

# SCHEDULES

## SCHEDULE 13

Article 43

### PROTECTIVE PROVISIONS

#### PART 1

##### FOR PROTECTION OF RAILWAY INTERESTS

1. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 15 of this Part of this Schedule, any other person on whom rights or obligations are conferred by that paragraph.

2. In this Part of this Schedule—

“construction” includes execution, placing, alteration and reconstruction, and “construct” and “constructed” are to be construed accordingly;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of powers under section 8 (licences) of the Railways Act 1993<sup>(1)</sup>;

“Network Rail” means Network Rail Infrastructure Limited and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 (meaning of “subsidiary” etc.) of the Companies Act 2006<sup>(2)</sup>) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail Infrastructure Limited and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail Infrastructure Limited or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail Infrastructure Limited for the purposes of such railway or works, apparatus or equipment;

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(1) 1993 c. 43. Section 8 was amended by section 216 of, and paragraphs 1 and 4 of Schedule 17 and Part 4 of Schedule 31 to, the Transport Act 2000 (c. 38), paragraphs 1 and 5 of Schedule 2 to the Railways and Transport Safety Act 2003 (c. 20), paragraph 3 of Schedule 1, and Part 1 of Schedule 13, to the Railways Act 2005 (c. 14) and S.I. 2015/1682.

(2) 2006 c. 46.

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“specified work” means so much of any of the authorised works as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property; and  
“working day” means a day other than Saturday or Sunday, Christmas Day, Good Friday or a bank holiday in England and Wales under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971<sup>(3)</sup>.

**3.—**(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised works pursuant to this Order.

**4.—**(1) The undertaker must not exercise the powers conferred by—

- (a) article 5 (authorisation of use);
- (b) article 6 (maintenance of the authorised development);
- (c) article 12 (public rights of way – creation, substitution and stopping up);
- (d) article 13 (accesses);
- (e) article 22 (authority to survey and investigate the land);
- (f) article 24 (compulsory acquisition of land);
- (g) article 25 (compulsory acquisition of rights);
- (h) article 26 (private rights);
- (i) article 27 (power to override easements and other rights);
- (j) article 32 (statutory undertakers and operators of the electronic communications code network);
- (k) article 34 (temporary use of land for carrying out the authorised development);
- (l) article 35 (temporary use of land for maintaining the authorised development);
- (m) article 38 (operation and use of railways);
- (n) article 42 (felling or lopping of trees and removal of hedgerows),

or the powers conferred by section 11(3) (powers of entry) of the 1965 Act in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not, in the exercise of the powers conferred by this Order, prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 or 272<sup>(4)</sup> of the 1990 Act or, article 32, in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

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<sup>(3)</sup> 1971 c. 80.

<sup>(4)</sup> Section 272 was amended by paragraph 103(1) and (2) of Schedule 17 to the Communications Act 2003 (c. 21).

(4) The undertaker must not under the powers conferred by this Order acquire or use or acquire new rights over any railway property except with the consent Network Rail.

(5) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions.

**5.—**(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled in accordance with paragraph 22 of this Part of this Schedule.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated his or her disapproval of those plans and the grounds of such disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer is deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying his or her approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to his or her reasonable satisfaction.

**6.—**(1) Any specified work and any protective works to be constructed by virtue of paragraph 5(4) of this Part of this Schedule must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

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(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

7. The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as he or she may reasonably require with regard to a specified work or the method of constructing it.

8. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

9.—(1) If any permanent or temporary alterations or additions to railway property, are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 5(3) of this Part of this Schedule, pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 10(a) of this Part of this Schedule provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

10. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 5(3) of this Part of this Schedule or in constructing any protective works under the provisions of paragraph 5(4) of this Part of this Schedule including, in respect of any

- permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;
  - (c) in respect of the employment or procurement of the services of any inspectors, signallers, watch-persons and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
  - (d) in respect of any special traffic working resulting from any speed restrictions which may, in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
  - (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

**11.—(1) In this paragraph—**

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised works where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised works) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 5(1) of this Part of this Schedule for the relevant part of the authorised works giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised works take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker’s compliance with sub-paragraph (3)—

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(1)) of this Part of this Schedule in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail’s apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail’s apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail’s apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail’s apparatus, but the means of prevention and the method of their

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execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 5(1) of this Part of this Schedule have effect subject to this sub-paragraph.

(6) If at any time prior to the commencement of regular revenue-earning operations on the authorised railway comprised in the authorised works and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised works causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI; and
- (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6)—

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and
- (b) such modifications must be carried out and completed by the undertaker in accordance with paragraph 6 of this Part of this Schedule.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) of this Part of this Schedule applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 10(a) of this Part of this Schedule any modifications to Network Rail's apparatus under this paragraph are deemed to be protective works referred to in that paragraph.

**12.** If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

**13.** The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

**14.** Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

**15.—(1)** The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction or maintenance of a specified work or the failure thereof or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission; and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision does not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) is to include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs is, in the event of default, enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 (licences) of the Railways Act 1993.

**16.** Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 15 of this Part of this Schedule) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

**17.** In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

**18.** The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

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- (a) any railway property shown on the works and land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

**19.** Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part 1 of the Railways Act 1993.

**20.** The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 7 (benefit of order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

**21.** The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 46 (certification of plans and documents) are certified by the Secretary of State, provide a set of those plans to Network Rail in a format specified by Network Rail.

### **Dispute Resolution and Arbitration**

**22.**—(1) Article 48 (arbitration) does not apply to this Part of this Schedule.

(2) All parties involved in settling any difference are to use reasonable endeavours to do so within 42 working days from the date of a dispute first being notified in writing by one party to the other.

(3) In the absence of the difference being settled within the period referred to in sub-paragraph (2) the difference is to be referred to and settled by a single arbitrator to be agreed between the parties except that, failing agreement between the parties of the arbitrator to be appointed, an arbitrator is to be appointed following the expiry of 14 working days from the expiry of the 42 day working days referred to in sub-paragraph (2) on the application of either party—

- (a) in the case of matters relating to paragraph 11 of this Part of this Schedule, by the president of the Institution of Engineering and Technology; and
- (b) in the case of matters of all other matters relating to this Part of this Schedule, by the president of the Institute of Civil Engineers.

(4) All parties involved in settling any difference by arbitration will use reasonable endeavours to deal with such matters expeditiously and in accordance with the timetable set out in sub-paragraph (5) unless that timetable is varied in accordance with sub-paragraph (6)(b) to allow for the consents referred to in sub-paragraph (6)(a) to be obtained.

(5) The timetable referred to in sub-paragraph (4) is—

- (a) the parties must make submissions to the arbitrator in writing, and copied to the other party, within 42 working days of the arbitrator's appointment;
- (b) any comment on the submissions made by either party must be submitted to the arbitrator within 42 working days of the receipt of the submission under paragraph (a);
- (c) a maximum of 42 working days extension to either or both of the periods referred to in paragraphs (a) and (b) is to be allowed should a party request such an extension prior to the relevant period expiring, unless the arbitrator is of the view that such an extension would be manifestly unreasonable or unnecessary; and



- (d) a decision must be issued within 42 working days of the receipt of the submissions under paragraph (b) or any extension to such period allowed under paragraph (c) subject to sub-paragraph (6).
- (6) The parties recognise that—
  - (a) Network Rail’s compliance with the arbitration timetable referred to at sub-paragraph (5) will be subject to the obtaining by Network Rail of necessary clearance consents and other engineering, regulatory and stakeholder (internal and external) consents required under statute, by regulations or by Network Rail governance procedures; and
  - (b) the timetable set out in sub-paragraph (5) can be varied by the arbitrator to accommodate the consents and procedures referred to in paragraph (a).
- (7) Network Rail must use reasonable endeavours to pursue any consents referred to in sub-paragraph (6) expeditiously.
- (8) The fees of the arbitrator are payable by the parties in such proportions as the arbitrator may determine, or in the absence of such determination, equally.

