AGENCY AGREEMENT BETWEEN THE HEALTH AND SAFETY EXECUTIVE AND THE OFFICE OF RAIL AND ROAD UNDER PARAGRAPH 7(2) OF SCHEDULE 3 TO THE RAILWAYS ACT 2005 AND SECTION 13(3) OF THE HEALTH AND SAFETY AT WORK ETC ACT 1974 IN CONNECTION WITH THE CARRYING OUT OF ENFORCEMENT FUNCTIONS ARISING IN RELATION TO ELECLINK CABLE LOCATED WITHIN THE CHANNEL TUNNEL FIXED LINK.

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 (the "2005 Act") pursuant to the authorisation of the Secretary of State given on 1 February 2023, and section 13(3) of the Health and Safety at Work etc. Act 1974 (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 that some other authority is made responsible for their enforcement.
B. Regulation 3(1) of the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006 (the "2006 Regulations"), made under the 1974 Act, confers on ORR responsibility for enforcing the relevant statutory provisions to the extent that they relate to certain activities, including, the operation of a railway.
C. HSE and ORR acknowledge and agree that there is a split in enforcement responsibility for the project known as "ElecLink". It is agreed that ORR is responsible for enforcement of ElecLink so far as it located within the north rail tunnel up to the Frontier Point within the Fixed Link. HSE is the responsible for enforcement of ElecLink so far as it is situated outside of the tunnel within the Fixed Link.
D. This Agreement relates to certain functions which, to the extent they are exercisable by HSE under the 1974 Act, ORR has agreed to perform on behalf of HSE, being enforcement 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 the responsibility for the enforcement of the relevant statutory provisions (the "enforcement functions") is not transferred to ORR under the 2006 Regulations, and

consequently lies with HSE under section 18(1) of the 1974 Act, HSE and ORR agree that ORR will perform HSE's enforcement functions, on behalf of HSE, in relation to ElecLink within the Fixed Link.

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. In this Agreement:
    a. "operation of a railway", "operational premises" and "railway" each have the meaning set out in the 2006 Regulations;
    b. "the relevant statutory provisions" has the meaning set out in section 53 of the 1974 Act;
    c. "Fixed Link" has the meaning as set out in Article 1(2) of the "Treaty between the United Kingdom of Great Britain and Northern Ireland and the French Republic concerning the Construction and Operation by private concessionaires of a Channel Fixed Link" ("Treaty of Canterbury") and further defined in Clause 2 together with Annex I of the "Channel Tunnel Fixed Link Concession Agreement";
    d. "ElecLink" is the project to install and operate a new electricity interconnector through the Fixed Link to provide a transmission link between the UK and France with a capacity of 1000MW in either direction of flow. ElecLink consists of a cable, installed within the north rail tunnel and utilises parts of the Fixed Link railway infrastructure and operates adjacent to the operational railway, and a converter station located within the Fixed Link but is physically separated from operational premises;
    e. "Frontier Point" has the meaning set out in Article 3(1) of the Treaty of Canterbury.
4. 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.
5. HSE and ORR must ensure that the memorandum of understanding between HSE and ORR is amended to facilitate the performance of, and set out provision for appropriate arrangements for implementation of, this Agreement.
6. 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 by both HSE and ORR or on the expiry of 28 days following receipt of a written notice given by either party to this Agreement to the other.

Signed on behalf of the Office of Rail and Road on 20th April 2023 by Ian Prosser, Chief Inspector of Railways of the Office of Rail and Road:

IN WITNESS Whereof the Common Seal of the Health and Safety Executive is affixed on 28 March 2023 and authenticated by:

Authorised by Sarah Newton the Chair of the Health and Safety Executive Signature: