

Andrew Shirley
Chief Surveyor
Country Land and Business Association
16 Belgrave Square
London
SW1X 8PQ

2 May 2018

Dear Mr Shirley

**HIGH SPEED RAIL (WEST MIDLANDS – CREWE) BILL – HOUSE OF COMMONS SELECT COMMITTEE:
PETITION P2A-000140 – THE COUNTRY LAND AND BUSINESS ASSOCIATION**

I am writing to you in my capacity as the Director of Hybrid Bill Delivery at HS2 Ltd, which is acting on behalf of the Promoter of the High Speed Rail (West Midlands-Crewe) Bill ('the Bill') currently before Parliament. I understand that you have a number of concerns about the impact of Phase 2A of HS2 (known as 'the Proposed Scheme') and have submitted a petition on that basis against the Bill in the House of Commons.

As you are aware, we have already provided a number of assurances to the NFU and to the CLA, set out in my letter to you of 30 April 2018. Following further discussions with the NFU the generic assurances to be offered to farmers or rural business owner petitioners on a case-by-case basis in part B of the attachment have been further refined in the areas of:

- Notice of entry (assurance 7.2);
- Land acquisition (assurance 11.6); and
- Agricultural soils (assurance 15.3).

I am writing to you now, on behalf of the Secretary of State for Transport, to formally offer you these revised assurances in the terms attached as Annex A to this letter. These replace all previous versions. For information I have also provided a version which shows the revised text underlined.

In these assurances, "the Nominated Undertaker" refers to the body or bodies appointed by the Secretary of State to carry out the powers conferred under the Bill to construct and maintain the scheme. The Nominated Undertaker may be HS2 Ltd, or it may be another body or bodies appointed to oversee the construction and operation of Phase 2A.

If accepted, the assurances will be included in the Register of Undertakings and Assurances, which is held by the Department for Transport. Drafts of the Register will be published regularly during the passage of the Bill and it will be finalised after Royal Assent. A Nominated Undertaker will be contractually obliged to comply with all relevant undertakings and assurances set out in the Register. Further information on how the Secretary of State will ensure compliance with assurances made by

HS2 Ltd is set out in HS2 Phase 2A Information Paper B5: Compliance with Undertakings and Assurances¹.

If you or your clients have any queries please don't hesitate to contact Stephen McFarlane on 020 7944 6206 and stephen.mcfarlane@HS2.org.uk.

Yours sincerely

A handwritten signature in black ink, appearing to read 'O Bayne', written in a cursive style.

Oliver Bayne

Director, Hybrid Bill Delivery
High Speed Two (HS2) Limited

¹ A copy can be found at <https://www.gov.uk/government/publications/understanding-the-hybrid-bill-hs2-phase-2a-information-papers>

HIGH SPEED RAIL (WEST MIDLANDS – CREWE) BILL – HOUSE OF COMMONS SELECT COMMITTEE: THE COUNTRY LAND AND BUSINESS ASSOCIATION

Part A – Assurances specific to CLA

Assurance No.1 – Agricultural liaison service

- 1.1. The Secretary of State will require the Nominated Undertaker to ensure that there is an agricultural liaison service providing individuals experienced in agricultural matters in place and contactable by telephone 24 hours a day, 7 days per week, during the construction of HS2 works on agricultural land.
- 1.2. The Secretary of State will require that the Nominated Undertaker will:
 - 1.2.1. Provide the name and contact details of the agricultural liaison service provider(s) (and any replacement) to the CLA before he or she takes up his or her post;
 - 1.2.2. Arrange meetings between the agricultural liaison service provider(s) and the CLA on a regular basis, and at least every three months to discuss the activities of the agricultural liaison service provider.

Assurance No.2 – Prompt payment of compensation

- 2.1. The Secretary of State will, in line with wider Government policies, require the Nominated Undertaker to pay promptly compensation that has been agreed or determined by the Upper Tribunal of the Lands Chamber to be payable to a claimant under the Bill in respect of the compulsory acquisition of agricultural land/rural businesses.