## PART 2

### FOR THE PROTECTION OF HIGHWAYS ENGLAND

#### **Application**

1. The provisions of this Part of this Schedule have effect, and apply to the HE works, unless otherwise agreed in writing between the undertaker and Highways England.

#### **Interpretation**

2.—(1) The terms used in this Part of 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 Part of this Schedule—

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

- (a) as constructed drawings in both PDF and AutoCAD DWG formats for anything designed by the undertaker, in compliance with Interim Advice Note 184 or any successor document;
- (b) list of suppliers and materials used;
- (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 1300 and 1400 of the Specification for Highway Works;
- (g) organisation and methods manuals for all products used in the construction of the authorised development;
- (h) as constructed programme;
- (i) test results and records as required by the detailed design information and during the construction phase of the project;
- (j) RSA 3 and exceptions agreed;

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- (k) health and safety file; and
- (l) other such information as is necessary to enable Highways England to update all relevant databases and to ensure compliance with the Highways England Asset Data Management Manual as in operation at the relevant time including CCTV surveys;

“the bond sum” means the sum equal to 120% of the cost of the carrying out of the phase of the HE works concerned (to include all costs including the commuted sum) or such other sum agreed between the undertaker and Highways England;

“the cash surety” means the sum of £150,000 or such other sum agreed between the undertaker and Highways England;

“county highway works” means those parts of the authorised development to be carried out in the areas identified as Works Nos. 7, 9, 12, 13, 14, 15, 16 and 17 on the works plans, the general arrangement of which is shown on the highway plans and any ancillary works thereto;

“commuted sum” means such sum as calculated for each phase as provided for in paragraph 9 of this Part of this Schedule and to be used to fund the future cost of maintaining the HE works;

“contractor” means any contractor or sub-contractor appointed by the undertaker to carry out the HE works or any phase of the HE works and approved by Highways England in accordance with paragraph 3(3) of this Part of this Schedule;

“detailed design information” means drawings, specifications and calculations as appropriate for the following, and in accordance with the general arrangements of the HE works shown on the highway plans, unless otherwise agreed between Highways England and the undertaker—

- (a) site clearance details;
- (b) boundary, environmental and mitigation fencing;
- (c) road restraints systems and supporting Road Restraint Risk Appraisal Process assessment;
- (d) drainage and ducting as required by Series 500 of the Specification for Highways Works, HD 43/04, IAN 147/12 and SD 15 Parts 1 – 6 inclusive;
- (e) earthworks including supporting geotechnical assessments required by HD22/08 and any required Strengthened Earthworks Appraisal Form certification (SEAF);
- (f) pavement, pavement foundations, kerbs, footways and paved areas;
- (g) traffic signs and road markings;
- (h) traffic signal equipment and associated signal phasing and timing detail;
- (i) road lighting (including columns and brackets);
- (j) electrical work for road lighting, traffic signs and signals;
- (k) motorway communications as required by the Designs Manual for Roads and Bridges;
- (l) highway structures and any required structural approval in principle (AIP);
- (m) landscaping;
- (n) agreed departures from the Designs Manual for Roads and Bridges standards;
- (o) a report of walking, cycling and horse riding carried out in accordance with the Design Manual for Roads and Bridges Standard HD42/17 or any successor document;
- (p) Stage 2 Road Safety Audit and exceptions agreed and, in the event that any works are not commenced within five years of the date of the Stage 1 Road Safety Audit, a further Stage 1 Road Safety Audit and exceptions agreed;
- (q) utilities diversions;
- (r) topographical survey;

- (s) maintenance and repair strategy in accordance with Designing for Maintenance Interim Advice Note 69/15 or any successor document; and
- (t) health and safety information including any asbestos survey required by GD05/16 or any successor document,

where relevant to the phase concerned;

“dilapidation survey” means a survey of the condition of the roads, bridges and retaining walls which will be the subject of the physical works comprised in the phase concerned;

“estimated costs” means the estimated costs in respect of each phase agreed pursuant to paragraph 5(1)(b) to (d) and (5) of this Part of this Schedule;

“the excess” means the amount by which Highways England estimates that the costs referred to in paragraph 5(1)(b) to (d) of this Part of this Schedule will exceed the estimated costs pursuant to paragraph 5(5)(b);

“HE works” means those parts of the authorised development to be carried out in the areas identified as Works Nos. 8 and 11 on the works plans, the general arrangement of which is shown on the highway plans, and any ancillary works;

“nominated persons” means the undertaker’s representatives or the contractors’ representatives on site during the carrying out of the HE works as notified to Highways England from time to time;

“phase” means that part of the HE works which is to be carried out in separate phases in the areas identified as Works Nos. 8 and 11 on the works plans or such other phasing arrangements as agreed with Highways England;

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

“Road Safety Audit” means an audit carried out in accordance with the Road Safety Audit Standard and the approved audit team will include a member of Highways England East Midlands Asset Delivery Road Safety Team;

“Road Safety Audit Standard” means the Design Manual for Roads and Bridges Standard HD 19/15 or any successor document;

“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; and

“winter maintenance” means maintenance of the road surface to deal with snow and ice.

### **Prior approvals and security**

3.—(1) No work must commence on any phase of the HE works until the detailed design information and a programme of works in respect of that phase have been submitted to and approved by Highways England.

(2) Highways England must nominate a person who will be a single point of contact on behalf of Highways England for consideration of the detailed design information and who will co-ordinate the Highways England response to the details submitted.

(3) No works must commence on any phase of the HE works other than by a contractor employed by the undertaker for that phase but first approved by Highways England.

(4) No work must commence on any phase of the HE works until Highways England has agreed the bond sum for that phase and 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 Highways England.

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(5) No work must commence on any phase of the HE works until Stage 1 and Stage 2 Road Safety Audits have been carried out in respect of that phase and all recommendations raised incorporated into an amended design approved by Highways England or any relevant exceptions approved by Highways England.

(6) No work must commence on any phase of the HE works until the undertaker demonstrates to the satisfaction of Highways England that the walking, cycling and horse riding assessment and review process for that phase has been adhered to in accordance with the Design Manual for Roads and Bridges Standard HD 42/17 or any successor document.

(7) No work must commence on any phase of the HE works until a scheme of traffic management has been submitted by the undertaker and approved by Highways England for that phase, such scheme to be capable of amendment by agreement between the undertaker and Highways England from time to time.

(8) No work must commence on any phase of the HE works until stakeholder liaison has taken place for that phase in accordance with a scheme for such liaison agreed between the undertaker and Highways England.

(9) No work must commence on any phase of the HE works until Highways England has approved the audit brief and CVs for all road safety audits and exceptions to items raised, if appropriate, for that phase in accordance with the Road Safety Audit Standard.

(10) No work must commence on any phase of the HE works until the undertaker has agreed the commuted sum for that phase with Highways England to be calculated in accordance with paragraph 9 of this Part of this Schedule.

(11) No work must commence on any phase of the HE works until a dilapidation survey for that phase has been carried out by the undertaker and has been submitted to and approved in writing by Highways England.

(12) No work must commence on any phase of the HE works until the scope of all routine maintenance to be carried out by the undertaker during the construction of the phase concerned has been agreed in writing by Highways England, such maintenance only to include winter maintenance of the phase concerned where—

- (a) access to carry out such maintenance by Highways England is not available by virtue of the works being carried out on that phase; and
- (b) any winter maintenance is needed immediately prior to the opening of any carriageway to traffic where that carriageway had been closed for the purposes of the carrying out of the phase concerned.

### **Carrying out of works**

4.—(1) The undertaker must prior to commencement of each phase of the HE works give Highways England 28 days' notice in writing of the date on which that phase will start unless otherwise agreed by Highways England.

