

Appendix 11

Dated: 2018

- (1) North Somerset Council
 - (2) Network Rail Infrastructure Limited
-

DRAFT
Metrowest Phase 1
Promotion Agreement

Contents

	Part 1 Introductory	2
1	DEFINITIONS AND INTERPRETATION	2
2	THE DSA	5
3	DURATION	5
4	THE OBJECTIVES	5
	Part 2 The DCO and Other Consents.....	6
5	PROMOTION OF THE DCO	6
7	THE DCO APPLICATION AND THE DCO	8
8	DCO POWERS	8
9	AMENDMENTS TO DCO INCLUDING DRAFT REQUIREMENTS	9
10	FUTURE AGREEMENTS OR UNDERTAKINGS	9
11	NOISE MITIGATION MEASURES	10
12	PROCESS FOR SECURING CONSENT	10
	Part 3 Land and Environmental Obligations	10
13	IDENTIFICATION OF THE REQUIRED LAND	10
14	OBLIGATIONS AS REGARDS ACQUIRING OR MAKING AVAILABLE THE REQUIRED LAND	12
15	DISCHARGE OF ENVIRONMENTAL OBLIGATIONS	12
16	PAYMENT FOR ACQUISITION OF LAND AND COMPENSATION	13
17	LAND STRATEGY	14
	Part 4 Project Agreements	14
18	PROJECT AGREEMENTS	14
	Part 5 Supplementary and General	15
19	STATUTORY AND GOVERNANCE REQUIREMENTS	15
20	PUBLICITY AND MEDIA	15
	Schedules	
1	TEMPLATE FORM OF PROTECTIVE PROVISIONS TO BE INSERTED IN THE DCO.....	16
2	FORM OF PROVISIONS RELATING TO TRANSFER OF POWERS TO BE INSERTED IN THE DCO.....	23
3	REMIT	25
	Appendices	
1	AGREEMENTS REQUIRED SUPPORTING THE ENTRY INTO SERVICE OF METROWEST PHASE 1: STATUS DOCUMENT	27
2	METROWEST PHASE 1 DCO AGREEMENT SIGN OFF PROCESS	29

BETWEEN

- (1) **North Somerset Council** whose office is at Town Hall, Walliscote Grove Rd, Weston-super-Mare BS23 1UJ ("**the Council**"); and
- (2) **Network Rail Infrastructure Limited** (Company No. 2904587) whose registered office is at 1 Eversholt Street, London, NW1 2DN ("**Network Rail**")

WHEREAS

- (A) The Council wishes to promote a project known as Metrowest Phase 1, part of which includes the re-opening of the Portishead rail line and stations and the reintroduction of passenger train services from Portishead to Parson Street Junction where the services will join the existing rail passenger network ("**the Project**" as is more particularly defined in clause **1**).
- (B) The Objectives of Metrowest Phase1 and the Project are set out in clause **4** of this Agreement.
- (C) The Council wishes to promote an application ("**the DCO Application**") to the Secretary of State for Transport for the granting of the DCO (as defined in clause **1**).
- (D) This Agreement is supplemental to a Development Services Agreement ("**DSA**" as defined in clause **1**) which has been entered into by the Parties as regards the carrying out by Network Rail of certain feasibility and development services in connection with the development of the Project and the promotion of the DCO.
- (E) The DSA contemplates that details of the feasibility and development services to be undertaken by Network Rail under the DSA will be set out in more detail in supplementary agreements.
- (F) The Parties have entered into this Agreement pursuant to, and supplemental to, the DSA for the purpose of setting out in further detail the responsibilities and activities to be undertaken by Network Rail under the DSA in support of the promotion of the DCO.
- (G) The Parties intend that the Works to be authorised by the DCO will be constructed by Network Rail under an Implementation Agreement and wish to record their intention of working together in agreeing the Implementation Agreement and other agreements relating to the implementation of the Project and certain elements of Metrowest Phase 1.

IT IS AGREED as follows:-

Part 1 Introductory

1. Definitions and Interpretation

1.1 In the Agreement (unless the context otherwise requires):-

"**2008 Act**" means the Planning Act 2008;

"**Approvals Programme**" means a written programme to be agreed between the Council and Network Rail prior to the submission of the DCO Application setting out:-

- (a) a timetable and process (including attendance at meetings) for the preparation and settlement of any proposed Future Agreement, Future Undertaking, Draft Requirement or modification to a Draft Requirement or the DCO that either Party desires to enter into, propose or accept;
- (b) a timetable and process (including attendance at meetings) for the preparation and settlement of any document required for the purposes of the Application,

Acceptance and Examination including written representations, Statements of Common Ground and responses to questions or requests for information raised or made by the Examining Authority;

- (c) the arrangements for the commencement and completion of review by both Parties of any document referred to in (a) or (b) above including target notification periods and dates for the commencement and completion of such review PROVIDED THAT:
- (i) the Council will use reasonable endeavours to provide Network Rail with as much notice as possible to complete such review but recognising that it has limited control over the timetable during the Examination
- (ii) Network Rail will use reasonable endeavours to complete such review so as to meet the DCO Application target date referred to in clause 5.2 and not to prejudice the Examination.
- (d) the method of notification for any review in accordance with sub paragraph (c) above and of any decision in response to a request for consent or agreement made for the purposes of clause **9.1, 10.1** and **11.1** shall include a requirement for any notification to be in writing and in accordance with target notification periods and dates referred to in sub paragraph (c) above PROVIDED ALWAYS that the notice provisions provided at clause 20 of the DSA shall not apply to the Approvals Programme ; and
- (e) any specific arrangements and conditions attaching to the provision, release and return of any document submitted for the purposes of clause **9.1, 10.1** and **11.1** and related documentation made available for such review;

"Bedminster Down Goods Relief Works" means the works to reinstate the former Bedminster Down Goods Relief Line parallel to the existing running lines of the Bristol and Exeter railway;

"DCO" means a development consent order to be granted by the Secretary of State under section 114 of the Planning Act 2008 ("the 2008 Act") to authorise the construction and maintenance of the Project;