Assurance No.3 – Estimated claims for compensation

- 3.1. Where a farmer/rural business owner submits to the Promoter detailed particulars of an estimated claim for compensation arising from the compulsory acquisition of agricultural land/a rural business (a “detailed request”), the Promoter will provide in writing within three months of receipt of the detailed request the Nominated Undertaker’s estimate of the compensation (including for disturbance) payable in respect of the compulsory purchase of that agricultural land/rural business.
- 3.2. Where possession of land is taken by the Nominated Undertaker under Schedule 15 of the Bill and an owner occupier or agricultural tenant submits to the Promoter a particularised and evidenced claim for compensation based upon agricultural losses arising from the temporary occupation of agricultural land pursuant to paragraph 1 of Part 1 of Schedule 15 to the Bill (a “compensation request”), the Promoter will make interim payments of compensation as appropriate on a case by case basis, taking account of the particular characteristics of the agricultural business in question. Before making the interim payments, the Nominated Undertaker may require the owner occupier or agricultural tenant to enter into a Temporary Possession Agreement in advance of the exercise of powers.

Assurance No.4 – Relocation matters

- 4.1. In respect of farmers/rural business owners, the Promoter will use reasonable endeavours to reach an agreement with that farmer/rural business owner, where a business case is approved and where it relates to a relocation necessary for a particular business in consequence of permanent acquisition by the Promoter of land required for that business, such agreement to provide that compensation

will be paid in advance of entry after Royal Assent, subject to the Promoter being satisfied there is no subsisting mortgage over the land in question and that suitable security for any advanced payment can be adequately secured.

Assurance No.5 – Liability and claims

- 5.1. The Secretary of State confirms that the Nominated Undertaker will be liable to farmers and rural business owners for the actionable acts and omissions of the Nominated Undertaker's contractors and sub-contractors in constructing the works authorised by the Bill, and as a consequence the Secretary of State will require the Nominated Undertaker to:
 - 5.1.1 Set in place arrangements to deal promptly with any claims made by farmers and rural business owners arising as a consequence of the construction of the works authorised by the Bill (including as a consequence of the acts or omissions of the Nominated Undertaker's contractors and sub-contractors).
- 5.2. The Secretary of State will require the Nominated Undertaker to implement contractual monitoring, reporting and enforcement procedures to ensure that third party claims against the Nominated Undertaker arising out of the execution of HS2 works on the farmer/rural business owner's land are being dealt with promptly and effectively.

Part B – Generic assurances to be offered to farmers or rural business owner petitioners on a case-by-case basis

Assurance No. 6 – Provision of information

- 6.1. The Promoter will keep the Petitioner informed of the progress of the Bill and of likely target dates for implementation of Phase 2A of the HS2 project.

Assurance No.7 – Notices of entry and taking possession

- 7.1. Notwithstanding the requirements under the Bill to give 3 months' notice of entry in relation to the outright acquisition of land, where reasonably practicable, the Nominated Undertaker will provide a longer period of notice to the Petitioner in respect of any of the Petitioner's land to be acquired outright under the Bill.
- 7.2. Notwithstanding the requirements under the Bill to give 28 days' notice of entry under Part 1 of Schedule 15 in relation to the temporary occupation of land the Nominated Undertaker will use reasonable endeavours, and in advance of any formal notification required under the Bill, to notify the Petitioner of the expected quarter of the calendar year in which the Petitioner's land is planned to be occupied temporarily under the Bill.
- 7.3. Following the receipt by the Nominated Undertaker of the programme of works from the relevant works contractor in relation to the Petitioner's land, the Promoter will provide to, and discuss with, the Petitioner an estimate of the likely period of occupation of the Petitioner's land and shall from time to time update the Petitioner with further information as to the likely extent of the period of temporary occupation.

Assurance No.8 – Relocation of agricultural buildings

- 8.1. The Promoter will require the Nominated Undertaker to offer appropriate assistance to the Petitioner in respect of the relocation of any agricultural buildings displaced for the purposes of the project where the replacement is either:

- 8.1.1 to be provided for under a deemed planning consent granted by the Town and Country Planning (General Permitted Development) (England) Order 2015; or
- 8.1.2. the subject of a separate application for planning consent.
- 8.2. The assistance referred to in paragraph 8.1. shall (if requested by the Petitioner) include the provision of a statement of impact and timing for the Petitioner in respect of the need for relocation of an agricultural building.
- 8.3. Paragraph 8.4. applies where notwithstanding any assistance provided in paragraph 8.1., a Petitioner provides to the Promoter evidence to the reasonable satisfaction of the Promoter that consent referred to in paragraph 8.1. and required to give effect to the relocation of an agricultural building, is unlikely to be obtained and requests the Secretary of State to take steps to authorise the relocation of the displaced building by the exercise of the powers of clause 46 of the Bill.
- 8.4. Any request to the Secretary of State by the Petitioner under paragraph 8.3. shall be considered by the Secretary of State in accordance with the policy relating to reinstatement of undertakings set out in section 7 of HS2 Information Paper C7, Business Relocation.
- 8.5. In this assurance and in Assurances 9 and 10, "agricultural building" includes a residential building occupied as part of an agricultural building.
- 8.6. In this assurance, a "statement of impact and timing" means a statement describing the impact of the work proposed to be undertaken in relation to the agricultural building(s) in question and the timescales in which those impacts are intended to be implemented.