(2) The undertaker must comply with Highways England's usual road space booking procedures prior to and during the carrying out of each phase of the HE works and no HE works for which a road space booking is required is to commence without a road space booking having first been secured. It will be necessary for an assessment of the highway network and impact of any road closures on diversion routes to be carried out including any impact related to the county highway works. It is acknowledged by Highways England that in the event that the aforementioned assessment indicates no safety or operational concerns then the HE works can proceed at the same time as Highways England's M1 J13-16 Smart Motorway scheme with road space booking being shared where practicable. In the event that the aforementioned assessment indicates that both schemes cannot be accommodated at the same time then Highways England, in its absolute discretion will decide when a road space booking can be issued to the undertaker.

(3) Each phase of the HE works must be carried out to the satisfaction of Highways England 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 Highways England;
- (b) the Design Manual for Roads and Bridges, the Specification for Highway Works (contained within the Manual of Contract Documents for Highways Works), all relevant interim advice notes, the Traffic Signs Manual and the Traffic Signs Regulations and General Directions 2016<sup>(5)</sup>, and any amendment to or replacement thereof for the time being in force, save to the extent that they are inconsistent with the general arrangement of the HE works as shown on the highway plans or a departure from such standards has been approved by Highways England;
- (c) such approvals or requirements of Highways England that are required by the provisions of paragraph 3 of this Part of this Schedule to be in place prior to the relevant phase of the HE works being undertaken; and
- (d) all aspects of the Construction (Design and Management) Regulations 2015<sup>(6)</sup> or any statutory amendment or variation of the same and in particular the undertaker, as client, must ensure that all client duties (as defined in the said regulations) are undertaken to the satisfaction of Highways England.

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

(5) At any time during the carrying out of the HE works the nominated persons must act upon any reasonable request made by Highways England in relation to the carrying out of the HE 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 undertaker's obligations in this Order.

(6) 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 of the HE works having been given notice of an alleged breach and an adequate opportunity to remedy it by Highways England, Highways England, on giving the undertaker 14 days' notice in writing to that effect, is entitled to either—

- (a) carry out and complete that phase of the HE works and any maintenance works which the undertaker would have been responsible for on the undertaker's behalf; or
- (b) carry out such necessary works of reinstatement of the highway and other land and premises of Highways England,

and in either case the undertaker must within 28 days of receipt of the itemised costs pay to Highways England the costs so incurred by Highways England.

(7) If at any time the undertaker, in carrying out the authorised development, causes any damage or disruption to the strategic road network not hereby authorised, then Highways England is to give notice of such damage or disruption and allow the undertaker 14 days to remedy the problem. Should the undertaker fail to adequately remedy the problem to the satisfaction of Highways England, Highways England, on giving to the undertaker 7 days' notice in writing to that effect, is entitled to carry out such necessary works as Highways England acting reasonably deem appropriate to remedy

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(5) [S.I. 2016/362](#).

(6) [S.I. 2015/51](#).

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the damage or disruption, and the undertaker must within 28 days of receipt of the itemised costs pay to Highways England the costs so incurred by Highways England.

(8) Nothing in this Part of this Schedule prevents Highways England 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 Highways England 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 authorised development. This provision applies to all areas of the authorised development including any area of traffic management deployed under the traffic management plan approved pursuant to paragraph 3(7) of this Part of this Schedule to facilitate delivery of the authorised development.

(9) The undertaker, in carrying out each phase of the HE works, must at its own expense divert or protect all utilities as may be necessary to enable the HE works to be properly carried out, and all agreed alterations to existing services must be carried out to the reasonable satisfaction of Highways England.

(10) During the construction of each phase of the HE works the undertaker is responsible for all routine maintenance at its cost within that phase (including winter maintenance where required to be undertaken by the undertaker in accordance with paragraph 3(12)) of this Part of this Schedule. All routine maintenance must be carried out in accordance with the scope of routine maintenance operations agreed by Highways England in accordance with paragraph 3(12).

## **Payments**

**5.—**(1) The undertaker must fund the whole of the cost of the HE works and all costs incidental to the HE works and must also pay to Highways England in respect of each phase of the HE works a sum equal to the whole of any costs and expenses which Highways England 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 HE 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 administrative costs in relation to paragraphs (a) and (b),

together comprising “the estimated costs”.

(2) The sums referred to in sub-paragraph (1) do not include any sums payable from the undertaker to the contractor but do include any value added tax which is payable by Highways England in respect of such costs and expenses and for which it cannot obtain reinstatement from HM Revenue and Customs.

(3) The undertaker must pay to Highways England upon demand and prior to such costs being incurred the total costs that Highways England believe will be properly and necessarily incurred by Highways England 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 HE works provided that this sub-paragraph does not apply to the making of any orders which duplicate orders contained in this Order.

(4) The undertaker must make the payments of the estimated costs as follows—

- (a) the undertaker must pay a sum equal to the anticipated cost of the tasks referred to in sub-paragraph (1)(a), (b) and (d) to Highways England prior to Highways England undertaking those tasks;

- (b) the undertaker must pay a sum equal to the anticipated cost of the tasks referred to in sub-paragraph (1)(c) prior to commencing that phase;
- (c) if at any time after the payment in respect of a phase referred to in sub-paragraph (4)(a) and (b) has become payable, Highways England 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 Highways England within 28 days of the date of that notice a sum equal to the excess.

(5) Within 91 days of the issue of the handover certificate for each phase of the HE works in accordance with paragraph 7 of this Part of this Schedule, Highways England 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 Highways England the undertaker must pay to Highways England 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 Highways England 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 rate payable in respect of compensation under section 32 (rate of interest after entry on land) of the 1961 Act 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**

6. As soon as—

- (a) each phase of the HE works has been completed; and
- (b) a Stage 3 Road Safety Audit for that phase has been carried out and any resulting recommendations complied with and any exceptions agreed,

Highways England must issue a provisional certificate of completion in respect of that phase, such certificate not to be unreasonably withheld or delayed.

### **Handover certificate and defects period**

7.—(1) As soon as, in respect of a phase—

- (a) the undertaker has carried out a dilapidation survey in accordance with paragraph 3(11) of this Part of this Schedule and completed any remedial works necessary to bring that area into as good a condition as when it was originally surveyed, such works to be first agreed with Highways England;
- (b) the undertaker has provided a plan clearly identifying the extent of any land which is to become highway maintainable at public expense together with any ancillary equipment that will become the responsibility of the highway authority; and
- (c) the as built information has been provided to Highways England,

Highways England must forthwith issue a handover certificate 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 any phase of the HE works as are reasonably required to be remedied by Highways England during a period of 12 months from the date of the handover certificate in respect of that phase. All identified defects are to be remedied in accordance with the following timescales—

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- (a) in respect of matters of urgency, within 24 hours of receiving notification (urgency to be determined at the absolute discretion of Highways England);
  - (b) in respect of matters which Highways England consider to be serious defects or faults, within 14 days of receiving notification or if a road space booking is required at the time when the road space is available, whichever is the later; and
  - (c) in respect of all other defects notified to the undertaker, within 4 weeks of receiving notification or if a road space booking is required at the time when the road space is available, whichever is the later.
- (3) Following the issue of the handover certificate in respect of a phase, Highways England is to be responsible for the HE works within that phase which will thereafter be maintained by and at the expense of Highways England, save for any soft landscaping works which are to be established and thereafter maintained for a period of 3 years by and at the expense of the undertaker.
- (4) The undertaker must submit Stage 4 Road Safety Audits for each phase as required by and in line with the timescales stipulated in the Road Safety Audit Standard. The undertaker must comply with the findings of the Stage 4 Road Safety Audits and be responsible for all costs of and incidental to such audits.

#### **Final certificate**

8. Highways England must issue the final certificate in respect of each phase at the expiration of the 12 month period in respect of that phase referred to in paragraph 7(2) of this Part of this Schedule or if later on the date on which any defects or damage arising from defects during that period have been made good to the reasonable satisfaction of Highways England, such certificate not to be unreasonably withheld or delayed.