"DCO Requirement" means any requirement included in the DCO as made;

"DCO Working Group" means the persons responsible on behalf of the Council for preparing the DCO Application and handling any resulting objections and any Examination the meetings of which upon notice in accordance with the Approvals Programme given by the Council must be attended by representatives of Network Rail;

"Draft Requirement" means any draft requirement included in the DCO, as applied for;

"DSA" means the Development Services Agreement dated 13 March 2014 as amended and supplemented by agreements dated 4 December 2014, 22 June 2015 and 1 October 2015, 1 March 2016, 31 August 2017 and [2018]and made between Network Rail and the Council;

"Examination" means the Examination held in connection with the DCO Application;

"Exchange Land" has the meaning given in clause **13.1.6**;

"Future Agreement" means an agreement, or a commitment to agree, proposed to be entered into in favour of any third party on or after the date of this Agreement in respect of any matter connected with the promotion of the DCO;

"Future Railway Property" means any property and assets which the Parties agree shall be vested in Network Rail following completion of the Works including such buildings, lands, works, apparatus and equipment to be held or used by Network Rail including any property interest held or used by Network Rail for the purposes of such property or assets;

"Future Undertaking" means an undertaking, or a commitment to give an undertaking, proposed to be entered into in favour of any third party on or after the date of this Agreement in respect of any matter connected with the promotion of the DCO;

"the Implementation Agreement" is the agreement mentioned in clause **18.1.1**;

"Intellectual Property Rights" means any patent, patent application, know how, trade mark or name, service mark, design right, registered design, copyright, moral right, rights in commercial or technical information or any other intellectual property rights, whether registered or unregistered and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect anywhere in the world;

Metrowest Phase 1 comprises Phase 1A – an enhanced half-hourly passenger train services for the Severn Beach line and the Bath line, with an option under technical development to extend the train service to Westbury, and Phase 1B - the re-opening of the Portishead rail line and re-commencement of passenger train services, with two new stations, Portishead and Pill.

"Mitigation Land" has the meaning given in clause **13.1.5**;

"Network Licence" means the network licence, as the same is amended from time to time, granted to Network Rail by the Secretary of State in exercise of his powers under section 8 of the Railways Act 1993;

"Portbury Railway" means the Portbury freight line from Portbury Dock Junction to Ashton Junction

"the Objectives" has the meaning given by clause **4**;

"Parson Street Junction Works" means the works to the junction of the Portbury Freight Line and the Bristol and Exeter Railway;

"Parties" means the parties to this Agreement and any permitted successors and "Party" means whichever of them is indicated by the context of the reference;

"PD Works" means the Bedminster Down Goods Relief Works and the Parson Street Junction Works;

"Permanent Railway Land" has the meaning given in clause **13.1.2**;

"Permanent Railway Rights" has the meaning given in clause **13.3**;

"Project" means the construction and reopening of the Railway works to upgrade the Portbury Railway to provide for an approximately hourly passenger train service; the construction of a new station at Portishead including a car park, pedestrian and cycle access, and associated highways works; the construction/re-opening of Pill Station including the provision of a station car park; the provision of a footbridge and the extinguishment of crossings together with associated development and engineering works;

"Project Agreements" means the agreements referred to in clause **18**;

"Project Development Group" means the persons responsible for monitoring delivery of the Project and providing direction, attended by appropriately authorised representatives of the Council and Network Rail amongst others;

"the Property Contract" is the property contract referred to in clause **18.1.3**;

"the Railway" means the to be constructed railway between Portishead and Portbury Dock Junction for passenger train services and connection to the Portbury Railway;

"Railway Operational Procedures" means procedures specified under any access agreement (as defined in the Railways Act 1993) or station or depot lease;

"Required Land" means any land or rights required for the construction or operation of the Works including the land and rights in the categories set out in clause **13.1**;

"Responsibility Matrix" means the responsibility matrix referred to in clause **5.4**;

"Temporary Land" has the meaning given in clause **13.1.4**;

"Third Party Rights" has the meaning given in clause **13.1.3**;

"Works" means the works and conveniences to be provided for in the DCO required to construct, operate and maintain the Project which works are to be set out in a Schedule to the Implementation Agreement referred to in clause **18.1**;

- 1.2 References to clauses are to the clauses of this Agreement.
- 1.3 References to the singular are deemed to include the plural and vice versa and references in either gender are deemed to include the other and the neuter.
- 1.4 References to any provision of a statute or regulation are to be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 1.5 Headings are inserted for convenience only and do not affect construction.

2. **The DSA**

- 2.1 This Agreement is supplemental to, and forms part of, the DSA and accordingly –
 - 2.1.1 the terms and conditions of the DSA apply (mutatis mutandis) and, in particular, Network Rail's liabilities as respects the responsibilities and services detailed in this Agreement are as provided in the DSA; and
 - 2.1.2 Network Rail's costs for providing the services detailed in this Agreement are payable by the Council under and in accordance with the DSA.

3. **Duration**

- 3.1 3.1 This Agreement shall commence on the date of this Agreement and shall terminate on the date of expiry or termination of the DSA unless otherwise provided for in the Project Agreements Termination or expiry of the Agreement shall be without prejudice to clause 17.1 (b) of the DSA
- 3.2 Upon the termination or expiry of this Agreement the obligations of the parties shall cease except for any obligations arising as a result of any antecedent breach of the Agreement or accrued rights

4. **The Objectives**

- 4.1 The principal business objectives of the Metrowest Phase 1 are:
 - 4.1.1 To support economic growth, through enhancing the transport links to and across Bristol city centre, from the Portishead, Bath and Avonmouth and Severn Beach arterial corridors.
 - 4.1.2 To deliver a more resilient transport offer, providing more attractive and guaranteed (future-proofed) journey times for commuters, business and

residents into and across Bristol, through better utilisation of strategic heavy rail corridors from Portishead, Bath and Avonmouth, and Severn Beach.

4.1.3 To improve accessibility to the rail network with new and reopened rail stations and reduce the cost (generalised cost) of travel for commuters, business and residents.

4.1.4 To make a positive contribution to social well-being, life opportunities and improving quality of life, across the three arterial corridors.