Assurance No.9 – Identification of land for the relocation of agricultural buildings

- 9.1. If prior to the giving of notice of entry or prior to the notice of vesting under a general vesting declaration to acquire land permanently (whether or not before Royal Assent) the Petitioner identifies suitable land for the relocation of an agricultural building (whether within or outside the Petitioner's ownership) and the Petitioner provides to the Secretary of State a detailed course of action substantiating the relocation, the Secretary of State will confirm whether or not he accepts that the land identified and evidence supporting the course of action provides a reasonable basis for the Petitioner's claim for compensation in the event that the Bill receives Royal Assent and the Secretary of State exercises his powers of compulsory acquisition.

Assurance No.10 – Professional costs and fees

- 10.1. The Promoter acknowledges that proper professional costs and fees reasonably incurred by the Petitioner for the purposes of seeking to identify suitable alternative premises at which to relocate an agricultural building which is subject to the power of compulsory acquisition under the Bill, will form a Head of Claim as part of any disturbance claim arising from the acquisition of that land under the Bill.

Assurance No.11 – Land acquisition

Where land can be identified at this stage as not being required for permanent works and is not materially changed.

- 11.1. The Secretary of State shall not exercise the powers of compulsory acquisition conferred by the Bill in relation to the Property [describe] but instead the Nominated Undertaker may exercise the powers of Schedule 15 to the Bill to enter and take temporary possession of the Property.

Where land cannot be identified at this stage, but it may be possible to do so following detailed design.

- 11.2. If at the date when it is proposed to implement the powers of the Bill in relation to the Property [describe] the Secretary of State is satisfied, in the light of detailed design of the project, that any part of the property will not be required for the accommodation of any permanent works authorised by the Bill the Secretary of State shall not exercise the powers of compulsory acquisition conferred by the Bill in relation to that part of the Property but instead the Nominated Undertaker may exercise the powers of Schedule 15 to the Bill to enter and take temporary possession of the Property.

Where land is materially changed but there is no need for maintenance of that change.

- 11.3. Subject to the Petitioner entering an agreement in a form satisfactory to the Secretary of State which provides that the Property [describe] need not be restored to its former condition following completion of construction activity on the land, the Secretary of State shall not exercise the powers of compulsory acquisition conferred by the Bill in relation to the Property [describe] but instead the Nominated Undertaker may exercise the powers of Schedule 15 to the Bill to enter and take temporary possession of the Property.

Where land is materially changed and there is a need for an obligation to maintain.

- 11.4. Provided that-

11.4.1 the Petitioner enters into an agreement in a form satisfactory to the Secretary of State which-

11.4.1.1 provides that the Property [describe] need not be restored to its former condition following completion of construction activity on the land; and

11.4.1.2 restricts removal or interference with land or works adjoining the railway which are to provide support or protection to the railway; and

11.4.1.3 provides for the maintenance of the environmental mitigation to be provided on that land; [and

11.4.2 the Secretary of State is satisfied that the Petitioner is an appropriate person, having regard to the nature and objectives of the mitigation required to be provided, to be responsible for securing the maintenance of that mitigation;] **[N.B. only relevant where this is a site identified for ecological mitigation]**

the Secretary of State shall not exercise the powers of compulsory acquisition conferred by the Bill in relation to the Property but instead the Nominated Undertaker may exercise the powers of Schedule 15 to the Bill to enter and take temporary possession of the Property.

- 11.5 Where the Nominated Undertaker exercises powers of temporary occupation over land under the Bill which is subject to compulsory acquisition and the Nominated Undertaker proposes to the Petitioner that the Petitioner enters into an agreement with the Secretary of State for the purposes of assurances 11.3 and 11.4, the Petitioner may at any time prior to entry into an agreement under assurances 11.3 and 11.4, make a written request to the Nominated Undertaker to request that the Secretary of State exercises the powers of compulsory acquisition conferred by the Bill in relation to the Property.

- 11.6 On receipt of a request pursuant to paragraph 11.5 the Secretary of State will review the need to acquire the land in question and where he is satisfied that it is required for permanent works for Phase 2a purposes he will give notice of acquisition as soon as is reasonably practicable.