#### **Security**

9.—(1) Subject to paragraph 3(4) of this Part of this Schedule the undertaker must provide security for the carrying out of the HE works as follows—

- (a) prior to the commencement of each phase, the HE works within that phase must be secured by a bond from a bondsman first approved by Highways England drafted substantially as detailed in Form 1 contained in paragraph 17 of this Part of this Schedule, or such other form that may be agreed between the undertaker and Highways England, to indemnify Highways England 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 does not exceed the bond sum relating to that phase; and
  - (b) prior to the commencement of the HE works, the undertaker must provide the cash surety which may be utilised by Highways England in the event of the undertaker failing to meet its obligations to make payments under paragraph 5 of this Part of this Schedule or to carry out works the need for which arises from a breach of one or more of the obligations of the undertaker (which will be a single cash surety for the entirety of the HE works).
- (2) Each bond sum and the cash surety (the latter in respect of the final phase only) is to be progressively reduced as follows—
- (a) on receipt of written confirmation (including receipt of receipted invoices evidencing payments made by the undertaker to the contractors) from the undertaker of the payments made from time to time to the contractor, Highways England must, in writing, authorise the reduction of the bond sum by such proportion of the bond sum as amounts to 80% of those payments provided that an evaluation of the HE works completed and remaining has been carried out by the undertaker and audited and agreed by Highways England to ensure that



the stage of completion of the works is relative to the payments made by the undertaker to the contractors. Highways England will only be required to provide the said authorisation if it is satisfied that the monies remaining secured by the bond sum will be sufficient to cover all remaining costs and liabilities anticipated to be incurred in completing the HE works plus an additional 20%;

- (b) within 20 working days of completion of each phase of the HE works (as evidenced by the issuing of the provisional certificate in respect of that phase in accordance with paragraph 6(1) of this Part of this Schedule) Highways England must, in writing, release the bond provider from its obligations in respect of 80% of the bond sum relating to that phase (“the revised bond sum”) save insofar as any claim or claims have been made against the bond and/or liability on its part has arisen prior to that date, in which case Highways England will retain a sufficient sum to meet all necessary costs; and
- (c) within 20 working days of the issue of the final certificate for each phase of the HE works referred to in paragraph 8 of this Part of this Schedule, Highways England must, in writing, release the bond provider from its obligations in respect of the revised bond sum relating to that phase and (in respect of the final phase) release the remainder of the cash surety to the undertaker save insofar as any claim or claims have been made against the bond or liability on its part has arisen prior to that date, in which case Highways England will retain a sufficient sum to meet all necessary costs.

### **Commuted sums**

**10.** The undertaker must pay to Highways England the commuted sum calculated in accordance with FS Guidance S278 Commuted Lump Sum Calculation Method dated 18th January 2010 within 28 days of the date that each phase of the HE works becomes maintainable by Highways England in accordance with paragraph 7(3) of this Part of this Schedule.

### **Insurance**

**11.** The undertaker must prior to commencement of the HE 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 HE works or any part thereof by the undertaker.

### **Indemnification**

**12.—(1)** The undertaker must in relation to the carrying out of the HE 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 Highways England 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 HE works, provided that—

- (a) the foregoing indemnity does not extend to any costs, expenses, liabilities and damages caused by or arising out of the neglect or default of Highways England or its officers, servants, agents or contractors or any person or body for whom it is responsible;
- (b) Highways England must notify the undertaker immediately upon receipt of any claim; and
- (c) Highways England must, following the acceptance of any claim, notify the quantum to the undertaker in writing, and the undertaker must within 14 days of the receipt of such notification pay to Highways England the amount specified as the quantum of such claim.

(2) The undertaker must notify Highways England of the intended date of opening of each phase to public traffic not less than 14 days in advance of the intended date and the undertaker must notify

Highways England of the actual date that each phase is open to public traffic on each occasion within 14 days of that occurrence.

### **Warranties**

**13.** 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 Highways England before that phase commences.

### **Land transfer**

**14.—(1)** Following the issuing of the final certificates for all the HE works, Highways England may serve notice on the undertaker that it wishes to take a freehold transfer of land within the then extent of highway land which is not in the ownership of HE but has been acquired by the undertaker for the purposes of carrying out the HE works.

(2) If the undertaker receives a notice under sub-paragraph (1), the undertaker must co-operate in a freehold transfer of the land which is the subject of the notice and complete such transfer as soon as reasonably practicable at no cost to Highways England, which includes the undertaker being responsible for the reasonable legal costs incurred by Highways England in connection with such transfer.

### **Approvals**

**15.—(1)** Any approvals, consents or agreements required or sought from or with Highways England pursuant to the provisions of this Part of this Schedule must not be unreasonably withheld or delayed and must be given in writing.

(2) If Highways England fail to notify the undertaker of its decision in respect of any approval, consent or agreement pursuant to the provisions of this Part of this Schedule within 28 days of the specified day, the undertaker may serve upon Highways England written notice requiring Highways England to give their decision within a further 28 days beginning on the date upon which Highways England received written notice from the undertaker. Subject to subparagraph (3), if by the expiry of the further 28 days Highways England has failed to notify the undertaker of its decision, Highways England are to be deemed to have given the relevant approval, consent or agreement.

(3) Any further notice given by the undertaker to Highways England under subparagraph (2) must include a written statement that the provisions of subparagraph (2) apply to the relevant approval, consent or agreement.

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

- (a) the day on which particulars of the matter are received by Highways England under the provisions of this Part of this Schedule; or
- (b) the day on which the undertaker provides Highways England with any further particulars of the matter that have been reasonably requested by Highways England within 28 days of the date in sub-paragraph (2)(a),

whichever is the later.

### **Expert determination**

**16.—(1)** Article 48 (arbitration) does not apply to this Part of this Schedule except in respect of sub-paragraph (5).

(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 21 days of the notification of the dispute.

(4) The expert must—

- (a) invite the parties to make submission 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 sub-paragraph (b); and
- (d) give reasons for the decision.

(5) 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 48.

(6) 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.

**17.** Form 1 as referred to in paragraph 9—

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## Form 1

### Bond – Highways England

**BY THIS BOND** [ ] [(Company Regn No )] whose registered office is situate at [ ] (“**the undertaker**”) and [ ] [(Company Regn No )] whose registered office is situate at [ ] (“**the Surety**”) are jointly and severally bound to [ ] of [ ] (“**the [ ]**”) this [ ] day of [ ] 200[ ] in the sum of [ ] pounds (£[Surety Sum to the payment of which sum the undertaker and the Surety hereby jointly and severally bind themselves their successors and assigns

**WHEREAS** under a Development Consent Order known as the Northampton Gateway Rail Freight Interchange Order 2019 (“**the DCO**”) the undertaker is empowered to commence execute perform and complete the highway works mentioned therein 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 Highways England such sums as are therein provided **NOW THE CONDITIONS** of this Bond are such that if the undertaker shall duly observe and perform all the terms provisions covenants conditions and stipulations of Part 2 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 satisfy and discharge the damages sustained by Highways England 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 Highways England under the DCO nor any forbearance or forgiveness in or in respect of any matter or thing concerning the DCO on the part of Highways England 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 2 of Schedule 13 to the DCO.

[Attestation]

## 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 Part of 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 Part of this Schedule—

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

- (a) as constructed drawings in both PDF and AutoCAD DWG formats for anything designed by the undertaker;

- (b) list of suppliers and materials used, 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) plan of temporary signage indicating new road layouts;
- (h) populated post-construction inventory in the form of the Northamptonshire County Council post construction inventory dated November 2018;
- (i) organisation and methods manuals for all products used in the construction of the authorised development;
- (j) as constructed programme;
- (k) test results and records required by the detailed design information and during the construction phase of the project;
- (l) RSA3 and exceptions agreed; and
- (m) health and safety file;

“the bond sum” means the sum equal to 110% of all the costs of the carrying out of the phase of the county highway works concerned and 100% of the commuted sum relating to that phase or such other sum agreed between the undertaker and the local highway authority;

“commuted sum” means such sum as calculated for each phase as provided for in paragraph 9(2) of this Part of this Schedule and to be used to fund the future cost of maintenance of the county highway works.