4.2 The supporting objectives of the Project are:

4.2.1 To contribute to reducing traffic congestion on the Portishead and Bristol arterial corridors.

4.2.2 To contribute to enhancing the capacity of the local rail network, in terms of seats per hour in the AM and PM peak.

4.2.3 To contribute to reducing the overall environmental impact of the transport network.

Part 2 The DCO and Other Consents

5. Promotion of the DCO

5.1 Without prejudice to clause **5.3**, the Council and Network Rail shall work together and act reasonably and in good faith to enable the Parties jointly to discharge their obligations under the DSA as supplemented by this Agreement and to facilitate the promotion by the Council of a DCO which confers the powers needed to carry out the Project and accordingly will endeavour to respond as promptly and expeditiously as possible in providing information or support for or agreement on all elements as appropriate of the DCO Application and related matters and as provided for in the Approvals Programme including but not limited to the following:-

5.1.1 the scope of the DCO and works to be authorised, including on engineering matters so as to enable the Works to be identified and approved to the relevant Network Rail engineering standards and the relevant Railway Group standards;

5.1.2 the form and content of the DCO Application documents and any other documents required to support the DCO Application;

5.1.3 so far only as may be relevant to the DCO Application, information on any matters relating to the national rail network, including any approvals in relation to any works or operation of services on the national rail network;

5.1.4 in relation to any consultation, discussions and negotiations with stakeholders and third parties, including objectors to the DCO;

5.1.5 in relation to all aspects of the Examination process, including attendance at conferences with Counsel, provision of written representations and other documentation;

having regard always to the timetable and particular deadlines for the DCO Application and Examination.

5.2 The Council will seek to obtain all necessary internal approvals in order to promote the DCO Application so as to meet the agreed DCO Application target date, currently intended to be end of July 2019]

5.3 Provided that Network Rail provides its Services and Deliverables in accordance with the DSA as they relate to the DCO and in particular the input required by Network Rail as set out in the Approvals Programme, the Council through its DCO Working Group will be

responsible for obtaining the DCO and ensuring that the powers of the DCO are appropriate to authorise the construction of the Works and the acquisition of all Required Land (other than any land or rights which the Council are satisfied have been or will be acquired by private treaty), including undertaking:-

- 5.3.1 general project management of the day to day handling of the DCO Application and Examination and related matters;
 - 5.3.2 land and property related matters, including but not limited to referencing and preparation of the book of reference and parcelling on the plans, identifying property interests and rights;
 - 5.3.3 public consultation matters, including but not limited to preparation of the consultation report required by section 37(3)(c) of the 2008 Act to accompany the DCO Application;
 - 5.3.4 environmental matters, including but not limited to undertaking environmental impact assessment and preparation of the environmental statement required to accompany the DCO Application;
 - 5.3.5 engineering matters including but not limited to settling of the works details and alignments and preparation of the plans and sections (with particular input from Network Rail as appropriate to meet railway standards and railway infrastructure requirements);
 - 5.3.6 preparation of documents, plans and drawings required to accompany the DCO Application;
 - 5.3.7 business case matters (with particular input from Network Rail as necessary);
 - 5.3.8 preparation of other DCO Application documentation and compliance with statutory procedures regarding notices and materials on deposit;
 - 5.3.9 objection management handling including arrangements for meetings and attendees and preparation of compromise agreements and undertakings; and
 - 5.3.10 preparation of Examination documentation and submissions including appointment of counsel, preparation of written representations, statements of common ground and other materials;
- 5.4 Prior to the entry into the Implementation Agreement the Parties shall prepare and agree a Responsibility Matrix which, amongst other matters, identifies any licences under the Conservation of Habitats and Species Regulations 2010 and other consents and approvals required for the carrying out of the Works (including approvals pursuant to discharge Requirements in the made DCO) and allocates responsibility for obtaining such consents.
- 5.5 The Implementation Agreement will contain provisions requiring the Parties to obtain the licences, consents and approvals in accordance with the Responsibility Matrix.
- 5.6 Except where otherwise agreed the Council will be responsible for co-ordinating and managing (including preparation as appropriate for):-
- 5.6.1 all DCO Working Group and Project Development Group meetings;
 - 5.6.2 all meetings with stakeholders;
 - 5.6.3 all meetings with potential objectors/affected Parties;
 - 5.6.4 all meetings with objectors;

and shall invite Network Rail to every such meeting where the Council considers that attendance by Network Rail at any such meeting is necessary or desirable.

- 5.7 Attendance by Network Rail at any meeting mentioned in this clause **5** shall not affect the Council's responsibilities under this Agreement.

6. **Progress review**

- 6.1 The Parties agree that the Project Development Group will be responsible for the review of progress against objectives agreed between the Parties and that the DCO Working Group will be responsible for the day to day promotion of the Project, the review of progress against the Approvals Programme and will receive recommendations from the work stream groups and is the body responsible for progressing the DCO Application.

- 6.2 Each Party will put in place whatever internal arrangements are required to ensure it can:-

6.2.1 respond in a timely manner to the documents and matters to be agreed in accordance with the Approvals Programme; and

6.2.2 nominate a single point of contact responsible for co-ordinating contributions from different constituent parts of each Party for the purposes of this clause **6.2**.

- 6.3 For the avoidance of doubt, clauses **6.1** and **6.2** are subject to the provisions of clause **19**.

7. **The DCO Application and the DCO**

- 7.1 The form of the draft DCO, including the Draft DCO Requirements, to be submitted to the Secretary of State as part of the DCO Application shall be in such form as shall have been agreed by the Council and Network Rail.

- 7.2 The DCO shall include protective provisions in the form of the template set out in Schedule **1** to this Agreement.

- 7.3 Agreement by Network Rail to the draft DCO or any documents submitted with the DCO application shall not be taken as implying that Network Rail has any liability as respects the contents of those documents except as provided by and in accordance with the DSA including Network Rail's obligation to perform the Services and Deliverable in accordance with Good Industry Practice (as defined in the DSA) nor as affecting the Council's responsibilities under clause **5.3**.

- 7.4 Network Rail acknowledges that, except as regards the Parsons Street Junction works, the draft DCO will not make provision for the PD Works to be authorised nor for any necessary access to land to undertake PD Works and that Network Rail will be responsible for securing any necessary temporary access to land and any required consents, authorisations, permissions or licences for the PD Works prior to commencement of the Works and to undertake the PD Works prior to completion of the Works in accordance with the Implementation Agreement.

8. **DCO Powers**

- 8.1 The DCO will not include provision authorising the transfer of any of the functions under the DCO to any person or body other than Network Rail without the consent of Network Rail not to be unreasonably withheld or delayed. Accordingly the DCO will include the provision in Part **1** of Schedule **2** to this Agreement.

- 8.2 The DCO as applied for will include a provision authorising the making of agreements between the Council and Network Rail in the terms set out in Part **2** of Schedule **2** to this Agreement; and the Council will transfer to Network Rail under that provision of the DCO all the Council's powers to maintain and operate the Works as and when any of

such Works vest in Network Rail in accordance with the Property Contract and other agreements referred to in clause **18.1.3**.

- 8.3 If so provided by the Land Strategy referred to in clause **17**, the Council will exercise the powers of the DCO to acquire the Permanent Railway Rights.
- 8.4 The DCO as applied for will include a provision authorising the transfer to statutory undertakers of powers to acquire interests [or to impose restrictions] in the terms set out in Part **3** of Schedule **2** to this Agreement.
- 8.5 The DCO as applied for will include provision for the permanent closure of the Ashton Containers Footpath Crossing.

9. **Amendments to DCO including Draft Requirements**

- 9.1 The Council and Network Rail agree that following submission of the DCO Application neither Party shall:-

- 9.1.1 propose any new Draft Requirement or modifications to any Draft Requirement or any other provision of the DCO; or
- 9.1.2 accept any such new Draft Requirement or a modification to any Draft Requirement or to any other provision of the DCO put forward by any third party except where this is required by the Secretary of State;

without the consent of the other Party except in the case of any new Draft Requirements which may be required by any regulator under statutory powers or which Network Rail reasonably considers is needed to ensure the safe construction, maintenance or operation of the Railway or the Portbury Railway.

Where the Secretary of State proposes to impose a new Draft Requirement or to modify a Draft Planning requirement which relates to, or in any way affects, Future Railway Property, the construction of the Works, the operation or maintenance of the Railway or the Portbury Railway or the safe and efficient operation of Network Rail's railway undertaking the Parties shall consult one another as to the proposal's consistency with this Agreement and any protective provisions contained in the DCO and as to its general acceptability, and the Parties shall make such representations to the Secretary of State as are necessary to:-

- 9.1.3 support this Agreement and the protective provisions and their operation; and
- 9.1.4 convey to the Secretary of State any conclusion reached in the course of such consultation as to the general acceptability of the Secretary of State's proposal.

10. **Future Agreements or Undertakings**

- 10.1 Neither the Council nor Network Rail shall without the consent of the other, enter into:-

- 10.1.1 a Future Agreement; or
- 10.1.2 a Future Undertaking,

which relates to, or in any way affects Future Railway Property, the construction of the Works, the operation or maintenance of the Railway or the Portbury Railway or the safe and efficient operation of Network Rail's railway undertaking

- 10.2 The parties will seek to identify categories of Future Agreements or Future Undertakings which-

- 10.2.1 do not adversely affect Future Railway Property, the construction of the Works, the operation of the Railway, the Portbury Railway or Network Rail's railway undertaking so do not require Network Rail's consent under clause **10.1**; or

- 10.2.2 do not adversely affect the Council's interests and so do not require the Council's consent under clause **10.1**.
- 10.3 The powers conferred by the DCO will not be exercised in relation to any land used or owned by Network Rail without the consent of Network Rail.
- 10.4 The Council shall keep a register of all Future Agreements and Future Undertakings which identifies separately:-
 - 10.4.1 those which affect the construction of the Works; and
 - 10.4.2 those which affect Future Railway Property or the operation and maintenance of the Railway and the Portbury Railway.

11. **Noise Mitigation Measures**

- 11.1 Any commitment to be given by the Council to provide measures to mitigate noise impacts during the operation of Works (other than measures required under the Noise Insulation Regulations 1996) shall be agreed (not to be unreasonably withheld or delayed) in advance with Network Rail.

12. **Process for Securing Consent**

- 12.1 Subject to clause **12.2**, for the purposes of clause **9.1 10.1** and **10.3** the consent of either Party shall not be unreasonably withheld or delayed and shall be given in writing in accordance with the Approvals Programme.
- 12.2 Subject to Network Rail complying with the terms of the Approvals Programme it may in its absolute discretion withhold its consent to any commitment proposed to be given under clause **9.1**, and **10.1 or 10.3** if in its opinion it would adversely affect the safe or efficient operation of the Railway or the Portbury Railway
- 12.3 The Approvals Programme will for the purposes of clause **10.1** include the Agreement Sign-off Process set out in Appendix **2** to this Agreement.
- 12.4 The parties shall co-operate in giving or withholding consent as speedily as reasonably practicable and within a timescale which is consistent with the time table set by the Approvals Programme.