- 11.7 In reaching a decision pursuant to paragraph 11.6 the Secretary of State will need to be satisfied that necessary rights of access can be secured to the land in question.

- 11.8 In this assurance "Petitioner" means a Petitioner who is the freehold owner and occupier of land which is the proposed subject of an agreement referred to in assurance 11.3 and 11.4.

Where land is temporarily occupied and permanent ownership is required.

11.9 Where the Nominated Undertaker exercises powers of temporary occupation over land under the Bill which is subject to compulsory acquisition, (other than land required for utility diversions, highway related works or other advanced works) the Secretary of State will prior to the exercise over that land of compulsory powers of acquisition:-

11.9.1 consider the extent of land to be acquired for permanent works required to construct and maintain the Phase 2a railway; and

11.9.2 seek to acquire that land permanently as soon as reasonably practicable following appointment of the main works contractor and when detailed design plans are sufficiently advanced to enable the Secretary of State to identify the required land and having regard to the economic and efficient construction of the Phase 2a project.

11.10 Subject to paragraph 11.11 the Secretary of State shall not exercise the powers of compulsory acquisition conferred by the Bill in relation to the Property [describe] but instead the Nominated Undertaker may exercise the powers of Schedule 15 to the Bill to enter and take temporary possession of the Property.

11.11 The Secretary of State [or any statutory undertaker authorised by the Secretary of State] may exercise the powers of the Bill so as to acquire permanent rights over the Property in respect of [installing, maintaining, renewing, replacing or upgrading cable, pipes, ducts and other services and to have access to the Property in order to maintain, renew, replace or upgrade such cable, pipes, ducts or other services] or [access over the Property as required in connection with the construction, implementation, renewal, operation or maintenance of the work authorised by the Bill].

N.B.1 All these assurances assume that the economic criteria for exercising temporary rather than permanent powers has been satisfied. In cases where there is some concern about the amount of compensation that may be payable on temporary occupation of the land it may be necessary to add the following qualification to each of the assurances:

"This assurance is subject to agreement, in a form acceptable to the Secretary of State, as to the level of compensation payable in respect of the exercise of the temporary powers of the Bill in advance of the Nominated Undertaker taking temporary possession of the Property."

N.B.2 The description of the Property in assurances 11.1, 11.3, 11.4 and 11.5 should make clear that the precise area to which the assurance applies can only be determined following detailed design

Assurance No.12 – Use of private roads

12.1. The Nominated Undertaker will engage with the owner and occupier of the land with respect to the particular purpose(s) he expects to exercise the powers under clause 14 of the Bill, the type of vehicle(s) to be used, the purpose of the use and the expected frequency and period of use.

Assurance No.13 – Drainage

13.1. The Nominated Undertaker will identify with the farmer existing drainage arrangements on the holding. This will include the carrying out, where reasonable, of inspections of the site and of any existing plans.

13.2. The location of drains cut or disturbed by the construction works will be recorded by the Nominated Undertaker.

13.3 The Nominated Undertaker will utilise appropriate drainage consultants to advise on drainage works and will engage with the farmer in respect of the pre and post drainage schemes that are required.

The Nominated Undertaker will use reasonable endeavours to engage drainage consultants with working knowledge of the local conditions.

- 13.4. Prior to the commencement of significant construction works, land drains affected by the HS2 works will, where practicable, be intercepted in a manner which maintains their efficiency. Work will be carried out to an appropriate specification after discussion with the farmer which may include the design (e.g. layout, falls, pipe sizes and types, outfall arrangements) and timing of any land drainage works required.
- 13.5. As-built plans of modifications to existing land drainage and of any new drainage works will be provided to the farmer or the Landowner as appropriate by the Nominated Undertaker.
- 13.6. Where natural drainage patterns are adversely affected by the HS2 works, the provision of supplementary drainage or irrigation works will be considered having regard to an assessment of compensation and the commercial justification by the farmer.