“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 the authorised development to be carried out in the areas identified as Works Nos. 7, 9, 12, 13, 14, 15, 16 and 17 on the works plans, the general arrangement of which is shown on the highway plans, and any ancillary works;

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

- (a) site clearance details;
- (b) boundary environmental and mitigation fencing;
- (c) road restraints systems and supporting Road Restraint Risk Appraisal Process assessment;
- (d) drainage and ducting;
- (e) earthworks including supporting geotechnical assessments required by HD22/08 and any required Strengthened Earthworks Appraisal Form certification;
- (f) pavement, pavement foundations, kerbs, footways and paved areas;
- (g) traffic signs and road markings;
- (h) traffic signal equipment and associated signal phasing and timing detail;
- (i) road lighting (including columns and brackets);
- (j) electrical work for road lighting, traffic signs and signals;

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- (k) highway structures;
- (l) Stage 2 Road Safety Audit and exceptions agreed and, in the event that any works are not commenced within five years of the date of this Order comes into force, a further Stage 1 Road Safety Audit and exceptions agreed;
- (m) landscaping;
- (n) utilities diversions;
- (o) topographical survey;
- (p) identification of any land to be dedicated as highway; and
- (q) pre- construction health and safety information, where relevant to the phase concerned;

“estimated costs” means the estimated costs in respect of each phase agreed pursuant to paragraphs 5(1) and (5) of this Part of this Schedule;

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

“nominated persons” means the undertaker’s representatives or the contractor’s representatives on site during the carrying out of the county highway works as notified to the local highway authority from time to time;

“phase” means that part of the county highway works which is to be carried out in separate phases in the areas identified as separate works numbers on the works plans or such other phasing arrangements as shall be agreed with the local highway authority;

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

“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 GG 119 or any successor document;

“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; and

“winter maintenance” means maintenance of the road surface to deal with snow and ice during the winter months.

### **Prior approvals and security**

3.—(1) No work must commence on any phase of the county highway works 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.

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

(3) No work must commence on any phase of the county highway works until the local highway authority has agreed the bond sum for that phase and the undertaker has provided security for the carrying out of those works as provided for in paragraph 8 of this Part of this Schedule or some other form of security acceptable to the local highway authority.

(4) No work must commence on any phase of the county highway works until a Stage 2 Road Safety Audit has been carried out in respect of that phase and all issues raised incorporated into an

amended design approved by the local highway authority or any relevant exceptions approved by the local highway authority.

(5) No work must commence on any phase of the county highway works until a scheme of traffic management provisions has been agreed with the local highway authority.

(6) No work must commence on any phase of the county highway works until the local highway authority has approved the audit brief and CVs for all Road Safety Audits and exceptions to items raised if appropriate for that phase in accordance with the Road Safety Audit Standard.

(7) No works must commence on any phase of the county highway works until the undertaker has agreed the commuted sum for that phase with the local highway authority to be calculated in accordance with paragraph 9(2) of this Part of this Schedule.

(8) No works must commence on any phase of the county highway works until the undertaker had provided confirmation of ownership to the local highway authority for any land which is to be dedicated as highway following completion of the county highway works.

### **Carrying out of works**

4.—(1) The undertaker must prior to commencement of each phase of the county highway works give the local highway authority 28 days' notice in writing of the date on which that phase will start unless otherwise agreed with the local highway authority.

(2) The undertaker must comply with the local highway authority's usual road space booking procedures prior to and during the carrying out of each phase of the county highway works and no county highways works for which a road space booking is required must commence without a road space booking having first been secured.

(3) Each phase of the county highway works 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), all relevant interim advice notes, the Traffic Signs Manual and the Traffic Signs Regulations and General Directions 2016(7) and any amendment to or replacement thereof for the time being in force save to the extent that they are inconsistent with the highway plans or a departure from such standards has been approved by the local highway authority;
- (c) such approvals or requirements of the local authority that are required by the provisions of paragraph 3 of this Part of this Schedule to be in place prior to the relevant phase of the county highway works being undertaken; and
- (d) all aspects of the Construction (Design and Management) Regulations 2015(8) or any statutory amendment or variation of the same and in particular the undertaker as client shall ensure that all client duties (as defined in the said regulations) are undertaken to the satisfaction of the local highway authority.

(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 land upon which the county highway works are being carried out 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.

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(7) [S.I. 2016/362](#).

(8) [S.I. 2015/51](#).

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(5) 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 or the undertaker's obligations in this Order.

(6) 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 of the county highway works having been given notice of an alleged breach and an adequate opportunity to remedy it by the local highway authority, the local highway authority, on giving the undertaker 14 days' notice in writing to that effect, is entitled to either—

- (a) carry out and complete that phase of the county highway works and any maintenance works which the undertaker would have been responsible for on the undertaker's behalf; or
- (b) carry out such necessary works of reinstatement of the highways and other land and premises of the local highway authority,

and in either case the undertaker must within 28 days of receipt of the itemised costs pay to the local highway authority the costs so incurred by the local highway authority in undertaking this work.

(7) If at any time the undertaker, in carrying out any phase of the county highway works, causes any damage or disruption to the local road network not hereby authorised then the local highway authority is to give notice of such damage or disruption and allow the undertaker 14 days to remedy the problem. Should the undertaker fail to adequately remedy the problem to the satisfaction of the local highway authority, the local highway authority, on giving the undertaker 7 days' notice in writing to that effect, is entitled to carry out such necessary works deemed appropriate to remedy the damage or disruption, and the undertaker must within 28 days of receipt of the itemised costs pay to the local highway authority the costs so incurred by the local highway authority in undertaking this work.

(8) 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.

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

(10) In the event that the local highway authority incurs additional costs in the winter maintenance of the highway as a result of traffic management measures regulating the phase concerned (over and above the costs that would have been incurred in the absence of the county highway works being carried out), the undertaker must reimburse the local highway authority those additional costs, such costs to include any administration costs incurred.

(11) 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 and 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.

## **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 of the county highway works 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 the inspection of that phase; and
  - (d) all administrative costs in relation to paragraphs (a), (b) and (c),
- together comprising “the estimated costs”).

(2) The undertaker must pay to the local highway authority upon demand and prior to such costs being incurred the total costs that the local highway authority believe will be 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 sub-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 to the local highway authority prior to the local highway authority undertaking those tasks in respect of any phase of the county highway works;
- (b) if at any time or times after the payment in respect of a phase referred to in paragraph (a) has become payable, the local highway authority reasonably estimates that the costs in respect of that phase referred to in paragraph (1) above 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 county highway authority within 28 days of the date of that notice a sum equal to the excess.

(5) Within 91 days of the issue of the final certificate for each phase of the county highway works pursuant to paragraph 7 of this Part of this Schedule 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 party to whom it was due interest at 1% above the rate payable in respect of compensation under section 32 (rate of interest after entry on land) of the 1961 Act 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 and maintenance period**

6.—(1) As soon as each phase of the county highway works has been completed and—

- (a) a Stage 3 Road Safety Audit for that phase has been carried out;
- (b) any resulting recommendations have been complied with and any exceptions agreed;

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- (c) the undertaker has provided a plan clearly identifying the extent of any land which is to become highway maintainable at public expense by the local highway authority upon the issue of the final certificate referred to in paragraph 7 of this Part of this Schedule;
- (d) the undertaker providing confirmation that any additional land which is to be dedicated as highway maintainable at public expense is so dedicated; and
- (e) the as built information has been provided to the local highway authority,

the local highway authority must issue a provisional certificate of completion in respect of that phase of the county highway works such certificate not to be unreasonably withheld or delayed.

