have been supplied to LUL, LUL gives notice to the Council 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 LUL's railway undertaking, then, if the Council desires such part of the specified works to be constructed, LUL must construct it without unnecessary delay on behalf of, and to the reasonable satisfaction of, the Council in accordance with the plans approved or settled in accordance with this Part of this Schedule or amended as agreed with the Council.

**41.** Upon signifying approval or disapproval 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 the specified works to ensure the stability of railway property, the continuation of the safe and efficient operation of LUL's railway undertaking 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 must be constructed by LUL at the expense of the Council without unnecessary delay, or if LUL so desires, such protective works must be carried out by the Council at its own expense without unnecessary delay to the satisfaction of the engineer and the Council must not commence the construction of the specified works until the engineer has notified the Council that the protective works have been completed to the engineer's reasonable satisfaction.

**42.** The Council must give to the engineer not less than 56 days' notice of its intention to commence the construction of any of the specified works or protective works and also except in emergency (when it must 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.

**43.** The construction of the specified works, any protective works and any alterations and additions to them carried out by the Council must be carried out in such a way so as not to prejudice the safety of LUL's railway and without limitation to this obligation those works, when commenced, must be carried out—

- (a) without unnecessary delay in accordance with the plans approved or settled in accordance with this Part of this Schedule;
- (b) under the supervision (if required by the engineer), and to the reasonable satisfaction of the engineer;
- (c) in such manner as to mitigate against any damage to the railway property; and

- (d) so far as reasonably practicable, so as not to interfere with or obstruct the free uninterrupted and safe use of LUL's railway, 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 or obstruction is caused by the carrying out of the specified works or any protective works carried out, the Council must, notwithstanding any approval in accordance with this Part of this Schedule, make good such damage and must pay to LUL all reasonable expenses to which LUL may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

**44.** Nothing in paragraph 43 imposes any liability on the Council with respect to any damage, cost, expense or loss which is attributable to the negligence of LUL or any person in its employ, or of its contractors or agents and any liability of the Council under paragraph 43 is to be reduced proportionately to the extent to which any damage, cost, expense or loss is attributable to the negligence of LUL or of any person in its employ, or of its contractors or agents.

**45.** The Council must 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 the Council under the provisions of paragraph 41 and must supply the engineer with all such information as the engineer may reasonably require with regard to the specified works or any such protective works or to the method of construction of them.

**46.** During the construction of any works by LUL under this Part of this Schedule, LUL must at all times afford reasonable facilities to the Council and its agents for access to those works, the Council complying at all times with LUL's requirements for training and safety, and must supply the Council with such information as it may reasonably require with regard to such works or the method of constructing them.

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

**48.** The Council must in the design and construction of the authorised works take all measures necessary to prevent EMI and must establish with LUL (both parties acting reasonably) appropriate arrangements to test and verify the effectiveness of works proposed to be constructed by the Council to prevent EMI.

**49.** If the cost of maintaining, working or renewing its railway property is reduced in consequence of any such alterations or additions referred to in paragraph 47, a capitalised sum representing such saving is to be set off against any sum payable by the Council to LUL under this Part of this Schedule.

**50.** The Council must repay to LUL all reasonable costs, charges and expenses reasonably incurred by LUL—

- (a) in constructing any part of a specified work on behalf of the Council as provided by paragraph 40 or in constructing any protective works under the provisions of paragraph 41, including, in respect of any permanent protective works, a capitalised sum representing the cost which may be expected to be reasonably incurred by LUL in maintaining and renewing such works;
- (b) in respect of the employment or procurement of the services of any inspectors, supervisory staff, signallers, watchkeepers and other persons appointed for inspecting, monitoring,

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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 efficient operation of LUL's railway undertaking (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 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 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.

**51.** The Council must be responsible for, and make good to LUL all reasonable costs, charges, damages and expenses not otherwise provided for in paragraph 50 which may be occasioned to or reasonably incurred by LUL—

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

and the Council must indemnify LUL 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 referred to in this Part of this Schedule; and the fact that any act or thing may have been done in accordance with any requirement of the engineer or under the engineer's supervision must not (if it was not attributable to the act, neglect or default of LUL or of any person in its employ, or of its contractors or agents) excuse the Council from any liability under the provisions of this Part of this Schedule.

**52.—(1)** Any liability of the Council under paragraph 51 is to be reduced proportionately to the extent to which any costs, charges, damages and expenses are attributable to the act, neglect or default of LUL or of any person in LUL's employ, or of LUL's contractors or agents.

(2) LUL must give to the Council immediate notice of any claim or demand and no settlement or compromise of any claim or demand is to be made without the prior consent of the Council (such consent not to be unreasonably withheld).

**53.** Any difference arising between the Council and LUL under this Part of this Schedule must be referred to and settled by arbitration under article 47 (arbitration).