Assurance No.14 – Detailed design

- 14.1. Prior to the completion of the detailed design of the works authorised by the High Speed Rail (West Midlands - Crewe) Bill (“the Bill”), the Secretary of State will require the Nominated Undertaker to consult an owner/tenant of an agricultural holding regarding the detailed design of works proposed to be constructed upon any part of that holding under the powers of the Bill and the use of land for the provision of ecological and any other mitigation that does not involve the construction of works.
- 14.2. The Nominated Undertaker shall have regard to the responses received to the consultation undertaken under paragraph 14.1 and in so far as reasonably practicable, after taking into account all other relevant factors, including other relevant Undertaking and Assurances, associated with the design, construction, maintenance and operation of those works and other ecological or other mitigation,
 - 14.2.1 seek to minimise the loss of Grade 1, 2 and 3a agricultural land as described in the Agricultural Land Classification of England and Wales, published by the Ministry of Agriculture, Fisheries and Food in October 1988; and
 - 14.2.2 seek to accommodate reasonable proposals from the relevant owner/tenant to modify the detailed design of the works or provision of other ecological mitigation for the purposes of facilitating the efficient management of the agricultural holding in question following the completion of construction of the works.
- 14.3. In this assurance, “works” means the construction within Bill limits of accommodation works, landscaping and other mitigation works, drainage works and the construction of balancing ponds, embankments, bunds and made-up ground required for Phase 2A purposes.
- 14.4. Nothing in this assurance shall require any modification to the works which gives rise to any significant impact on the environment which has not been addressed in the Environmental Statement for the HS2 Project but that does not preclude consideration being given to any proposals for such modifications.

Assurance No.15 – Agricultural soils

- 15.1. The Secretary of State will require the Nominated Undertaker to work with landowners and farmers whose productive agricultural soils are temporarily affected by the construction of the HS2 works and/or are affected temporarily as a result of land-raising, with the intention to bring agricultural soils back to enable their former use before construction of the HS2 works on the relevant land and shall prepare in consultation with the relevant landowner and relevant planning authority an agricultural soils plan in advance of construction that shall include:-

- a pre-disturbance record of the soil physical characteristics;
 - a target specification, set by the Nominated Undertaker and informed by a suitably qualified agricultural soils scientist or practitioner, for agricultural soils being restored to agriculture after temporary use;
 - a method of assessing the suitability of handling soils based on plastic limit (i.e. to avoid moving soils when wet and plastic so that they would not compact when replaced);
 - advice on stripping topsoil and subsoil to the correct depth;
 - recommendations of the most suitable equipment for soil handling;
 - advice on soil storage (e.g. heights and management of soil stores);
 - advice on alleviating compaction after replacement;
 - a schedule of aftercare maintenance, to include soil testing, appropriate to the target specification for a period of up to five years (subject to paragraph 15.2) following completion of the relevant construction work; and
 - a final report to determine the final handover condition of the agricultural soil.
- 15.2. Should the target specification not be met by the expiry of the period of five years for aftercare maintenance mentioned in paragraph 15.1 (“the initial period”), then, if the landowner has fully complied with a schedule of aftercare, the Nominated Undertaker, informed by a suitably qualified agricultural soils scientist or practitioner, has reasonable grounds to believe that the target specification could be met within a further period (being no longer than a further period of five years), and the initial period shall be extended by that period.
- 15.3. The reasonable cost of compliance by the relevant landowner with the schedule of aftercare shall be borne by the Nominated Undertaker save where such cost has been compensated under the compensation code.
- 15.4. The agricultural soils plan will be incorporated in and prepared as part of the Code of Construction Practice to form part of the Environmental Minimum Requirements undertaking given by the Secretary of State before Parliament.

HIGH SPEED RAIL (WEST MIDLANDS – CREWE) BILL – HOUSE OF COMMONS SELECT COMMITTEE: THE COUNTRY LAND AND BUSINESS ASSOCIATION

Part A – Assurances specific to CLA

Assurance No.1 – Agricultural liaison service

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- 3.1. Where a farmer/rural business owner submits to the Promoter detailed particulars of an estimated claim for compensation arising from the compulsory acquisition of agricultural land/a rural business (a “detailed request”), the Promoter will provide in writing within three months of receipt of the detailed request the Nominated Undertaker’s estimate of the compensation (including for disturbance) payable in respect of the compulsory purchase of that agricultural land/rural business.
- 3.2. Where possession of land is taken by the Nominated Undertaker under Schedule 15 of the Bill and an owner occupier or agricultural tenant submits to the Promoter a particularised and evidenced claim for compensation based upon agricultural losses arising from the temporary occupation of agricultural land pursuant to paragraph 1 of Part 1 of Schedule 15 to the Bill (a “compensation request”), the Promoter will make interim payments of compensation as appropriate on a case by case basis, taking account of the particular characteristics of the agricultural business in question. Before making the interim payments, the Nominated Undertaker may require the owner occupier or agricultural tenant to enter into a Temporary Possession Agreement in advance of the exercise of powers.

