

# SCHEDULES

## SCHEDULE 13

### PROTECTIVE PROVISIONS

#### **PART 3**

#### FOR THE PROTECTION OF THE LOCAL HIGHWAY AUTHORITY

##### **Application**

1. The provisions of this Part of this Schedule have effect, and apply to the county highway works, unless otherwise agreed in writing between the undertaker and the local highway authority.

##### **Interpretation**

2.—(1) The terms used in this Schedule are as defined in article 2 (interpretation) of this Order save where inconsistent with sub-paragraph (2) which will prevail.

(2) In this Schedule—

“approval in principle” means the document, which records the agreed basis and criteria for the detailed design or assessment of a highway structure.

“as built information” means one electronic copy of the following information where applicable to the phase in question—

- (a) as constructed drawings in both PDF AutoCAD DWG, MX and GIS formats for anything designed by the undertaker;
- (b) list of suppliers and materials, test results and CCTV surveys;
- (c) product data sheets, technical specifications for all materials used;
- (d) as constructed information for any utilities discovered or moved during the works
- (e) method statements for works carried out;
- (f) in relation to road lighting, signs and traffic signals any information required by Series 1400 of the Specification for Highway Works;
- (g) organisation and methods manuals for all products used;
- (h) as constructed programme;
- (i) health and safety file under the Construction (Design and Management) Regulations 2015;
- (j) test results and records; and
- (k) other such information as is readily available to the undertaker and may be reasonably required by the local highway authority to be used to update any relevant databases;

“bond” means a bond from a surety approved by the local highway authority for the bond sum drafted substantially as detailed in Form 2 contained in paragraph 15 of this Part of this Schedule;

“the bond sum” means the sum equal to 120% of the estimated costs of the carrying out of the phase of the county highway works concerned or such other sum agreed between the undertaker and the local highway authority;

“commuted sum” means such sum as calculated by the local highway authority in accordance with paragraph 7(2)(c) of this Part of this Schedule for any structure within each phase to be used to fund the future cost of maintaining such structures;

“contractor” means any contractor or sub-contractor appointed by the undertaker to carry out the county highway works or any phase of the county highway works and approved by the local highway authority in accordance with paragraph 3(2) of this Part of this Schedule;

“county highway works” means those parts of Works Nos. 4 and 7 coloured pink and yellow on the future highway maintenance plans the general arrangement of which is shown on the highway general arrangement plans and any ancillary works;

“defects period” means a period of twelve months from the date of the provisional certificate or longer period if agreed between the undertaker and the local highway authority in which all defects arising from the county highway works must be rectified by the undertaker;

“detailed design information” means the following drawings, specifications and other information which must be in accordance with the general arrangements shown on the highway general arrangements plans unless otherwise agreed between the local highway authority and the undertaker—

- (a) site clearance details;
- (b) boundary environmental and mitigation fencing;
- (c) road restraint systems (vehicle and pedestrian) and supporting Road Restraint Risk Assessment Process assessment (RRRAP);
- (d) drainage and ducting;
- (e) earthworks including supporting geotechnical assessments required by HD22/08 and any required Strengthened Earthworks Appraisal Form certification;
- (f) kerbs, footways and paved areas;
- (g) traffic signs, signals and road markings;
- (h) road lighting (including columns, brackets and bat hop-overs);
- (i) electrical work for road lighting and traffic signs;
- (j) highway structures and any required certification in accordance with BD2/12;
- (k) agreed departures from Standard;
- (l) landscaping;
- (m) utilities diversions; and
- (n) wildlife crossings,

where relevant to the phase concerned;

“estimated costs” means the estimated costs in respect of each phase agreed in accordance with paragraph 5(1) of this Part of this Schedule;

“the excess” means the amount by which the county highway authority estimates that the costs referred to in paragraph 5(1) of this Part of this Schedule will exceed the estimated costs in accordance with paragraph 5(5)(b) of this Part of this Schedule;