Part 3 Land and Environmental Obligations

13. **Identification of the Required Land**

- 13.1 The Required Land includes the following categories of land:-
 - 13.1.1 Land already owned by Network Rail (which may be subject to adverse rights which need to be modified or extinguished such as the cycle paths or utilities connections);
 - 13.1.2 Land to be permanently acquired for the Railway and Portbury Railway whether from third parties or from the Council ("Permanent Railway Land");
 - 13.1.3 Permanent rights to be granted to third parties over the Railway and Portbury Railway e.g. rights for utilities or air rights for a bridge ("Third Party Rights");
 - 13.1.4 Land owned by the Council or by a third party needed temporarily for the construction of the Works e.g. work sites and work access ("Temporary Land");
 - 13.1.5 Land or rights (not being Permanent Railway Land) needed for mitigation either within the boundary of the DCO works plan submitted with the DCO application or on neighbouring land including any mitigation required by the Draft DCO Requirements or any modifications to them ("Mitigation Land");

- 13.1.6 Land to be acquired as exchange land for open space (if any) ("Exchange Land");
 - 13.1.7 Permanent Railway Rights as referred to in clause **13.3**.
- 13.2 The Council will be responsible, in consultation with and input from Network Rail in accordance with Clause 5, for identifying the Required Land falling within any of the categories defined in clause **13.1.1** to **13.1.6**.
- 13.3 Network Rail shall specify to the Council any permanent rights, including in particular, rights for accommodating, gaining access to, maintaining or operating the Works which Network Rail in its absolute discretion considers should be vested in Network Rail to enable the Railway to be operated ("Permanent Railway Rights").
- 13.4 Subject to Network Rail using reasonable endeavours to give the Council all relevant information in its possession relating to utilities and other adverse rights on the Railway and/or the Portbury Railway, the Council shall:
- 13.4.1 identify all utilities and any other adverse rights on the Railway and/or the Portbury Railway or on any other Required Land which have an interface with and/or which could adversely affect the construction, efficient operation and ongoing maintenance of the Works; and
 - 13.4.2 prepare a list of those utilities and adverse rights for review by, and agreement with, Network Rail.
- 13.5 When the list of utilities and adverse rights mentioned in clause **13.4** has been agreed:
- 13.5.1 Network Rail shall seek to identify those utilities and adverse rights which are the subject of existing agreements with Network Rail; and
 - 13.5.2 in consultation with the Council, shall use reasonable endeavours to seek to secure the variation prior to the DCO Application of those agreements so far as may be necessary to enable the Works to be constructed, efficiently maintained and operated;
- but Network Rail shall not be required to take, or be party to, any court, arbitration or other proceedings to secure any such variation.
- 13.6 The Council shall reimburse Network Rail for any sum paid by Network Rail to a utility company or other party to secure the variation of an existing agreement but no such payment shall be made without the Council's prior approval.
- 13.7 Network Rail shall when requested to do so by the Council, provide the Council with evidence of any existing agreement having been varied as mentioned in clause **13.5.2** or, if negotiations for the variation of any such agreement are continuing, details of the progress of the negotiations.
- 13.8 The Council shall use reasonable endeavours to secure agreements prior to the DCO Application for the diversion or removal of any utilities and adverse rights identified on the list mentioned in clause **13.4.2** so far as may be necessary to enable the Works to be efficiently maintained and operated.
- 13.9 The Council shall include in the DCO as applied for such provisions as may be necessary to divert or extinguish:
- 13.9.1 any utilities or adverse rights which are the subject of existing agreements with Network Rail which have not been varied as mentioned in this clause **13.5.2** prior to the DCO Application; or
 - 13.9.2 any other utilities or adverse rights which are identified on the list mentioned in this clause **13.4.2** which are not the subject of agreements mentioned in clause **13.8**.

- 13.10 Within 21 days of written request by the Council, Network Rail shall exercise its right to terminate the agreement with First Corporate Shipping Limited t/a Bristol Port Company ("the Port") dated 4 September 2017 regarding the existing crossing over the railway at Court House Farm, Easton in Gordano [and shall use reasonable endeavours to reach a replacement agreement with the Port].
- 13.11 Network Rail shall when requested to do so by the Council, provide the Council with evidence of the agreement in clause **13.10** having been secured or, if negotiations are continuing, details of the progress of the negotiations.

14. Obligations as regards acquiring or making available the Required Land

- 14.1 Where any adverse third party rights over the land referred to in clause **13.1.1** have been identified under clause **13.4** which would impede or restrict the Works or operation of the Railway and Portbury Railway and where Network Rail using reasonable endeavours has been unable to modify or extinguish any adverse third party rights, the Council shall procure that those rights are modified or extinguished prior to commencement of the Works.
- 14.2 Network Rail shall provide and designate the land referred to in clause **13.1.1** to the Project, whether required for construction or permanently, at nil consideration.
- 14.3 Subject to the DSA not being terminated the Council shall be responsible for securing that the Permanent Railway Land (including in particular the Permanent Railway Rights) in a form previously agreed between Network Rail and the Council is vested in Network Rail for nil consideration on or before the time of practical completion of the Works in accordance with the Property Contract.
- 14.4 If the Permanent Railway Rights are not vested in Network Rail in accordance with clause **14.3:-**
- 14.4.1 if Network Rail consider that the Railway and Portbury Railway cannot be safely operated in the absence of those rights being vested in it, Network Rail shall be under no obligation to operate the Railway; or
- 14.4.2 if Network Rail considers that the Railway and Portbury Railway can be safely operated notwithstanding the absence of those rights being vested in it, the Council shall pay to Network Rail in accordance with the Implementation Agreement the additional costs to Network Rail of operating the Railway and Portbury Railway without those rights but only where such costs are not included in the relevant industry control period maintenance costs.
- 14.5 The Council shall secure that, for the purposes of carrying out the Works, there is made available to Network Rail at nil consideration under a licence to be more particularly specified in the Implementation Agreement all the Required Land which is needed for the construction of the Works ; and particulars of such land will be detailed in the Implementation Agreement.
- 14.6 The Council shall be responsible for acquiring the Exchange Land.
- 14.7 For the avoidance of doubt, the Council may, in its discretion and at its sole risk, decide whether to discharge its obligations under this clause by including appropriate powers in the DCO or by agreement with the landowners concerned;

15. Discharge of environmental obligations

- 15.1 The Council shall be responsible for securing that the Mitigation Land is available to provide the mitigation for which it is needed whether by acquiring the land or by making appropriate arrangements with the owner of the land.

