

SCHEDULES

SCHEDULE 7

PROVISIONS FOR THE PROTECTION OF NETWORK RAIL

13.—(1) The undertaker shall 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 an identified 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 the identified work;

and the undertaker shall indemnify Network Rail from and against all claims and demands arising out of or in connection with an identified 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 shall not (if it was done without negligence or default 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 shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand shall be made without the prior consent of the undertaker.

(3) Any liability of the undertaker under this paragraph or under any other paragraph of this schedule shall be reduced proportionately to the extent to which any costs, charges, damages and expenses are attributable to the neglect or default of Network Rail or of any person in its employ, or of its contractors or agents.

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

(5) 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 shall 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.

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

(7) 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 the identified works or any such act or omission as mentioned in sub-paragraph (1).