(2) Subject to sub-paragraph (3) the undertaker must at its own expense remedy any and all defects and of any and all imperfections and all other faults arising out of defective design materials or workmanship or of any other nature whatsoever (which includes all damage to the highway whether accidental or otherwise (but only that attributable to defective design materials or workmanship and excluding winter maintenance)) in that phase of the county highway works as reasonably required to be remedied by the local highway authority and identified by the local highway authority during a period of 24 months from the date of the provisional certificate in respect of that phase.

(3) The local highway authority will provide to the undertaker all information on any accident or incident resulting in damage to the highway which occurs in any phase of the county highway works during the period of 24 months referred to in sub-paragraph (2).

(4) The undertaker must submit Stage 4 Road Safety Audits for each phase of the county highway works as required by and in line with the timescales stipulated in the Road Safety Audit Standard. The undertaker must comply with the findings of the Stage 4 Road Safety Audits and be responsible for all costs of and incidental to such audits.

### **Final Certificate**

7.—(1) The undertaker must apply to the local highway authority for the issue of the final certificate in respect of each phase at the expiration of the 24 month period in respect of that phase referred to in paragraph 6(2) of this Part of this Schedule or, if later, on the date on which any defects or damage arising during that period which are the responsibility of the undertaker under the provisions of paragraph 6 of this Part of this Schedule have been made good to the reasonable satisfaction of the local highway authority.

(2) If the provisions of sub-paragraph (1) are satisfied the local highway authority must issue a final certificate for the phase of the county highway works concerned, such certificate not to be unreasonably withheld or delayed.

### **Security**

8.—(1) Subject to paragraph 3(3) of this Part of this Schedule the undertaker must provide security for the carrying out of the county highway works as follows—

- (a) prior to the commencement of each phase, the county highway works within that phase must be secured by a bond from a bondsman first approved by the local highway authority drafted substantially as detailed in Form 2 contained in paragraph 15 of this part of this Schedule, or such other form 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 of the county highway works under the provisions of this Part of this Schedule, provided that the maximum liability of the bond does not exceed the bond sum relating to that phase.

(2) Each bond sum is to be progressively reduced as follows—

- (a) on receipt of written confirmation (including receipt of received invoices evidencing payments made by the undertaker to the contractors) from the undertaker of the payments made from time to time to the contractor (“the submission”), the local highway authority, may in writing authorise the reduction of the bond sum by such proportion of the bond sum as amounts to 75% of those payments provided that—
  - (i) there is not more than two submissions of written confirmation to the local highway authority during each phase of the county highway works;
  - (ii) an evaluation of the county highway works completed and remaining has been carried out by the undertaker and audited and agreed by the local highway authority to ensure that the stage of completion of the works is relative to the payments made by the undertaker to the contractors (the local highway authority will only be required to provide the said authorisation if it is satisfied that the monies remaining secured by the bond sum will be sufficient to cover all remaining costs and liabilities anticipated to be incurred in completing the county highway works plus an additional 10%); and
  - (iii) the operation of paragraph (a) will not enable the overall reduction of the bond to be greater than 70% of the original bond sum;
- (b) within 20 working days of completion of each phase of the county highway works (as evidenced by the issuing of the provisional certificate in respect of that phase pursuant to paragraph 6(1) of this Part of this Schedule) the local highway authority must in writing release the bond provider from its obligations in respect of 75% of the bond sum relating to that phase save insofar as any claim or claims have been made against the bond and/or liability on its part has arisen prior to that date; and
- (c) within 20 working days of the issue of the final certificate for each phase of the county highway works referred to in paragraph 7 of this Part of this Schedule the local highway authority must in writing release the bond provider from all its obligations in respect of the bond relating to that phase save insofar as any claim or claims have been made against the bond or liability on its part has arisen prior to that date.

### **Commuted sums**

9.—(1) Within 28 days following the issue of the final certificate in respect of any phase the undertaker must pay to the local highway authority any commuted sums payable in respect of that phase calculated as provided for in sub-paragraph (2).

(2) The rates to be applied in calculating the commuted sums payable must be calculated in accordance with Northamptonshire County Council’s commuted sum calculator or as otherwise agreed between the undertaker and the local highway authority prior to commencement of work on any phase.

### **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) for any one claim against any legal liability for damage loss or injury to any property or any person arising out of or in connection with the execution of the county highway works or any part thereof by the undertaker.

### **Indemnification**

11. 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

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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, provided that—

- (a) the foregoing indemnity shall 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;
- (b) the local highway authority must notify the undertaker upon receipt of any claim; and
- (c) the local highway authority must, following the acceptance of any claim, notify the quantum thereof to the undertaker in writing and the undertaker must within 14 days of the receipt of such notification pay to the local highway authority the amount specified as the quantum of such claim.

### **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 or sought from or with the local highway authority pursuant to the provisions of this Part of this Schedule must not be unreasonably withheld or delayed and must be given in writing save that any such approvals, certificates, consents or agreements shall be 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 or within 28 days of the date in paragraph (a),

whichever is the later.

### **Expert determination**

**14.—**(1) Article 48 (arbitration) does not apply to this Part of this Schedule except in respect of sub-paragraph (5).

(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 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.

(5) 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 48.

(6) 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.

15. Form 2 as referred to in paragraph 8—

## Form 2

### Bond – Local Highway Authority

**BY THIS BOND** [ ] [(Company Regn No )] whose registered office is situate at [ ] (“**the undertaker**”) and [ ] [(Company Regn No )] whose registered office is situate at [ ] (“**the Surety**”) are jointly and severally bound to [ ] of [ ] (“**the [ ]**”) this [ ] day of [ ] 200[ ] in the sum of [ ] pounds (£[Surety Sum to the payment of which sum the undertaker and the Surety hereby jointly and severally bind themselves their successors and assigns

**WHEREAS** under a Development Consent Order known as the Northampton Gateway Rail Freight Interchange Order 2019 (“**the DCO**”) the undertaker is empowered to commence execute perform and complete the highway works mentioned therein 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 duly 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 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 8 of Part 3 of Schedule 13 to the DCO.

**[Attestation]**

## PART 4

### FOR THE PROTECTION OF CADENT GAS LIMITED AS GAS UNDERTAKER

#### Application

1. The provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and Cadent.

#### Interpretation

2. In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of Cadent to enable it to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any gas mains, pipes, pressure governors, ventilators, cathodic protection, cables or other apparatus belonging to or maintained by Cadent for the purpose of gas supply together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of Cadent for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to the apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2 (interpretation) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Part of this Schedule;

“Cadent” means Cadent Gas Limited (Company Number 10080864) whose registered office is situated at Ashbrook Court, Prologis Park, Central Boulevard, Coventry, CV7 8EP and any successor in title or assign including any successor to their licence as a gas transporter under Part 1 of the Gas Act 1986<sup>(9)</sup>;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by the undertaker (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for Cadent’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

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(9) 1986 c. 44.

“maintain” and “maintenance” includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus of Cadent including construct, use, repair, alter, inspect, renew or remove the apparatus;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed; and

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 6(2) of this Part of this Schedule or otherwise; or
- (b) include any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (Cadent policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW/22”).

### **On street apparatus**

3.—(1) Except for paragraphs 4 (apparatus of Cadent in stopped up streets), 6 (removal of apparatus) and 7 (facilities and rights for alternative apparatus) (in so far as sub-paragraph (2) applies), 8 (retained apparatus: protection), 9 (expenses) and 10 (indemnity) of this Part of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of the undertaker, and subject to sub-paragraph (2), the other provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and Cadent are regulated by the provisions of Part 3 of the 1991 Act.

(2) Notwithstanding sub-paragraph (1), paragraphs 6 and 7 of this Part of this Schedule apply to diversions even where carried out under the 1991 Act, in circumstances where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within existing adopted public highway.

