

## **PART 6**

### **FOR THE PROTECTION OF HIGHWAYS ENGLAND COMPANY LIMITED**

#### **Application**

**1.** For the protection of Highways England Company Limited (Company No. 04346363) as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and Highways England.

#### **Interpretation**

**2.** (1) In this Part of this Schedule—

"the contractor" means any contractor or sub-contractor appointed by the undertaker to construct the HE works;

"the detailed design information" means details of the following where applicable to the HE works —

- (a) site clearance details;
- (b) boundary and mitigation fencing;
- (c) road restraints systems and supporting road restraint risk appraisal process assessment;
- (d) drainage and ducting and supporting drainage calculations;
- (e) earthworks including supporting geotechnical assessments and any required strengthened earthworks appraisal form certification;
- (f) 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) and supporting lighting calculations;
- (j) electrical work for road lighting, traffic signs and signals;
- (k) highway structures and any required structural approval in principle;
- (l) landscaping;
- (m) proposed departures from DMRB requirements;
- (n) utilities diversions;
- (o) topographical survey;

- (p) site waste management plan;
- (q) maintenance and repair strategy in accordance with Designing for Maintenance Interim Advice Note 69/15 or any replacement or modification of it;
- (r) asbestos survey;
- (s) regime of core testing and sampling of existing trunk road pavement construction;
- (t) site investigation survey;
- (u) health and safety information; and
- (v) other such information used to inform the detailed design of the HE works that may be required by Highways England;

"DMRB" means the Design Manual for Roads and Bridges or any replacement or modification of it;

"the estimated costs" means the estimated costs in respect of any HE works agreed pursuant to paragraph [TBC] of this Part of this Schedule;

"the Existing Gas Pipeline" means the existing gas pipeline the location of which is shown shaded blue within the Order Land but outside the Order Limits as shown on sheets the Land Plans;

"the HE works" means any works carried out by the undertaker on the strategic road network to maintain, alter, inspect, repair, renew, replace, decommission or remove in whole or in part the Existing Gas Pipeline;

"Highways England" means the Highways England Company Limited with company number 04346363 and whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ;

"the nominated persons" means the undertaker's representatives or the contractor's representatives on site during construction of the HE works, as notified to Highways England from time to time;

"the programme of works" means a document setting out the sequence and timetabling of the HE works; and

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

### **Prior approvals**

**3—(1)** The HE works must not commence until—

- (a) the detailed design of the HE works comprising of the following details has been submitted to and approved by Highways England—

- (i) the detailed design information;
  - (ii) the programme of works;
  - (iii) details of proposed road space bookings;
  - (iv) a scheme of traffic management; and
  - (v) the identity of the contractor and nominated persons,
- (b) all necessary temporary traffic regulation measures have been made by the undertaker under article 11 (1) or 14(3), or all necessary temporary traffic regulation orders have been made by Highways England;
- (c) at least 28 days' notice of the commencement date of the HE works has been given to Highways England in writing, unless otherwise agreed by Highways England.

(2) Highways England must use its best endeavours to notify the undertaker of its approval or, as the case may be, of its disapproval and the grounds of disapproval, within 42 days of the information required by sub-paragraphs (1)(a)(i)-(1)(a)(v) being received by Highways England. Highways England must give reasons for any disapproval and shall not unreasonably delay its approval to the undertaker,

(3) In the event of any disapproval, the undertaker may re-submit the information required by sub-paragraphs (1)(a)(i)-(1)(a)(v) with modifications and Highways England must use its best endeavours to notify the undertaker of its approval or, as the case may be, of its disapproval and the grounds of disapproval, within 42 days of the revised detailed design information being received by Highways England. Highways England must give reasons for any further disapproval and must not unreasonably withhold or delay consent.

(4) The documents and programmes approved under sub-paragraphs (1) and (2) may be subsequently amended by agreement between the undertaker and Highways England from time to time, both parties acting reasonably and without delay.

(5) Within 28 days of receipt of a written request by the undertaker and in any event prior to the commencement of the HE works, Highways England must inform the undertaker of the identity of the person who will act as the point of contact on behalf of Highways England for consideration of the information required under sub-paragraph (1).

### **Construction of the HE works**

4. (1) The HE works must be constructed to the satisfaction of Highways England acting reasonably and in accordance (where relevant) with—

- (a) the information approved under paragraph 3(1) or as subsequently varied by agreement between the undertaker and Highways England;
- (b) the DMRB and the Specification for Highway Works (contained within the Manual of Contract Documents for Highway Works) together with all other

relevant standards as required by Highways England (to include all relevant interim advice notes, the Traffic Signs Manual 2008 and any amendment to or replacement of such standards for the time being in force), save to the extent that exceptions to those standards apply which have been approved by Highways England under paragraph 3(1) in respect of the HE works;

- (c) the Traffic Signs Regulations and General Directions 2016 or any amendment to or replacement of them; and
- (d) all aspects of the Construction (Design and Management) Regulations 2015 or any amendment to or replacement of them.