- 15.2 The Mitigation Land is not to be vested in Network Rail.
- 15.3 Without affecting clause **7.1** and **9**, except with the consent of Network Rail not to be unreasonably withheld or delayed, the Council shall not enter into any environmental obligations:
- 15.3.1 which can only be discharged by entering onto, or which otherwise affect, Permanent Railway Land or land owned by Network Rail ("Railway Land Environmental obligations");
 - 15.3.2 which Network Rail consider would affect the safety or operation of the Railway or Portbury Railway;
 - 15.3.3 which Network Rail consider would affect the safe and efficient operation of, Network Rail's railway undertaking.
- 15.4 The Council will be responsible for the discharge of any environmental obligations including any ongoing monitoring or other obligation except for Railway Land Environmental obligations.
- 15.5 Network Rail will be responsible for the discharge of any Railway Land Environmental obligations; and the cost of discharging those obligations shall be agreed in the Implementation Agreement but the Council shall not be liable where such costs are not included in the relevant industry control period maintenance costs.
- 15.6 In this clause "environmental obligation" includes any existing or future obligation however imposed the purpose of which is to mitigate or prevent any effects of the construction of the Works or the operation of the Railway or Portbury Railway including any obligation under a DCO Requirement, a planning condition, an agreement under the Wildlife and Countryside Act 1981 or an agreement with a third party.
- 16. Payment for acquisition of land and compensation**
- 16.1 Subject to clause **16.3** the Council shall be responsible for the negotiation and payment of:-
- 16.1.1 all statutory or other compensation to third parties in respect of the acquisition or taking possession of any Required Land under the powers conferred by the DCO;
 - 16.1.2 all payments made to third parties in respect of the acquisition, or making available of, any required Land by private treaty;
 - 16.1.3 all compensation or other payments made to third parties for claims arising from the promotion of the DCO, the exercise of powers in the DCO or the carrying out of the Works.
- 16.2 The Council shall be responsible for the payment of any tax liabilities arising from the land transactions.
- 16.3 Network Rail shall be responsible for the negotiation of any claims under Part 1 of the Land Compensation Act 1973; and the Parties shall agree responsibility for the payment of those claims in accordance with the Implementation Agreement.
- 16.4 Without prejudice to the generality of this clause **16**, the claims for compensation referred to in this clause **16** include claims for blight and claims under section 10 of the Compulsory Purchase Act 1965 or the Noise Insulation (Railway and other Guided Transport Systems) Regulations 1996.

17. **Land Strategy**

- 17.1 The Parties will work together to develop and agree a Land Strategy which will deal with the following matters:
- 17.1.1 which Party is to exercise the powers of the DCO to acquire the Required Land;
 - 17.1.2 the process as between Network Rail and the Council by which the Required Land is to be acquired;
 - 17.1.3 the vesting in Network Rail, in accordance with the Property Contract and other property agreements referred to in clause **18.1.3**, of any Permanent Railway Land or Permanent Railway Rights.

Part 4 Project Agreements

18. **Project Agreements**

- 18.1 As soon as reasonably practicable after the date of this Agreement, the Parties shall proceed to negotiate with one another with a view to entering into the following agreements:
- 18.1.1 An Implementation Agreement (or Agreements) being such agreement (or agreements) between the Council and Network Rail as may be necessary in relation to GRIP stages [5 to 8] and the procurement of design and construction of the Works, the monitoring, control and remuneration of contractors and construction consultants engaged to carry out the Works and the remuneration of Network Rail an outline of which is set out in Part **1** of Schedule **3** to this Agreement;
 - 18.1.2 An Asset Protection Agreement, being such agreement as may be necessary in relation to works undertaken by others in proximity to or on Network Rail's land an outline of which is set out in Part **2** of Schedule **3** to this Agreement;
 - 18.1.3 A Property Contract and such other property agreements as may be necessary to regulate the dispositions of property, interests and rights for the purpose of the construction, operation and maintenance of the Works and, in particular, to provide for the transfer of land and grant of rights to Network Rail required for the purpose of accommodating, gaining access to or operating the Works which are to vest in Network Rail an outline of which is set out in Part **3** of Schedule **3** to this Agreement;
 - 18.1.4 Such overbridge agreements as may be necessary with the ownership and maintenance responsibilities to be agreed between the Parties ;
 - 18.1.5 Such bridge easements as may be necessary.
- 18.2 The Parties acknowledge that the further agreements and arrangements set out in columns (1) and (2) of Part **2** of Appendix **1** to this Agreement may be required to support the entry into service of Metrowest Phase 1 and will work together to facilitate those agreements and arrangements being put into place.
- 18.3 Appendix **1** to this Agreement incorporating the Projects Agreement Timetable shows the current status of the agreements and arrangements mentioned above; and that information will be updated on a regular basis and exchanged between the Parties outside this Agreement.

Part 5 Supplementary and General

19. Statutory and Governance Requirements

- 19.1 All obligations and any consent, approval, assistance or agreement required to be issued, given or entered into by the Council and Network Rail under this Agreement shall be subject to compliance by both the Council and Network Rail with their respective statutory and governance requirements, including in the case of Network Rail the requirements under Network Rail's Network Licence, any obligations to which Network Rail is subject under the Railway Portbury Procedures and the terms of the Network Rail Framework Agreement between the Department for Transport and Network Rail dated September 2014.
- 19.2 Nothing in this Agreement shall require Network Rail to give any consent, approval, assistance or agreement which would be contrary to the protection, safety and efficient operation of Network Rail's railway and the safety of persons or property on or near Network Rail's railway.

20. Publicity and Media

- 20.1 The Parties will establish a common policy and protocols with regard to:
- 20.1.1 the Parties dealings with the media in relation to anything having a bearing on the promotion of the Project; and
- 20.1.2 all other communications relating to the promotion of the Project made available to the general public by either Party.
- 20.2 Save as required by law or regulation, neither party shall issue any press release or make any public announcement in relation to the matters contemplated by this Agreement or any Project Agreement without the prior written consent of the other (such consent not to be unreasonably withheld or delayed) as to both the content and timing of the issue of the press release.

This Agreement has been signed under hand by the Parties on the above date.

