

Document 6

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Dated

20[xx]

*[Name of the nominated undertaker]* (1)

**The Secretary of State for Transport (2)**

**The Secretary of State for Culture, Media and Sport (3)**

**The Historic Buildings and Monuments Commission for England (4)**

High Speed Rail (London – West Midlands) Act 201[x]: Deed relating to works affecting  
the scheduled monument known as *[insert name]*



“the 1979 Act” means the Ancient Monuments and Archaeological Areas Act 1979;

“the affected monument” means scheduled monument [*insert schedule number*] (comprising [*insert name*]);

“emergency” means circumstances where there is a risk to health and safety or to the preservation of the affected monument such that any of the relevant construction works require to be carried out immediately;

“the Promoter” means the Secretary of State and any person or body exercising powers or functions by virtue of an order under section [*clause number of delegation provision in Bill, if any*] of the Act;

“relevant construction works” means works to be carried out to the affected monument under the powers conferred by the Act which fall within section 2(2) of the 1979 Act but which do not require consent under section 2 of the 1979 Act by virtue of paragraph 1(2) of Schedule [18] to the Act;

“the required field investigation” means a field investigation concerning the affected monument carried out in accordance with Schedule 2 hereto;

“the Secretary of State” means the Secretary of State for Transport;

“the Secretaries of State” means the Secretary of State for Transport and the Secretary of State for Culture, Media and Sport (or any successor Minister or Secretary of State to their respective portfolios), and includes officials in any of their departments;

“the works details” means in relation to relevant construction works concerning the affected monument (a) method statements covering the matters set out in Part 2 of Schedule 1 hereto and (b) particulars of any other works proposed by the nominated undertaker to the fabric of the monument for the purpose of protecting or restoring it; and

“the works specification” means, in relation to the affected monument, the works to the monument specified in Part 1 of Schedule 1 hereto.

## **2 Field investigations**

2.1 Before making the first request for approval of works details under clause 3.2, the nominated undertaker must carry out or complete the required field investigation, so far as it has not been carried out or completed by the Promoter or some other relevant person or body.

2.2 Before making a request for approval of works details under clause 3.2 (whether the first request for such approval or any subsequent ones), the nominated undertaker must consult English Heritage about whether in its view a field investigation relating to the relevant construction works concerned which is in addition to the required field investigation (or to any

other relevant field investigation which has been carried out and whose results are available to the nominated undertaker) should be carried out and the scope of any such additional investigation to be undertaken.

2.3 Where the carrying out by the nominated undertaker of a field investigation in accordance with this clause 2 may cause damage to the affected monument, the nominated undertaker must not carry it out without obtaining the prior approval of the proposals in writing from the Secretaries of State; and the approvals procedures under clause 3.4 and 3.5 shall apply to the proposals as they apply to works details submitted under clause 3.2 (but with the substitution of the period of 3 weeks for the period of 6 weeks in clause 3.4(a)), and the Secretaries of State must not unreasonably delay their decision and must in any event give the decision within 4 weeks of a request in writing for approval being made.

### **3 The carrying out of relevant construction works**

3.1 Any relevant construction works to the affected monument must either –

- (a) fall within or be ancillary to the works specification for the monument,
- (b) fall within or be ancillary to a variation of that specification requested by the nominated undertaker and agreed in accordance with clause 4,
- (c) be connected with a field investigation carried out in accordance with clause 2, or
- (d) be works for the purpose of protecting or restoring the monument.

3.2 Before commencing relevant construction works (other than those mentioned in clause 3.1(c)) for the affected monument, the nominated undertaker must submit to the Secretaries of State the works details for those works for their approval in writing, and the submission must –

- (a) include so far as relevant to the works details concerned the matters mentioned in Schedule 3 hereto,
- (b) have regard to the background information set out in Part 3 of Schedule 1 hereto,
- (c) specify the opinion (if any) expressed by English Heritage on being consulted under clause 2.2,
- (d) include the results of the required field investigation where the submission for approval is the first one to be made by the nominated undertaker under this clause 3.2, and
- (e) include the results of any field investigation carried out by the nominated undertaker which is in addition to the required field investigation and is relevant to the works

details, together with the results where available to the nominated undertaker of any other such field investigation as is referred to in clause 2.2 which is so relevant.

3.3 Subject to clause 3.8 and 3.9, the relevant construction works for the affected monument must be constructed in accordance with the works details so approved and subject to any requirements subject to which it is given.

3.4 The nominated undertaker must at the same time as submitting the works details under clause 3.2 send that information to English Heritage, and the Secretaries of State must not approve the works details submitted to them unless either–

- (a) a period of 6 weeks has elapsed after the submission, or
- (b) English Heritage have either given their comments on those details to the Secretaries of State or have indicated that they do not intend to comment.

3.5 The decision of the Secretaries of State may be that –

- (a) approval should be withheld for specified reasons,
- (b) approval should be given (in which case it may be given subject to specified amendments or requirements).

3.6 Where in the opinion of the Secretaries of State the required field investigation has not been carried out (or not fully or adequately carried out), or a field investigation in addition to the required field investigation should have been carried out but has not been carried out (or not fully or adequately carried out), a decision to withhold approval under clause 3.5(a) may include a decision that no approval should be given before the required field investigation, or a further field investigation, is carried out and the results submitted to the Secretaries of State for consideration.

3.7 The decision of the Secretaries of State under clause 3.5 must not be unreasonably delayed and must in any event be given within 8 weeks of the submission for approval being made, or where the required field investigation or a further field investigation is carried out following a decision made under clause 3.6, of the results of the investigation being submitted to the Secretaries of State for consideration, and must be sent in writing to the nominated undertaker.

3.8 Clauses 3.1 to 3.3 do not apply in the case of emergency but the nominated undertaker must inform the Secretaries of State and English Heritage as soon as reasonably practicable of the nature of the emergency and the works to be carried out or which have been carried out, and must so far as reasonably practicable take into account any proposals made by the Secretaries of State or English Heritage, where the emergency works have not yet been carried out.

3.9 In addition, clauses 3.1 to 3.3 do not apply in a case where –

- (a) in carrying out relevant construction works in accordance with approved works details, unexpected parts of the affected monument are discovered or any part of the affected monument is found to be in a different place than was expected when the works details were approved (all and any of which are referred to below as “the unexpected items”), and
- (b) it is not reasonably practicable (whether by virtue of the effects on traffic circulation or on the construction timetable for Phase One of High Speed 2 or otherwise) to delay the carrying out of the relevant construction works while the change procedures of clause 4 are followed to accommodate the unexpected items;

but where those events have occurred, then the nominated undertaker must in carrying out the relevant construction –

- (i) minimise so far as reasonably practicable any additional impacts on the affected monument in the carrying out of the relevant construction works which arise from the discovery of the unexpected items,
- (ii) if, notwithstanding paragraph (i) above, any removal of parts of the affected monument not envisaged when the works details were approved falls to be carried out, so far as reasonably practicable and required by good archaeological practice record the remains to be removed prior to removal, and
- (iii) so far as reasonably practicable, consult the Secretary of State and English Heritage on the matters referred to in paragraphs (i) and (ii) above and take their views into account.

3.10 Where the carrying out of relevant construction works (whether approved for the purposes of this clause 3 or works carried out under clause 3.8 or 3.9) causes damage to the affected monument for the remedying of which provision is not made in approved method statements, the nominated undertaker must as soon as reasonably practicable submit details for the carrying out of remedial works to make good the damage (so far as such remedial works can reasonably be carried out notwithstanding the presence of the permanent works or other things constructed or installed under the Act or the removal of any of the affected monument), and the approvals procedures under clauses 2, 3.2, 3.4 to 3.7 and 4 shall apply to details submitted for the purposes of this clause 3.10 as they apply to works details submitted under clause 3.2; and subject to clause 3.11 the nominated undertaker must carry out the remedial works as so approved.

3.11 The duty to carry out remedial works under clause 3.10 is subject to the obtaining of any necessary consents, agreements or other approvals required for the purpose, which the nominated undertaker must use reasonable endeavours to obtain.

3.12 English Heritage must use reasonable endeavours, having regard to the nature of the works details submitted and in particular to whether they relate only to a variation of works details previously approved, to give its comments (or indicate that it does not propose to comment) earlier than the period of 6 weeks mentioned in clause 3.4(a) in order that the Secretaries of State may make their decision promptly in accordance with clause 3.7.