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will be paid in advance of entry after Royal Assent, subject to the Promoter being satisfied there is no subsisting mortgage over the land in question and that suitable security for any advanced payment can be adequately secured.

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Part B – Generic assurances to be offered to farmers or rural business owner petitioners on a case-by-case basis

Assurance No. 6 – Provision of information

- 6.1. The Promoter will keep the Petitioner informed of the progress of the Bill and of likely target dates for implementation of Phase 2A of the HS2 project.

Assurance No.7 – Notices of entry and taking possession

- 7.1. Notwithstanding the requirements under the Bill to give 3 months' notice of entry in relation to the outright acquisition of land, where reasonably practicable, the Nominated Undertaker will provide a longer period of notice to the Petitioner in respect of any of the Petitioner's land to be acquired outright under the Bill.
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- 8.1. The Promoter will require the Nominated Undertaker to offer appropriate assistance to the Petitioner in respect of the relocation of any agricultural buildings displaced for the purposes of the project where the replacement is either:

- 8.1.1 to be provided for under a deemed planning consent granted by the Town and Country Planning (General Permitted Development) (England) Order 2015; or
- 8.1.2. the subject of a separate application for planning consent.
- 8.2. The assistance referred to in paragraph 8.1. shall (if requested by the Petitioner) include the provision of a statement of impact and timing for the Petitioner in respect of the need for relocation of an agricultural building.
- 8.3. Paragraph 8.4. applies where notwithstanding any assistance provided in paragraph 8.1., a Petitioner provides to the Promoter evidence to the reasonable satisfaction of the Promoter that consent referred to in paragraph 8.1. and required to give effect to the relocation of an agricultural building, is unlikely to be obtained and requests the Secretary of State to take steps to authorise the relocation of the displaced building by the exercise of the powers of clause 46 of the Bill.
- 8.4. Any request to the Secretary of State by the Petitioner under paragraph 8.3. shall be considered by the Secretary of State in accordance with the policy relating to reinstatement of undertakings set out in section 7 of HS2 Information Paper C7, Business Relocation.
- 8.5. In this assurance and in Assurances 9 and 10, "agricultural building" includes a residential building occupied as part of an agricultural building.
- 8.6. In this assurance, a "statement of impact and timing" means a statement describing the impact of the work proposed to be undertaken in relation to the agricultural building(s) in question and the timescales in which those impacts are intended to be implemented.

Assurance No.9 – Identification of land for the relocation of agricultural buildings

- 9.1. If prior to the giving of notice of entry or prior to the notice of vesting under a general vesting declaration to acquire land permanently (whether or not before Royal Assent) the Petitioner identifies suitable land for the relocation of an agricultural building (whether within or outside the Petitioner's ownership) and the Petitioner provides to the Secretary of State a detailed course of action substantiating the relocation, the Secretary of State will confirm whether or not he accepts that the land identified and evidence supporting the course of action provides a reasonable basis for the Petitioner's claim for compensation in the event that the Bill receives Royal Assent and the Secretary of State exercises his powers of compulsory acquisition.

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Assurance No.11 – Land acquisition

Where land can be identified at this stage as not being required for permanent works and is not materially changed.

- 11.1. The Secretary of State shall not exercise the powers of compulsory acquisition conferred by the Bill in relation to the Property [describe] but instead the Nominated Undertaker may exercise the powers of Schedule 15 to the Bill to enter and take temporary possession of the Property.

Where land cannot be identified at this stage, but it may be possible to do so following detailed design.

- 11.2. If at the date when it is proposed to implement the powers of the Bill in relation to the Property [describe] the Secretary of State is satisfied, in the light of detailed design of the project, that any part of the property will not be required for the accommodation of any permanent works authorised by the Bill the Secretary of State shall not exercise the powers of compulsory acquisition conferred by the Bill in relation to that part of the Property but instead the Nominated Undertaker may exercise the powers of Schedule 15 to the Bill to enter and take temporary possession of the Property.

Where land is materially changed but there is no need for maintenance of that change.

- 11.3. Subject to the Petitioner entering an agreement in a form satisfactory to the Secretary of State which provides that the Property [describe] need not be restored to its former condition following completion of construction activity on the land, the Secretary of State shall not exercise the powers of compulsory acquisition conferred by the Bill in relation to the Property [describe] but instead the Nominated Undertaker may exercise the powers of Schedule 15 to the Bill to enter and take temporary possession of the Property.

Where land is materially changed and there is a need for an obligation to maintain.