Signed:
Duly Authorised Signatory for the Council

Signed:
Duly Authorised Signatory for Network Rail

SCHEDULE 1

TEMPLATE FORM OF PROTECTIVE PROVISIONS TO BE INSERTED IN THE DCO

**** Drafting note: If the draft DCO refers to "promoter" rather than "undertaker" then a global change to that effect should be made.****

SCHEDULE [insert]

Article [insert]

PROTECTIVE PROVISIONS

PART I

FOR PROTECTION OF RAILWAY INTERESTS

1. The following provisions of this 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 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 2006¹ 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 Infrastructure Limited and-

- (a) any station, land, works, apparatus and equipment belonging to Network Rail Infrastructure Limited or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail Infrastructure Limited for the purposes of such railway or works, apparatus or equipment; and

¹ 2006 c.46

"specified work" means so much of any of the authorised works 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 Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—
 - (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
 - (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised works pursuant to this Order.

4. (1) The undertaker must not exercise the powers conferred by article **[XX] (i.e. Compulsory Acquisition of Land)** or the powers conferred by section 11(3) of the 1965 Act 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, **[as applied by Schedule [insert] to this Order / or article [XX] (Statutory Undertakers)]**, 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) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions.

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 his disapproval of those plans and the grounds of his disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate his 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 his approval or disapproval, he shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it 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 his approval 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 a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case 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 shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this 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 he 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 must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 5(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 10(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

10. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

(a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 5(3) or in constructing any protective works under the provisions of paragraph 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;

(b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by 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 shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;

(d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and

(e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

11. (1) In this paragraph-

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised works (including the operation of tramcars using the tramway comprised in the works) 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 works) 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 signaling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 5(1) for the relevant part of the authorised works 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 works take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

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

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

(b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and

(c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 5(1) have effect subject to the sub-paragraph.

(6) If at any time prior to the commencement of regular revenue-earning operations on the authorised **[tramway/railway]** comprised in the authorised works and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised works 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) applies to the costs and expenses reasonably incurred or losses suffered by network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

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

(11) In relation to any dispute arising under this paragraph the reference in article [XX] (Arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Electrical Engineers.

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 shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

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

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

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

(6) In this paragraph—

"the relevant costs" means the costs, 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 Schedule (including the amount of the relevant costs mentioned in paragraph 15) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Schedule (including any claim relating to those relevant costs).
17. In the assessment of any sums payable to Network Rail under this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this 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.
19. The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article [XX] (Consent to Transfer Benefit of Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—
 - (a) the nature of the application to be made;
 - (b) the extent of the geographical area to which the application relates; and
 - (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.
20. The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article [42] (Certification of Plans) are certified by the Secretary of State, provide a set of those plans to Network Rail in the form of a computer disc with read only memory.

SCHEDULE 2

FORM OF PROVISIONS RELATING TO TRANSFER OF POWERS TO BE INSERTED IN THE DCO

PART 1

“Benefit of Order

[] Subject to article (Agreements with Network Rail), the powers conferred by this Order shall be exercisable solely by the Council.”

PART 2

“Agreements with Network Rail

[]—(1) The Council and Network Rail may enter into and carry into effect agreements with respect to the construction, maintenance, use and operation of—

- (a) any of the authorised works, or any part of those works; and
- (b) any works required for the purposes of or in connection with the authorised works,

by Network Rail or by the Council, or by the Council and Network Rail jointly.

(2) Any agreement made pursuant to the powers conferred by this article may contain such incidental, consequential or supplementary provisions as may be agreed, including (but without limitation on the scope of paragraph (1)), provisions—

- (a) with respect to the defraying of, or the making of contributions towards, the cost of such construction, maintenance, use and operation as are referred to in paragraph (1) by the Council or by Network Rail or by the Council and Network Rail jointly;
- (b) for the exercise by Network Rail, or by the Council, or by Network Rail and the Council jointly, of all or any of the powers and rights of Network Rail and the Council (as the case may be) in respect of any of the authorised works and any works required for the purposes of, or in connection with, those works; and
- (c) without limitation on the scope of sub-paragraph (b), for the exercise by Network Rail, or by Network Rail and the Council jointly, of all or any of the powers under this Order for, or relating to, the compulsory acquisition or the taking of temporary possession of any land or rights over land.

(3) The exercise by the Council or Network Rail or by the Council and Network Rail jointly, of any powers and rights under any enactment or contract pursuant to any such agreement as is authorised by paragraph (1) is subject to all statutory and contractual provisions relating to it as would apply if such powers and rights were exercised by the Council or Network Rail (as the case may be) alone, and accordingly such provisions, with any necessary modifications, apply to the exercise of such powers and rights by the Council or Network Rail or by the Council and Network Rail jointly, as the case may be.

(4) The Council and Network Rail may enter into, and carry into effect, agreements for the transfer to and vesting in Network Rail or the Council, or the Council and Network Rail jointly of—

- (a) any of the authorised works or any part of any of those works; or
- (b) any works, lands or other property required for the purposes of the authorised works or in connection with such works,

together with any rights and obligations (whether or not statutory) of Network Rail or the Council relating to them.”

PART 3

“Exercise by statutory undertakers of power to acquire rights

[]—(1) In any case where the acquisition of rights [or the imposition of a restriction] under article [] is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, the Council or (where the land acquisition powers are exercisable by Network Rail pursuant to an agreement made under article [Agreements with Network Rail]) Network Rail may transfer the power to acquire such rights [or impose such restrictions] to the relevant statutory undertaker.

(2) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this order if that power were exercised by the Council.

(3) Nothing in this article authorises the acquisition of rights over or the imposition of restrictions affecting , an interest which is for the time being held by or on behalf of the Crown.”