“final certificate” means the certificate issued by the local highway authority to the undertaker for each phase to certify that the defects period has been completed to the satisfaction of the local highway authority;

“nominated persons” means the undertaker's representatives or the contractors' representatives on site during the carrying out of the county highway works;

“phase” means a phase of the county highway works which are to be carried out in separate phases such phases to be agreed with the local highway authority;

“programme of works” means a document setting out the sequence and timetabling of works for the phase in question;

“provisional certificate” means the certificate issued by the local highway authority to the undertaker for each phase of the county highway works to certify that in the opinion of the local highway authority the county highway works perform the function for which they were intended and are complete except for minor items not affecting safety;

“Road Safety Audit” means an audit carried out in accordance with the Road Safety Audit Standard;

“Road Safety Audit Standard” means the Design Manual for Roads and Bridges Standard GG119 or any successor document;

“satisfaction of the local highway authority” means the normal standards of the local highway authority in approving the design construction and/or rectification of defects of equivalent highway works applied elsewhere within their administrative area; and

“technical approval authority” means the organisation responsible for agreeing the approval in principle and subsequently accepting the relevant certificates for all highway structures; and

“utilities” means any pipes wires cables or equipment belonging to any person or body having power or consent to undertake street works under the 1991 Act.

### **Prior Approvals and Security**

3.—(1) The local highway authority is the technical approval authority in respect of all highway structures included in the county highway works, including the bridge which will carry the A5/A449 link road over the railway and canal, and the approval in principle for all such highway structures must be submitted to the local highway authority prior to any work commencing on the detailed design for any such highway structure.

(2) No work must commence on any phase until the detailed design information and a programme of works in respect of that phase has been submitted to and approved by the local highway authority.

(3) No works must commence on any phase other than by a contractor employed by the undertaker but first approved by the local highway authority.

(4) No work must commence on any phase until the undertaker has provided security for the carrying out of those works as provided for in paragraph 9 of this Part of this Schedule or some other form of security acceptable to the local highway authority.

(5) No work must commence on any phase until a Stage 2 Road Safety Audit has been carried out in respect of that phase and as necessary all issues raised incorporated into an amended design approved by the local highway authority or any relevant exceptions approved by the local highway authority.

(6) No work must commence on any phase until traffic management provisions have been agreed with the local highway authority.

(7) No work must commence on any phase until any land within that phase not within the public highway which will become public highway as a result of the authorised works is in the ownership of the undertaker.

### **Carrying out of works**

4.—(1) The undertaker must prior to commencement of each phase give the local highway authority 14 days' notice in writing of the proposed date on which that phase will start.

(2) The undertaker must give the local highway authority 14 days' notice of the road space required for the carrying out of each phase.

(3) Each phase must be carried out to the satisfaction of the local highway authority in accordance with—

- (a) the relevant detailed design information and a programme of works approved pursuant to paragraph 3(1) of this Part of this Schedule or as subsequently varied by agreement between the undertaker and the local highway authority;
- (b) the Design Manual for Roads and Bridges, the Specification for Highway Works (contained within the Manual of Contract Documents for Highways Works) and any amendment to or replacement thereof for the time being in force save to the extent that they are inconsistent with the Highway General Arrangement Plans (Documents 2.9A – 2.9K) or a departure from such standards has been approved by the local highway authority or such approvals or requirements of the local highway authority in paragraph 3 of this Part of this Schedule that need to be in place prior to the works being undertaken; and
- (c) all aspects of the Construction (Design and Management) Regulations 2015 and in particular the undertaker must ensure that all client duties (as defined in those regulations) are satisfied.

(4) The undertaker must permit and require the contractor to permit at all reasonable times persons authorised by the local highway authority (whose identity must have been previously notified to the undertaker by the local highway authority) to gain access to the county highway works for the purposes of inspection and supervision and the undertaker must provide to the local highway authority contact details of the nominated persons with whom the local highway authority should liaise during the carrying out of the county highway works.

