

AGENCY AGREEMENT BETWEEN THE HEALTH AND SAFETY EXECUTIVE AND THE OFFICE OF RAIL AND ROAD ON ENFORCEMENT FUNCTIONS IN RELATION TO THE DESIGN OF RAILWAYS, TRAMWAYS AND OTHER SYSTEMS OF GUIDED TRANSPORT

This Agreement is made between (1) the Health and Safety Executive ('HSE') and (2) the Office of Rail and Road ('ORR') under paragraph 7(2) of Schedule 3 to the Railways Act 2005 pursuant to the authorisation of the Secretary of State given on 2 February 2016, and section 13(3) of the 1974 Act.

WHEREAS:

- A. Under the 1974 Act HSE is under a duty to make adequate arrangements for the enforcement of the relevant statutory provisions except to the extent some other authority is made responsible for their enforcement.
- B. Under the 2006 Regulations ORR is made responsible for enforcing the relevant statutory provisions to the extent that they relate to the operation of a railway, tramway or any other system of guided transport, subject to certain exceptions. HSE remains the authority responsible for enforcing the relevant statutory provisions in respect of certain of these exceptions. HSE is also responsible for enforcing the relevant statutory provisions in relation to a railway, tramway or any other system of guided transport prior to such system of transport becoming operational.
- C. This Agreement relates to certain functions exercisable by HSE under the 1974 Act and regulations made under it, which ORR has agreed to carry out on behalf of HSE, being functions which the Secretary of State has considered can appropriately be carried out by ORR in connection with the carrying out of its safety functions.

IT IS HEREBY AGREED THAT:

- 1. To the extent that ORR is not currently responsible under the 2006 Regulations for the enforcement of the relevant statutory provisions and such responsibility lies with HSE, ORR, in connection with the carrying out of its safety functions, will carry out, on behalf of HSE, HSE's functions for the enforcement of the relevant statutory provisions as they apply in relation to the design of any infrastructure, operational premises or other fixed assets relating to a railway, tramway or any other system of guided transport for the purpose of ensuring that the design:
 - (a) eliminates or reduces health and safety risks which could otherwise arise during the operation of such system of transport; and/or
 - (b) will not adversely affect the safe operation of such system of transport.
- 2. ORR and HSE will each provide the other with such information as they may at any time reasonably require in connection with the performance of the functions specified in this Agreement.
- 3. For the purpose of this Agreement:

- (a) **'guided transport', 'railway' and 'tramway'** each has the same meaning as set out in regulation 2 of the 2006 Regulations;
 - (b) **'infrastructure' and 'operational premises'** each has the same meaning as set out in regulation 2 of the 2006 Regulations and any terms defined therein shall have the same meaning given to them in the 2006 Regulations;
 - (c) **'operation of a railway', 'operation of a tramway' and 'operation of any other system of guided transport'** each has the same meaning as set out in regulation 2 of the 2006 Regulations subject to regulation 4 of the 2006 Regulations;
 - (d) **'other fixed assets'** means fixed assets of a railway, tramway or other system of guided transport (other than infrastructure), which are both used in the operation and comprise, or are located within, operational premises, of such system of transport;
 - (e) **'the relevant statutory provisions'** has the same meaning as set out in section 53 of the 1974 Act;
 - (f) **'1974 Act'** means the Health and Safety at Work etc. Act 1974; and
 - (g) **'2006 Regulations'** means the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006.
- 4. Any reference in this Agreement to regulations or Acts is a reference to those regulations or Acts as amended, updated or replaced before or after the date of this Agreement.
 - 5. HSE and ORR must regularly review the terms of this Agreement and must do so at least once each year that this Agreement is in force from the date it comes into effect.
 - 6. HSE and ORR must ensure that the memorandum of understanding between HSE and ORR is amended to facilitate the performance of, and sets out provision for appropriate arrangements for implementation of, this Agreement.
 - 7. This Agreement comes into effect on the date it is signed by the last party to execute this Agreement and shall continue in force until terminated either on a date agreed between the parties or on the expiry of 28 days following receipt of a written notice to terminate given by either party to the other.

IN WITNESS whereof the Common Seal of the Health and Safety Executive is affixed on
17 March 2016 and authenticated by:



Judith Hackitt, Chair of the Health and Safety Executive

Signature:

Dame J Hackitt DBE

Signed by Ian Prosser, Chief Inspector of Railways:

Ian Prosser

On behalf of the Office of Rail and Road

Date: 21st March 2016.