SCHEDULE 3

REMIT

PART 1

1. THE IMPLEMENTATION AGREEMENT ("IA")

- 1.1 The IA will be based on Network Rail's current Office of Rail Regulation approved template Implementation Agreement. entered into conditionally on:-
 - 1.1.1 the DCO being granted and
 - 1.1.2 the funding being secured,with a long-stop date for the fulfilment of the conditions.
- 1.2 The IA will define "**the Metrowest Phase 1 Project**" for the purposes of the IA – this should be whole of the MetroWest Phase 1 project including not only the railway improvements that are to be transferred to Network Rail but also any aspects of the project which will remain the Council's property and the PD Works.
- 1.3 The IA template will define **the Works Requirements** in two stages (with rights for the Council to terminate) as follows:-
 - 1.3.1 Section A – Project (and certain Metrowest Phase 1) enabling works, including long lead-in time purchases and procurement of the Project works, to include the GRIP 5 to 8 contractors and consultants; and
 - 1.3.2 Section B – all further works and services required to achieve Metrowest Phase 1 and Project completion, including GRIP 5 to 8.
- 1.4 The IA will further define the Works Requirements which are comprised in the Project to be divided into:-
 - 1.4.1 NR Railway Works – the works to be carried out by Network Rail under the IA which are to become Network Rail's property;
 - 1.4.2 the Network Rail Non-Railway Works – the works to be carried out by Network Rail for the benefit of the Council but which will not be vested in Network Rail on completion ;
 - 1.4.3 The PD Works
- 1.5 **The Works Requirements** shall further define Network Rail's obligations to carry out the **Works** as defined in the IA i.e. to construct the NR Railway Works the PD Works and the Network Rail Non-Railway Works.
- 1.6 The IA will define "**the Necessary Consents**" –
 - 1.6.1 Responsibility for securing the Necessary Consents will be as provided in the Responsibility Matrix.
 - 1.6.2 Network Rail to be responsible for obtaining Network Change and any other railway regulatory requirements.

- 1.7 For the avoidance of doubt, nothing contained in the IA shall modify, override or extinguish any of the Parties' existing obligations or duties in respect of the provision of services set out in the DSA unless those obligations are imported into the IA in which case the DSA terminates.

PART 2

2. ASSET PROTECTION AGREEMENT ("APA")

This would be required if the Council carry out any works which are to be transferred to Network Rail or which are near to the railway. The APA will include provisions for the works to be constructed to meet railway standards and carried out in such a way to manage the safety risk to the operational railway.

PART 3

3. PROPERTY CONTRACT

- 3.1 Subject to paragraph **3.4**, the Property Contract will be conditional upon (1) completion of the Council Railway Works and the NR Railway Works under the IA and (2) obtaining Internal Consents (to be defined) and will address the following:-
- 3.1.1 transfer of Permanent Railway Land to Network Rail for nil consideration;
 - 3.1.2 grant of Permanent Railway Rights to Network Rail at nil cost;
 - 3.1.3 grant by Network Rail of Third Party Rights.
- 3.2 The forms of transfer and grant of easements should be annexed to the Property Contract.
- 3.3 The Property Contract could be entered into at the same time as the IA by which time the land and rights will have been identified.
- 3.4 The expectation is that in general the transfer of the land and granting of the rights will not take place until the completion of the Works but this will not apply to any rights that the parties agree are required to be granted before the completion of the Works.

APPENDIX 1

AGREEMENTS AT THIS STAGE CONSIDERED TO BE REQUIRED TO SUPPORT THE ENTRY INTO SERVICE OF METROWEST PHASE 1: STATUS DOCUMENT

PART 1					
AGREEMENTS BETWEEN NETWORK RAIL (1) AND THE COUNCIL (2)					
	Agreement Name (1)	Parties (2)	NR Owner / interested person (3)	Development Timescales (4)	Comments (5)
1	Implementation Agreement	(1) Network Rail (2) the Council	Michelle Scogings/Niall Spencer Corporate Commercial Paul Molyneux/Natalie O'Connell	Part 1 by [REDACTED], Part 2 by [REDACTED]	See outline in Part 1 of Schedule 3
2	Asset Protection Agreement	(1) Network Rail (2) the Council	[REDACTED]		For any works undertaken by others in proximity to NR property / on NR property. May be applicable to Susana cycle paths on NR property. See outline in Part 2 of Schedule 3
3	Property Contract (Land Transfer / Easements)		Michelle Scogings/Niall Spencer Others [REDACTED]	Commence in [REDACTED], land to be transferred identifies areas for Station Leases. Need to be in place for [REDACTED]	See outline in Part 3 of Schedule 3
4	Overbridge Agreement ²	(1) Network Rail (2) the Council	Michelle Scogings/Niall Spencer Others Paul Molyneux/Natalie O'Connell	As for IA	[New Trinity Road FB at Portishead. 3 No existing overbridges. (Assume any existing agreements will be replaced)]

² Bridge Agreements - use templates as agreed between NR and the County Surveyors' Society. Ownership and maintenance responsibilities lie with the Councils.

5	Bridge Easement ³	(1) Network Rail (2) the Council	[REDACTED]	Commence minimum of 3 months ahead of land transfer date – in place [REDACTED]	[New Trinity Road FB at Portishead. 3 No existing overbridges]
PART 2					
OTHER AGREEMENTS/ ARRANGEMENTS					
	Agreement Name (1)	Parties (2)	Owner / interested person (3)	Development Timescales (4)	Comments (5)
6	Station Leases Component parts I. Agreement for lease II. Station lease III. Annexes	(1) Network Rail (2) Train Operator ⁴	Michelle Scogings/Niall Spencer Others [Caroline Fone]	Commence in [REDACTED] for completion [REDACTED] utilising the GRIP 5 designs. Need to be in place for [REDACTED]	[Pill and Portishead stations. Arrangements to develop leases. Portishead Forecourt within lease for maintenance access to highway.]
7	Track Access: (i) Track Access Option ⁵ (ii) Track Access – driver training / operation of the full service.	(i) Track Access Option (1) Network Rail (2) the Council or Train Operator (ii) Track Access Agreement – driver training / full service operation (1) Network Rail (2) Train Operator	[REDACTED]	[REDACTED]	For further discussion between Network Rail, The Council and DfT on [REDACTED].
8	DNo supply		[REDACTED]	[REDACTED]	[Suppliers will require a land lease / Wayleaves for meter and route.]
9	Freight strategy?				

³ Bridge Easements – property agreements for abutments to stand on NR land and for air rights across the railway.

⁴ Refers to Train Operator for the future Great Western Franchise – identity will not be known until mid-2018.

⁵ If required.

APPENDIX 2

METROWEST PHASE 1 DCO AGREEMENT OR UNDERTAKING SIGN OFF PROCESS