(5) The undertaker must permit attendance by representatives of the local highway authority at all pre-contract and progress meetings held in relation to each phase.

(6) The undertaker must provide shared working facilities including access to welfare and office facilities for the local highway authority for the duration of each phase including the defects period unless otherwise agreed.

(7) The undertaker must during the period in which the county highway works are carried out maintain the flow of traffic and safeguard the passage of pedestrians along any street on which the county highway works are being carried out and maintain, or provide temporary alternative for all accesses (including, for the avoidance of doubt, private accesses) affected thereby or in the vicinity thereof.

(8) At any time during the carrying out of the county highway works the nominated persons must act upon any reasonable request made by the local highway authority in relation to the carrying out of the county highway works as soon as practicable following such request being made to the nominated persons save to the extent that the contents of such request are inconsistent with or fall outside the contractor's obligations under its contract with the undertaker or the undertakers' obligations in this Order.

(9) If at any time the undertaker does not comply with any of the terms of this Part of this Schedule in respect of any phase having been given one month's notice of an alleged breach by the local highway authority, then the undertaker must within 14 days of receipt of a demand by the local highway authority pay to the county highway authority the sum of the local highway authority's proper estimate of completing that phase and any maintenance works which the undertaker would have been responsible for, and if the undertaker fails to pay the demand from the local highway

authority within 14 days, the local highway authority is entitled to use the bond to meet the cost of completing the county highway works on behalf of the undertaker.

(10) Nothing in this Part of this Schedule prevents the local highway authority from carrying out any work or taking such action as deemed appropriate, without prior notice to the undertaker, in the event of an emergency or danger to the public. The cost to the local highway authority of such work or action being chargeable to and recoverable from the undertaker if the need for such action arises from the carrying out of the county highway works, and the local highway authority is entitled to utilise the bond should the undertaker fail to pay any costs arising from this sub-paragraph within 14 days of a demand for such costs being made by the local highway authority.

(11) The undertaker in carrying out each phase must at its own expense divert or protect all utilities as may be necessary to enable the local highway works to be properly carried out and all agreed alterations to existing services must be carried out to the satisfaction of the local highway authority acting reasonably.

## Payments

5.—(1) The undertaker must fund the whole of the cost of the county highway works and all costs incidental to the county highway works and must also pay to the local highway authority in respect of each phase in accordance with sub-paragraph (4) a sum equal to the whole of any costs and expenses which the local highway authority incur, including costs and expenses for using external staff and resources as well as costs and expenses of using in-house staff and resources in relation to the county highway works and arising out of them and their implementation including—

- (a) the checking and approval of all design work carried out by or on behalf of the undertaker for that phase;
- (b) costs in relation to agreeing the programme of works for that phase;
- (c) the carrying out of supervision of that phase; and
- (d) all legal and administrative costs in relation to paragraphs (a) and (b),

together comprising “the estimated costs”.

(2) The undertaker must pay to the local highway authority upon demand the total costs properly and necessarily incurred by the local highway authority in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the county highway works provided that this paragraph does not apply to the making of any orders which duplicate orders contained in this Order.

(3) The undertaker and the local highway authority must agree a schedule of the estimated costs to be incurred pursuant to sub-paragraph (1) in respect of each phase prior to the commencement of that phase.

(4) The undertaker must make the payments referred to in sub-paragraph (1) as follows—

- (a) the undertaker must pay a sum equal to the agreed estimated costs in respect of a phase prior to commencing that phase; and
- (b) if at any time or times after the payment in respect of a phase referred to in sub-paragraph (4)(a) has become payable the local highway authority reasonably estimates that the costs in respect of that phase referred to in sub-paragraph (1) will exceed the estimated costs for that phase it may give notice to the undertaker of the amount by which it then reasonably estimates those costs will exceed the estimated costs (“the excess”) and the undertaker must pay to the local highway authority within 28 days of the date of that notice a sum equal to the excess.