- 11.4. Provided that-

11.4.1 the Petitioner enters into an agreement in a form satisfactory to the Secretary of State which-

11.4.1.1 provides that the Property [describe] need not be restored to its former condition following completion of construction activity on the land; and

11.4.1.2 restricts removal or interference with land or works adjoining the railway which are to provide support or protection to the railway; and

11.4.1.3 provides for the maintenance of the environmental mitigation to be provided on that land; [and

11.4.2 the Secretary of State is satisfied that the Petitioner is an appropriate person, having regard to the nature and objectives of the mitigation required to be provided, to be responsible for securing the maintenance of that mitigation;] **[N.B. only relevant where this is a site identified for ecological mitigation]**

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- 11.5 Where the Nominated Undertaker exercises powers of temporary occupation over land under the Bill which is subject to compulsory acquisition and the Nominated Undertaker proposes to the Petitioner that the Petitioner enters into an agreement with the Secretary of State for the purposes of assurances 11.3 and 11.4, the Petitioner may at any time prior to entry into an agreement under assurances 11.3 and 11.4, make a written request to the Nominated Undertaker to request that the Secretary of State exercises the powers of compulsory acquisition conferred by the Bill in relation to the Property.

- 11.6 On receipt of a request pursuant to paragraph 11.5 the Secretary of State will review the need to acquire the land in question and where he is satisfied that it is required for permanent works for Phase 2a purposes he will give notice of acquisition as soon as is reasonably practicable.

- 11.7 In reaching a decision pursuant to paragraph 11.6 the Secretary of State will need to be satisfied that necessary rights of access can be secured to the land in question.

- 11.8 In this assurance "Petitioner" means a Petitioner who is the freehold owner and occupier of land which is the proposed subject of an agreement referred to in assurance 11.3 and 11.4.

Where land is temporarily occupied and permanent ownership is required.

11.9 Where the Nominated Undertaker exercises powers of temporary occupation over land under the Bill which is subject to compulsory acquisition, (other than land required for utility diversions, highway related works or other advanced works) the Secretary of State will prior to the exercise over that land of compulsory powers of acquisition:-

11.9.1 consider the extent of land to be acquired for permanent works required to construct and maintain the Phase 2a railway; and

11.9.2 seek to acquire that land permanently as soon as reasonably practicable following appointment of the main works contractor and when detailed design plans are sufficiently advanced to enable the Secretary of State to identify the required land and having regard to the economic and efficient construction of the Phase 2a project.

11.10 Subject to paragraph 11.11 the Secretary of State shall not exercise the powers of compulsory acquisition conferred by the Bill in relation to the Property [describe] but instead the Nominated Undertaker may exercise the powers of Schedule 15 to the Bill to enter and take temporary possession of the Property.

11.11 The Secretary of State [or any statutory undertaker authorised by the Secretary of State] may exercise the powers of the Bill so as to acquire permanent rights over the Property in respect of [installing, maintaining, renewing, replacing or upgrading cable, pipes, ducts and other services and to have access to the Property in order to maintain, renew, replace or upgrade such cable, pipes, ducts or other services] or [access over the Property as required in connection with the construction, implementation, renewal, operation or maintenance of the work authorised by the Bill].

N.B.1 All these assurances assume that the economic criteria for exercising temporary rather than permanent powers has been satisfied. In cases where there is some concern about the amount of compensation that may be payable on temporary occupation of the land it may be necessary to add the following qualification to each of the assurances:

"This assurance is subject to agreement, in a form acceptable to the Secretary of State, as to the level of compensation payable in respect of the exercise of the temporary powers of the Bill in advance of the Nominated Undertaker taking temporary possession of the Property."

N.B.2 The description of the Property in assurances 11.1, 11.3, 11.4 and 11.5 should make clear that the precise area to which the assurance applies can only be determined following detailed design

Assurance No.12 – Use of private roads

12.1. The Nominated Undertaker will engage with the owner and occupier of the land with respect to the particular purpose(s) he expects to exercise the powers under clause 14 of the Bill, the type of vehicle(s) to be used, the purpose of the use and the expected frequency and period of use.

Assurance No.13 – Drainage

13.1. The Nominated Undertaker will identify with the farmer existing drainage arrangements on the holding. This will include the carrying out, where reasonable, of inspections of the site and of any existing plans.

13.2. The location of drains cut or disturbed by the construction works will be recorded by the Nominated Undertaker.

13.3 The Nominated Undertaker will utilise appropriate drainage consultants to advise on drainage works and will engage with the farmer in respect of the pre and post drainage schemes that are required.