### **Apparatus of Cadent in stopped up streets**

4.—(1) Without prejudice to the generality of any other protection afforded to Cadent elsewhere in the Order, where any street is stopped up under article 10 (permanent stopping up of streets), if Cadent has any apparatus in the street or accessed via that street Cadent will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker will grant to Cadent, or will procure the granting to the Cadent of, legal easements reasonably satisfactory to Cadent in respect of such apparatus and access to it prior to the stopping up of any such street but nothing in this paragraph affects any right of the undertaker or Cadent to require removal of the Apparatus under paragraph 6 of this Part of this Schedule.

(2) Notwithstanding the temporary stopping up or diversion of any street under the powers of article 11 (temporary stopping up of streets), Cadent will be at liberty at all times to take all necessary access across any such stopped up street and/or to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that street.

(3) The protective provisions in this Part of this Schedule apply and take precedence over article 36(2) to (7) (apparatus and rights of statutory undertakers in stopped up streets) of this Order which do not apply to Cadent.

### **Acquisition of land**

5.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker may not acquire any land interest or apparatus, or acquire, extinguish, interfere with or otherwise override any easement and/or other interest or right, of Cadent otherwise than by agreement.

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between Cadent and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of Cadent or affects the provisions of any enactment or agreement regulating the relations between Cadent and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Cadent reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between Cadent and the undertaker acting reasonably and which must be no less favourable on the whole to Cadent unless otherwise agreed by Cadent, and it will be the responsibility of the undertaker to procure or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) Where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Cadent or other enactments relied upon by Cadent as of right or other use in relation to the apparatus, then the provisions in this Part of this Schedule prevail.

(4) Any agreement or consent granted by Cadent under paragraph 8 or any other paragraph of this Part of this Schedule, is not be taken to constitute agreement under sub-paragraph (1).

### **Removal of apparatus**

6.—(1) If, in the exercise of the agreement reached in accordance with paragraph 5 of this Part of this Schedule or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of Cadent to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of Cadent in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to Cadent advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Cadent reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Cadent to its satisfaction (taking into account paragraph 8(1) of this Part of this Schedule) the necessary facilities and rights—

- (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Cadent must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain



the necessary facilities and rights in the land in which the alternative apparatus is to be constructed, with the undertaker's assistance if required by Cadent, save that this obligation does not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Cadent and the undertaker.

(5) Cadent must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to Cadent of any such facilities and rights as are referred to in sub-paragraph (2) or (3), then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

### **Facilities and rights for alternative apparatus**

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for Cadent facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Cadent, and must be no less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by Cadent.

(2) If the facilities and rights to be afforded by the undertaker and agreed with Cadent under sub-paragraph (1) in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the matter will be referred to arbitration in accordance with paragraph 14 of this Part of this Schedule and the arbitrator is to make such provision for the payment of compensation by the undertaker to Cadent as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus: protection**

8.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to Cadent a plan and, if reasonably required by Cadent, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to the undertaker under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraph (1) applies until Cadent has given written approval of the plan so submitted.

(4) Any approval of Cadent required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and,

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(b) must not be unreasonably withheld or delayed.

(5) In relation to any work to which sub-paragraph (1) applies, Cadent may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), as approved or as amended from time to time by agreement between the undertaker and Cadent and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by Cadent for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Cadent will be entitled to watch and inspect the execution of those works.

(7) Where Cadent requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to Cadent's satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required and Cadent must give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If Cadent in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs (1) to (3) and (6) to (8) apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2) of this Part of this Schedule.

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to Cadent notice as soon as is reasonably practicable and a plan of those works and must—

(a) comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and

(b) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order the undertaker must comply with the Cadent policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(~G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker must implement an appropriate ground mitigation scheme, save that Cadent retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 9 of this Part of this Schedule.

## **Expenses**

**9.—(1)** Subject to the following provisions of this paragraph, the undertaker must pay to Cadent on demand all charges, costs and expenses reasonably anticipated or incurred by Cadent in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in

consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by Cadent as a consequence of Cadent—
  - (i) using its own compulsory purchase powers to acquire any necessary rights under 6(3); and/or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting Cadent;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) or article 36 (apparatus and rights of statutory undertakers in stopped up streets) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 48 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Cadent by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

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(5) An amount which apart from this sub-paragraph would be payable to an undertaker in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on Cadent any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

### **Indemnity**

**10.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of Cadent, or there is any interruption in any service provided, or in the supply of any goods, by Cadent, or Cadent becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and
- (b) indemnify Cadent for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Cadent, by reason or in consequence of any such damage or interruption or Cadent becoming liable to any third party as aforesaid other than arising from any default of Cadent.

(2) The fact that any act or thing may have been done by Cadent on behalf of the undertaker or in accordance with a plan approved by Cadent or in accordance with any requirement of Cadent or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless Cadent fails to carry out and execute the works properly with due care and attention and in a skilful and workmanlike manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of Cadent, its officers, servants, contractors or agents; and
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by Cadent as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 (benefit of order granting development consent) of the Planning Act 2008 subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this paragraph (b) will be subject to the full terms of this Part of this Schedule including this paragraph 10.

(4) Cadent must give the undertaker reasonable notice of any such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

### **Enactments and agreements**

**11.** Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between Cadent and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between Cadent and

the undertaker in respect of any apparatus laid or erected in land belonging to Cadent on the date on which this Order is made.

### **Co-operation**

**12.**—(1) Where in consequence of the proposed construction of any of the authorised works, the undertaker or Cadent requires the removal of apparatus under paragraph 6(2) of this Part of this Schedule or Cadent makes requirements for the protection or alteration of apparatus under paragraph 8 of this Part of this Schedule, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Cadent’s undertaking and Cadent must use its best endeavours to co-operate with the undertaker for that purpose.

(2) Whenever Cadent’s consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

### **Access**

**13.** If in consequence of the agreement reached in accordance with paragraph 5(1) of this Part of this Schedule or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Arbitration**

**14.** Any difference or dispute arising between the undertaker and Cadent under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Cadent, be determined by arbitration in accordance with article 48 (arbitration).

### **Notices**

**15.** The plan and scheme submitted to Cadent by the undertaker pursuant to paragraph 8(1) of this Part of this Schedule must be sent to Cadent Gas Limited Plant Protection at [plantprotection@cadentgas.com](mailto:plantprotection@cadentgas.com) or such other address as Cadent may from time to time appoint instead for that purpose and notify to the undertaker.

## **PART 5**

### **FOR THE PROTECTION OF ANGLIAN WATER LIMITED**

**1.** The provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and Anglian Water.

**2.** In this Part of this Schedule—

“Anglian Water” means Anglian Water Services Limited (Company Registration Number 02366656) whose registered office is situated at Lancaster House, Lancaster Way, Ermine Business Park, Huntingdon, Cambridge, PE29 6XU

“apparatus” means any works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage and—

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- (a) any drain or works vested in Anglian Water under the Water Industry Act 1991(10);
- (b) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4)(11) (adoption of sewers and disposal works) of the Water Industry Act 1991 or an agreement to adopt made under section 104(12) (agreements to adopt sewer, drain or sewage disposal works) of that Act,

and includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any sewer, drain or works;

“alternative apparatus” means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in no less efficient a manner than previously;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

“plan” includes sections, drawings, specifications and method statements; and

“standard protection strips” means the strips of land falling the following distances to either side of the medial line of any relevant pipe or apparatus: 2.25 metres where the diameter of the pipe is less than 150 millimetres, 3 metres where the diameter of the pipe is between 150 and 450 millimetres, 4.5 metres where the diameter of the pipe is between 450 and 750 millimetres and 6 metres where the diameter of the pipe exceeds 750 millimetres.

3. The undertaker must not interfere with, build over or build within 6 metres of any apparatus within the Order land or execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus or execute any filling around the apparatus (where the apparatus is laid in a trench) within the standard protection strips unless otherwise agreed in writing with Anglian Water, such agreement not to be unreasonably withheld or delayed.