(5) If the local highway authority has received the as built information within 91 days of the issue of the final certificate for the final phase of the A5/A449 link road pursuant to paragraph 7 of this Part of this Schedule, or for each phase pursuant to paragraph 8 of this Part of this Schedule, as

the case may be, the local highway authority must give the undertaker a final account of the costs referred to in sub-paragraph (1) and within 28 days from the expiry of the 91-day period—

- (a) if the account shows a further sum as due to the local highway authority the undertaker must pay to the local highway authority the sum shown due to it in that final account; and
- (b) if the account shows that the payment or payments previously made have exceeded those costs the local highway authority must refund the difference to the undertaker.

(6) If any payment due under any of the provisions of this Part of this Schedule is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the other party interest at 1% above the Base Rate of Lloyds Bank Plc for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

#### **Provisional certificate and defects period**

6.—(1) As soon as each phase has been completed and a Stage 3 Road Safety Audit for that phase has been carried out and any resulting recommendations complied with to the satisfaction of the local highway authority, the local highway authority must immediately issue a provisional certificate of completion in respect of that phase, such certificate not to be unreasonably withheld or delayed.

(2) The undertaker must at its own expense remedy any defects in that phase identified by the local highway authority to the satisfaction of the local highway authority acting reasonably during the defects period in respect of that phase.

(3) The undertaker must submit Stage 4(a) (12 months after completion of each phase) and Stage 4(b) (36 months after completion of each phase) Road Safety Audits as required by and in line with the timescales stipulated in the Road Safety Audit Standard. The undertaker must at its own expense comply with the findings of the Stage 4(a) and 4(b) Road Safety Audits to the satisfaction of the local highway authority acting reasonably.

(4) The local highway authority must approve the audit brief and CVs for all Road Safety Audits and exceptions to items raised if appropriate in accordance with the Road Safety Audit Standard.

#### **Final certificate – except for A5/A449 link road**

7.—(1) The provisions of this paragraph apply to all the county highway works with the exception of the A5/A449 link road.

(2) The undertaker must apply to the local highway authority for the issue of the final certificate in respect of each phase of the works to which this paragraph applies at the expiration of the defects period in respect of that phase) or if later on the date on which any defects or damage arising from defects during the defects period have been made good to the satisfaction of the local highway authority acting reasonably, and when making such application the undertaker must submit to the local highway authority—

- (a) as built information of the relevant phase; and
- (b) a plan, for approval, clearly identifying the extent of any land which is to be highway maintainable at public expense by the local highway authority which must be in accordance with the detailed design information but reflecting the as built outcome.

(3) If the provisions of paragraph 7(2) of this Part of this Schedule are complied with to the satisfaction of the local highway authority, the local highway authority must immediately issue a final certificate for the phase concerned, such certificate not to be unreasonably withheld or delayed.

#### **Final certificate – A5/A449 link road**

8.—(1) The provisions of this paragraph apply only to the A5/A449 link road.

(2) The undertaker must apply to the local highway authority for the issue of the final certificate in respect of the entirety of the A5/A449 link road at the expiration of the defects period of the last phase of the A5/A449 link road to be constructed or if later on the date on which any defects or damage arising from defects during the defects period of the last phase of the A5/A449 link road to be constructed have been made good to the satisfaction of the local highway authority acting reasonably, and when making such application the undertaker must—

- (a) submit to the local highway authority as built information of the relevant phase;
- (b) submit to the local highway authority a plan clearly identifying the extent of any land which is to be highway maintainable at public expense by the county highway authority which must be in accordance with the detailed design information but reflecting the as built outcome; and
- (c) pay to the local highway authority the commuted sum calculated in accordance with the versions of the ADEPT Commuted Sums Calculator and the ADEPT Bridge Sums Guidance in force at the date on which the commuted sum is calculated.

(3) If the provisions of paragraph 9(2) of this Part of this Schedule are complied with to the satisfaction of the local highway authority, the local highway authority must immediately issue a final certificate for the entirety of the A5/A449 link road, such certificate not to be unreasonably withheld or delayed.