3.13 Where recording is carried out under clause 3.9(ii), the results of the recording are to be sent by the nominated undertaker to the Secretaries of State or to such other person or body as the Secretaries of State may specify.

#### **4 Changes to works specification or to approved works details**

4.1 Where the nominated undertaker wishes to make changes to the works specification, or to any revised works specification or works details previously approved by the Secretaries of State under this Deed, the nominated undertaker must submit a revised works specification or (as the case may be) further works details to the Secretaries of State for approval.

4.2 The approvals procedures under clauses 2, 3.2 and 3.4 to 3.7 shall apply to the revised works specification or (as the case may be) to the further works details as they apply to works details submitted under clause 3.2.

4.3 Where the nominated undertaker submits a revised works specification for approval under clause 4.1, the Secretaries of State may, not later than the time at which they give any approval to the revised works specification, specify in writing any changes to the matters set out in Part 2 of Schedule 1 which in their opinion are required in consequence, and the extent to which any works details previously approved in relation to the works in question require to be resubmitted for approval; and where they do so the works details requiring approval under clause 3 shall (subject any further change proposed under clause 4.1) have effect subject to the changes and requirements for resubmission so specified.

#### **5 Delegation of functions**

5.1 The Secretaries of State may delegate any of their functions under this deed to another public authority (whether comprised in the Crown, a local authority or some other public body); and if they do so, they may (but shall not be obliged to) prescribe arrangements under which the nominated undertaker may appeal to the Secretaries of State against any decision of the delegatee with which the nominated undertaker is aggrieved, or any failure of the delegatee to take a decision.

5.2 On such an appeal, the Secretaries of State may take any decision which, but for the delegation, they could take under this Deed and under such extended timetable to accommodate the appeal as they think appropriate.

IN WITNESS of which the parties have executed this Deed and have delivered it on the date first above written.

Executed as a deed by [nominated undertaker]  
acting by:

.....Director/Secretary

.....Director

The Corporate Seal of the Secretary of State for Transport  
hereunto affixed to this deed is authenticated by

.....  
Authorised by the Secretary of State  
for Transport

The Corporate Seal of the Secretary of State for Culture, Media  
and Sport hereunto affixed to this deed is authenticated by

.....  
Authorised by the Secretary of State  
for Culture, Media and Sport

The Common Seal of the Historic Buildings and  
Monuments Commission for England  
was affixed in the presence of

.....



## Schedule 1

*[name of scheduled monument]*

### Part 1 – Works Specification

*[insert particulars]*

### Part 2 – Method Statement details

A method statement is to *[insert particulars]*

### Part 3 – Background context information concerning the monument

*[insert particulars]*

## Schedule 2

### Scope of the required field investigation

The results of the field investigation are to be employed to [advise High Speed 2 design engineers on appropriate routes, depths and construction methodology, that will so far as reasonably practicable avoid or minimise damage to the affected monuments, including informing any design variations that may be needed to achieve that objective]. The required field investigation is to include the following stages, each of which is intended to inform and focus the next:

#### *Stage 1 – Detailed desk-based assessment*

Stage 1 is to –

- (a) [assess results of the survey already carried out *[insert particulars if there is a prior survey]*];
- (b) assemble and map existing archaeological data and historical sources on the predicted route and depth of the monument. [This includes identifying the relatively extensive areas where there is insufficient predictive data *(if relevant)*];
- (c) *[insert other works specific items for stage 1]*

#### *Stage 2 – Non-intrusive fieldwork*

Using the results of stage 1, stage 2 is to identify the areas for an archaeologically-focused non-intrusive survey, eg remote sensing to inform subsequent design work, in particular *[insert particulars]*

#### *Stage 3 – Intrusive fieldwork*

Stage 3 is to comprise intrusive field investigation (trial pits or trenches), and detailed investigation and recording of any parts of the monument which cannot be preserved. *[insert particulars]*

### Schedule 3

#### Information to accompany submissions of works details

##### *Information on Proposals*

- a description of the monument and the part(s) affected by the works and their historical significance;
- an up to date location plan at a scale not smaller than 1:1,250 showing the location of the monument and the location and depth of the walls;
- survey drawings of the areas affected at a suitable scale;
- a description of the proposed works in sufficient detail for officers properly to understand the proposals; and
- drawings of the proposed works at appropriate scales.