

SCHEDULES

SCHEDULE 10

PROTECTIVE PROVISIONS

PART 2

PROTECTION FOR OPERATORS OF AN ELECTRONIC COMMUNICATIONS CODE NETWORK

14. For the protection of any operator of an electronic communications code network (in this Part of this Schedule referred to as “the operator”) the following provisions shall, unless otherwise agreed in writing between Network Rail and the operator, have effect.

15. The temporary stopping up or diversion of any highway under article 16 (temporary stopping up of streets) shall not affect any right of the operator under paragraph 9 of the electronic communications code to maintain any apparatus which, at the time of the stopping up or diversion, is in that highway.

16.—(1) Subject to sub-paragraphs (2) to (4), if by reason or in consequence of the construction of the authorised works or any subsidence resulting from any of those works, any damage is caused to any electronic communications apparatus belonging to British Telecommunications plc (“BT”), other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works, or other property of BT, or there is any interruption in the supply of the service provided by BT, Network Rail shall bear and pay the cost reasonably incurred by BT in making good such damage or restoring the supply and shall—

- (a) make reasonable compensation to BT for loss sustained by it, and
- (b) indemnify BT against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, BT, by reason or in consequence of any such damage or interruption.

(2) Sub-paragraph (1) shall not apply to any apparatus in respect of which the relations between Network Rail and BT are regulated by the provisions of Part 3 of the Street Works Act or to any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised works.

(3) Nothing in sub-paragraph (1) shall impose any liability on Network Rail with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of BT, its officers, servants, contractors or agents.

(4) BT shall give Network Rail reasonable notice of any such claim or demand and no settlement or compromise thereof shall be made without the consent of Network Rail which, if it withholds such consent, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

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