## Security

9.—(1) Prior to the commencement of each phase the county highway works within that phase must be secured by a bond or such other form of bond or other security that may be agreed between the undertaker and the local highway authority to indemnify the local highway authority against all losses, damages, costs or expenses arising from any breach of any one or more of the obligations of the undertaker in respect of that phase under the provisions of this Part of this Schedule provided that the maximum liability of the bond or other form of security does not exceed the bond sum relating to that phase.

(2) In respect of all the county highway works, with the exception of the A5/A449 link road, each bond sum must be automatically reduced as follows—

- (a) on the issue of the provisional certificate for each phase the bond sum must automatically reduce by 80% of the bond sum relating to that phase save insofar as any claim or claims have been made against the bond or other form of security and/or liability on its part has arisen prior to that date; and
- (b) on the issue of the final certificate for each phase the bond/security provider must automatically be released from all its obligations in respect of the bond or other form of security relating to that phase save insofar as any claim or claims have been made against the Bond or other form of security or liability on its part has arisen prior to that date.

(3) In respect of the A5/A449 link road the bond sum for each phase of the A5/A449 link road must be reduced as follows—

- (a) in respect of any phase which includes any part of the new bridge to be provided over the railway and canal on the issue of the provisional certificate for that phase the bond sum must be reduced by such percentage as the undertaker and the local highway authority agree save insofar as any claim or claims have been made against the bond or other form of security and/or liability on its part has arisen prior to that date;
- (b) in respect of all phases of the A5/A449 link road to which paragraph (a) does not apply, on the issue of the provisional certificate for that phase the bond sum must be reduced by such percentage as the undertaker and the local highway authority agree subject to a minimum reduction to 50% of the bond sum save insofar as any claim or claims have been

made against the bond or other form of security and/or liability on its part has arisen prior to that date; and

- (c) on the issue of the final certificate for the A5/A449 link road in accordance with paragraph 8 of this Part of this Schedule the bond/security provider must automatically be released from all its obligations in respect of all bonds or other form of security relating to the A5/A449 link road save insofar as any claim or claims have been made against the bond or other form of security or liability on its part has arisen prior to that date.

### **Insurance**

**10.** The undertaker must prior to commencement of the county highway works effect public liability insurance with an insurer in the minimum sum of £10,000,000.00 (ten million pounds) against any legal liability for damage loss or injury to any property or any person as a direct result of the execution of the county highway works or any part thereof by the undertaker.

### **Indemnification**

**11.—(1)** The undertaker must in relation to the carrying out of the county highway works take such precautions for the protection of the public and private interest as would be incumbent upon it if it were the highway authority and must indemnify the local highway authority from and against all costs, expenses, damages, losses and liabilities arising from or in connection with or ancillary to any claim, demand, action or proceedings resulting from the design and carrying out of the county highway works prior to the issue of each defects certificate provided that the foregoing indemnity does not extend to any costs, expenses, liabilities and damages caused by or arising out of the neglect or default of the local highway authority or its officers, servants, agents or contractors or any person or body for whom it is responsible.

(2) The undertaker must pay to the local highway authority each sum (if any) that is due to the local highway authority and certified as correct by the local highway authority arising from paragraph 12 of this Part of this Schedule within 28 days of receiving written notice from the local highway authority to do so and where payment is overdue interest will be payable calculated on a daily basis at a rate of 1% above the Base Rate of Lloyds Bank Plc.

(3) The undertaker must notify the local highway authority of the intended date of opening of each phase to public traffic not less than 14 days in advance of the intended date.

(4) The undertaker must notify the local highway authority of the actual date that each phase is open to public traffic on each occasion within 14 days of that occurrence.

### **Warranties**

**12.** The undertaker must procure warranties from the contractor and designer of each phase to the effect that all reasonable skill, care and due diligence will be exercised in designing and constructing that phase including the selection of materials, goods, equipment and plant, such warranties to be provided to the local highway authority before that phase commences.