The Nominated Undertaker will use reasonable endeavours to engage drainage consultants with working knowledge of the local conditions.

- 13.4. Prior to the commencement of significant construction works, land drains affected by the HS2 works will, where practicable, be intercepted in a manner which maintains their efficiency. Work will be carried out to an appropriate specification after discussion with the farmer which may include the design (e.g. layout, falls, pipe sizes and types, outfall arrangements) and timing of any land drainage works required.
- 13.5. As-built plans of modifications to existing land drainage and of any new drainage works will be provided to the farmer or the Landowner as appropriate by the Nominated Undertaker.
- 13.6. Where natural drainage patterns are adversely affected by the HS2 works, the provision of supplementary drainage or irrigation works will be considered having regard to an assessment of compensation and the commercial justification by the farmer.

Assurance No.14 – Detailed design

- 14.1. Prior to the completion of the detailed design of the works authorised by the High Speed Rail (West Midlands - Crewe) Bill (“the Bill”), the Secretary of State will require the Nominated Undertaker to consult an owner/tenant of an agricultural holding regarding the detailed design of works proposed to be constructed upon any part of that holding under the powers of the Bill and the use of land for the provision of ecological and any other mitigation that does not involve the construction of works.
- 14.2. The Nominated Undertaker shall have regard to the responses received to the consultation undertaken under paragraph 14.1 and in so far as reasonably practicable, after taking into account all other relevant factors, including other relevant Undertaking and Assurances, associated with the design, construction, maintenance and operation of those works and other ecological or other mitigation,
 - 14.2.1 seek to minimise the loss of Grade 1, 2 and 3a agricultural land as described in the Agricultural Land Classification of England and Wales, published by the Ministry of Agriculture, Fisheries and Food in October 1988; and
 - 14.2.2 seek to accommodate reasonable proposals from the relevant owner/tenant to modify the detailed design of the works or provision of other ecological mitigation for the purposes of facilitating the efficient management of the agricultural holding in question following the completion of construction of the works.
- 14.3. In this assurance, “works” means the construction within Bill limits of accommodation works, landscaping and other mitigation works, drainage works and the construction of balancing ponds, embankments, bunds and made-up ground required for Phase 2A purposes.
- 14.4. Nothing in this assurance shall require any modification to the works which gives rise to any significant impact on the environment which has not been addressed in the Environmental Statement for the HS2 Project but that does not preclude consideration being given to any proposals for such modifications.

Assurance No.15 – Agricultural soils

- 15.1. The Secretary of State will require the Nominated Undertaker to work with landowners and farmers whose productive agricultural soils are temporarily affected by the construction of the HS2 works and/or are affected temporarily as a result of land-raising, with the intention to bring agricultural soils back to enable their former use before construction of the HS2 works on the relevant land and shall prepare in consultation with the relevant landowner and relevant planning authority an agricultural soils plan in advance of construction that shall include:-

- a pre-disturbance record of the soil physical characteristics;
 - a target specification, set by the Nominated Undertaker and informed by a suitably qualified agricultural soils scientist or practitioner, for agricultural soils being restored to agriculture after temporary use;
 - a method of assessing the suitability of handling soils based on plastic limit (i.e. to avoid moving soils when wet and plastic so that they would not compact when replaced);
 - advice on stripping topsoil and subsoil to the correct depth;
 - recommendations of the most suitable equipment for soil handling;
 - advice on soil storage (e.g. heights and management of soil stores);
 - advice on alleviating compaction after replacement;
 - a schedule of aftercare maintenance, to include soil testing, appropriate to the target specification for a period of up to five year (subject to paragraph 15.2) following completion of the relevant construction work; and
 - a final report to determine the final handover condition of the agricultural soil.
- 15.2. Should the target specification not be met by the expiry of the period of five years for aftercare maintenance mentioned in paragraph 15.1 (“the initial period”), then, if the landowner has fully complied with a schedule of aftercare, the Nominated Undertaker, informed by a suitably qualified agricultural soils scientist or practitioner, has reasonable grounds to believe that the target specification could be met within a further period (being no longer than a further period of five years), and the initial period shall be extended by that period.
- 15.3. The reasonable cost of compliance by the relevant landowner with the schedule of aftercare shall be borne by the Nominated Undertaker save where such cost has been compensated under the compensation code.
- 15.4. The agricultural soils plan will be incorporated in and prepared as part of the Code of Construction Practice to form part of the Environmental Minimum Requirements undertaking given by the Secretary of State before Parliament.