4. The alteration, extension, removal or re-location of any apparatus must not be implemented until—

- (a) any requirement for any permits under the Environmental Permitting (England and Wales) Regulations 2016(13) or other legislation and any other associated consents are obtained, and any approval or agreement required from Anglian Water on alternative outfall locations as a result of such re-location are approved, such approvals from Anglian Water not to be unreasonably withheld or delayed; and
- (b) the undertaker has made the appropriate application required under the Water Industry Act 1991 together with a plan and section of the works proposed and Anglian Water has agreed all of the contractual documentation required under the Water Industry Act 1991, such agreement not to be unreasonably withheld or delayed; and such works to be executed only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

5. In the situation, where in exercise of the powers conferred by the Order, the undertaker acquires any interest in any land in which apparatus is placed and such apparatus is to be relocated, extended, removed or altered in any way, no alteration or extension can take place until Anglian Water has established to its reasonable satisfaction, contingency arrangements in order to conduct its functions for the duration of the works to relocate, extend, remove or alter the apparatus.

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(10) 1991 c. 56.

(11) As amended by section 96(1) of the Water Act 2003 (c. 37) and paragraphs 2 and 90 of Schedule 7 to the Water Act 2014 (c. 21).

(12) As amended by section 96(4) of, and Part 3 of Schedule 9 to, the Water Act 2003 (c. 37), section 42(3) of the Flood and Water Management Act 2010 (c. 29) and section 11(1) and (2) of, and section 11(1) and (2) of the Water Act 2014 (c. 21).

(13) S.I. 2016/1154.

6. Regardless of any provision in this Order or anything shown on any plan, the undertaker must not acquire any apparatus otherwise than by agreement, and before extinguishing any existing rights for Anglian Water to use, keep, inspect, renew and maintain its apparatus in the Order land, the undertaker must, with the agreement of Anglian Water, create a new right to use, keep, inspect, renew and maintain the apparatus that is reasonably convenient for Anglian Water, such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 48.

7. If in consequence of the exercise of the powers conferred by the Order the access to any apparatus is materially obstructed the undertaker must provide such alternative means of access to such apparatus as will enable Anglian Water to maintain or use the apparatus no less effectively than was possible before such obstruction.

8. If in consequence of the exercise of the powers conferred by the Order, previously unmapped sewers, lateral drains or other apparatus are identified by the undertaker, notification of the location of such assets will immediately be given to Anglian Water and afforded the same protection as other Anglian Water assets.

9. If for any reason or in consequence of the construction of any of the works referred to in paragraphs 4 to 6 and 8 of this Part of this Schedule any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker must —

- (a) bear and pay the cost reasonably incurred by Anglian Water in making good any damage or restoring the supply; and
- (b) make reasonable compensation to Anglian Water for any other expenses, loss, damages, penalty or costs incurred by Anglian Water,

by reason or in consequence of any such damage or interruption.

## PART 6

### FOR THE PROTECTION OF ELECTRICITY UNDERTAKERS

#### Application

1. The provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and the utility undertaker concerned.

#### Interpretation

2. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner no less efficiently than previously;

“apparatus” means electric lines or electrical plant (as defined in the Electricity Act 1989(14)), belonging to or maintained by that undertaker;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

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(14) 1989 c. 29.

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“plan” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed;

“specified work” means so much of any of the authorised development that is carried out within 6 metres of any apparatus; and

“utility undertaker” means any licence holder within the meaning of Part 1 of the Electricity Act 1989 for the area of the authorised development, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained.

### **On street apparatus**

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 of the 1991 Act.

### **Apparatus in stopped up streets**

4.—(1) Where any street is stopped up under article 10 (permanent stopping up of streets), any utility undertaker whose apparatus is in the street has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to the utility undertaker legal easements reasonably satisfactory to the utility undertaker in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of the utility undertaker to require the removal of that apparatus under paragraph 6 of this Part of this Schedule or the power of the undertaker to carry out works under paragraph 8 of this Part of this Schedule.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 11 (temporary stopping up of streets), a utility undertaker is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

### **Acquisition of land**

5. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

### **Removal of apparatus**

6.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that the utility undertaker’s apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land must not be extinguished, until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (6).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question 60 days’ written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.



(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed the utility undertaker must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation does not extend to a requirement on the utility undertaker to use its compulsory purchase powers to this end unless the utility undertaker elects to do so.

(4) If, for the purpose of executing any works, the undertaker requires to remove or divert any apparatus placed within the Order land, and alternative apparatus or any part of such alternative apparatus is to be constructed in land other than the Order land as a consequence of the removal or diversion of apparatus, then the undertaker shall use its reasonable endeavours to obtain alternative rights in other land in which the alternative apparatus is to be constructed.

(5) Should the undertaker not be able to obtain the alternative rights required under sub-paragraph (2)(a) then the undertaker and the utility undertaker shall use reasonable endeavours to agree a reasonably practicable and mutually agreeable alternative engineering solution which does not require alternative apparatus to be constructed in land other than Order land and does not require alternative rights.

(6) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 48 (arbitration).

(7) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 48, and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(8) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that the undertaker desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

### **Facilities and rights for alternative apparatus**

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 48 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus**

**8.**—(1) Not less than 60 days before starting the execution of any specified works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) of this Part of this Schedule, the undertaker must submit to the utility undertaker in question a plan of the works to be executed.

(2) Those works must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 60 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 5 to 7 of this Part of this Schedule apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2) of this Part of this Schedule.

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 60 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances.

### **Expenses and costs**

**9.** The undertaker must repay to a utility undertaker all expenses reasonably incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 6(2) of this Part of this Schedule.

**10.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 6(2) of this Part of this Schedule, or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the undertaker, by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by a utility undertaker on behalf of the undertaker or in accordance with a plan approved by a utility undertaker or in accordance with any requirement of a utility undertaker or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(4) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

**11.** At all times when carrying out any works authorised under the Order the undertaker must comply with the utility undertaker’s “Avoidance of Danger from Electricity Overhead Lines and Underground Cables” (2014), the Energy Network Association’s “A Guide to the Safe Use of Mechanical Plant in the Vicinity of Electricity Overhead Lines” (undated), the Health and Safety Executive’s GS6 “Avoiding Danger from Overhead Power Lines” and the Health and Safety Executive’s HSG47 “Avoiding Danger from Underground Services” (Third Addition) (2014) as the same may be replaced from time to time.

### **Co-operation**

**12.** Where in consequence of the proposed construction of any of the authorised development, the undertaker or a utility undertaker requires the removal of apparatus under paragraph 6(2) of this Part of this Schedule or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 8 of this Part of this Schedule, the undertaker must use best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the utility undertaker’s undertaking and each utility undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

**13.** Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

## **PART 7**

### **FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS**

**1.** The provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and the operator.

**2.** In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(**15**);

“electronic communications apparatus” has the same meaning as in the electronic communications code(**16**);

“the electronic communications code” has the same meaning as in section 106(1)(**17**) (application of the electronic communications code) of the 2003 Act;

“electronic communications code network” means—

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(15) 2003 c. 21.

(16) See paragraph 5 of Schedule 3A (the electronic communications code) to the Communications Act 2003 (c. 21). Schedule 3A was inserted by Schedule 1 to the Digital Economy Act 2017 (c. 30).

(17) Section 106 was amended by section 4(3) to (9) of the Digital Economy Act 2017 (c. 30).

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- (a) so much of an electronic communications network or infrastructure system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network which the undertaker is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act;

“infrastructure system” has the same meaning as in the electronic communications code and reference to providing an infrastructure system are to be construed in accordance with paragraph 7(2) of that code; and

“operator” means the operator of an electronic communications code network.

**3.** The exercise of the powers conferred by article 32 (statutory undertakers and operators of the electronic communications code network) is subject to Part 10 of the electronic communications code.

**4.—(1)** Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or
- (b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 48 (arbitration).

(5) This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damages, or any interruptions, caused by electro-magnetic interference arising from the construction or use of the authorised development.

(6) Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.