### **Approvals**

**13.—(1)** Any approvals, certificates, consents or agreements required of, or sought from or with the local highway authority pursuant to the provisions of this Schedule must not be unreasonably withheld or delayed and must be given in writing save that any such approval, certificate, consent or agreement is deemed to have been given if it is neither given nor refused within 42 days of the specified day.

(2) In this paragraph “specified day” means—



- (a) the day on which particulars of the matter are submitted to the local highway authority under the provisions of this Part of this Schedule; or
- (b) the day on which the undertaker provides the local highway authority with any further particulars of the matter that have been reasonably requested by the local highway authority within 28 days of the date in paragraph (a),

whichever is the later.

### **Expert Determination**

14.—(1) Article 47 (arbitration) does not apply to this Part of this Schedule except in respect of sub-paragraph (7).

(2) Any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 28 days of the notification of the dispute.

(4) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

- (a) invite the parties to make submissions to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;
- (c) issue a decision within 42 days of receipt of the submissions under paragraph (b); and
- (d) give reasons for the decision.

(6) The expert must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
- (c) the nature of the power sought to be exercised by the undertaker;
- (d) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party;
- (e) in respect of decisions on the level of the reductions of the bond sums pursuant to paragraph 9(3)(a) and (b) of this Part of this Schedule the need to ensure that the financial risk to the local highway authority is no greater than that which would ordinarily be accepted in relation to highway improvements required to facilitate private developments in which the local highway authority is carrying out its statutory duty as local highway authority, but having regard to any specific circumstances relating to the A5/A449 link road; and
- (f) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 47.

**Changes to legislation:** There are currently no known outstanding effects for the The West Midlands Rail Freight Interchange Order 2020, PART 3. (See end of Document for details)

## Bond form

### 15. Form 2 as referred to in paragraph 2—

Form 2

Bond – Local Highway Authority

**BY THIS BOND** We [ ] (Company Regn No [ ]) whose registered office is situate at [ ] (**the undertaker**) and we [ ] (Company Regn No [ ]) whose registered office is situate at [ ] (**the Surety**) are jointly and severally bound to **STAFFORDSHIRE COUNTY COUNCIL** of 1 Staffordshire Place, Tipping Street, Stafford, ST16 2DH (**the Local Highway Authority**) this [ ] day of [ ] 20[ ] in the sum of [ ] pounds (£) [ ] Surety Sum to the payment of which sum the undertaker and the Surety hereby jointly and severally bind themselves and their successors and assigns

**WHEREAS** under a Development Consent Order known as the West Midlands Interchange Order 2020 (**the DCO**) the undertaker is empowered to commence execute perform and complete the highway works mentioned therein (**the county highway works**) in such manner and within such time and subject to such conditions and stipulations as are particularly specified and set forth in the DCO and also to pay to the Local Highway Authority such sums as are therein provided **NOW THE CONDITIONS** of this Bond are such that if the undertaker shall daily observe and perform all the terms provisions covenants conditions and stipulations of Part 3 of Schedule 13 to the DCO on the undertaker's part to be observed and performed according to the true purport intent and meaning thereof or if on default by the undertaker the Surety shall in accordance with the provisions of Part 3 of Schedule 13 to the DCO on demand of the Local Highway Authority satisfy and discharge the damages sustained by the Local Highway Authority thereby up to the amount of this Bond then this obligation shall be null and void but otherwise shall be and remain in full force and effect in accordance with the provisions of the DCO (and including any reductions as provided for in the DCO) but no allowance of time by the Local Highway Authority under the DCO nor any forbearance or forgiveness in or in respect of any matter or thing concerning the DCO on the part of the Local Highway Authority shall in any way release the Surety from any liability under this Bond.

It is hereby agreed that this Bond will be reduced and released in accordance with paragraph 9 of Part 3 of Schedule 13 of the DCO.

[Attestation]

**Changes to legislation:**

There are currently no known outstanding effects for the The West Midlands Rail Freight Interchange Order 2020, PART 3.