(2) The undertaker must permit and must require the contractor to permit at all reasonable times persons authorised by Highways England (whose identity must have been previously notified to the undertaker and the contractor by Highways England) to gain access to the HE works for the purposes of inspection and supervision of the HE works.

(3) The undertaker must permit and must require the contractor to act upon any reasonable request made by Highways England in relation to the construction of the HE works as soon as reasonably practicable provided such a request is not inconsistent with and does not fall outside the contractor's obligations under its contract with the undertaker or the undertaker's obligations under this Order.

(4) If any part of the HE works is constructed otherwise than in accordance with the requirements of this Part of this Schedule, Highways England may by notice in writing require the undertaker, at the undertaker's own expense, to comply with the requirements of this Part of this Schedule.

(5) If within 28 days of the date on which a notice under sub-paragraph (4) is served on the undertaker, the undertaker has failed to take the steps required by that notice. Highways England may carry out works to reinstate the highway and other land and premises of Highways England, and Highways England may recover from the undertaker any expenditure reasonably incurred by it in so doing.

(6) If during construction of the HE works the undertaker causes any damage to the strategic road network then Highways England may by notice in writing require the undertaker, at the undertaker's own expense, to remedy the damage.

(7) If within 28 days of the date on which a notice under sub-paragraph (6) is served on the undertaker, the undertaker has failed to take steps to comply with the notice. Highways England may carry out the steps required of the undertaker and may recover from the undertaker any expenditure reasonably incurred by Highways England in so doing.

(8) Nothing in this Part of this Schedule prevents Highways England from carrying out any work or taking such action as it reasonably believes to be necessary as a result of the construction of the HE works without prior notice to the undertaker in the event of an emergency or to prevent the occurrence of danger to the public and Highways England may recover from the undertaker any reasonable expenditure incurred by Highways England in so doing.

(9) In constructing the HE works, the undertaker must at its own expense divert or protect all utilities and all agreed alterations and reinstatement of highway over existing utilities must be constructed to the reasonable satisfaction of Highways England.

## **Payments**

**5.**—(1) The undertaker must fund the full cost of the HE works and any incidental and amended works approved under this Part of this Schedule and must also pay to Highways England in respect of the HE works a sum equal to the whole of any costs and expenses which Highways England reasonably incurs (including costs and expenses for using internal or external staff) in relation to—

- (a) the checking and approval of the information required by paragraph 3(1)(a);
- (b) the supervision of the HE works;
- (c) all legal and administrative costs in relation to paragraphs (a) and (b) above;
- (d) any costs incurred by Highways England in undertaking any necessary statutory procedure required as a result of construction of the HE works, and in preparing and bringing into force any traffic regulation order necessary to construct or implement the HE works, provided that this paragraph will not apply to the making of any orders which duplicate traffic regulation measures contained in, or which may be made by the undertaker under, this Order; and
- (e) any value added tax which is payable by Highways England in respect of the costs incurred pursuant to paragraphs (a) to (e) which Highways England cannot otherwise recover from HM Revenue and Customs,

paragraphs (a) to (e) together comprising "the estimated costs".

(2) The undertaker and Highways England must, acting reasonably, agree a schedule of the estimated costs prior to the commencement of the HE works and once that schedule is agreed the undertaker must pay to Highways England the estimated costs in line with the agreed schedule.

(3) Highways England is not entitled to costs or expenses incurred under any limb of sub-paragraph (1) if those costs or expenses are included as part of the estimated costs under any other limb of that sub-paragraph.

## **Indemnity**

**6.**—(1) Subject to paragraphs (2) and (3) the undertaker must in relation to the construction of the HE works indemnify Highways England from and against all costs, expenses, damages, losses and liabilities arising from any claim, demand, action or proceedings resulting from damage caused by the construction of the HE works.

(2) Sub-paragraph (1) does not apply if the costs, expenses, damages, losses and liabilities were caused by or arise out of the act, neglect or default of Highways England or its officers, servants, agents, contractors or any person or body for whom it is responsible.

(3) In no circumstances is the undertaker liable to Highways England under this Part of this Schedule for any indirect or consequential loss or loss of profits.

(4) If any person makes a claim or notifies an intention to make a claim against Highways England which may reasonably be considered likely to give rise to a liability under this paragraph 6 then Highways England must-

(a) as soon as reasonably practicable give the undertaker reasonable notice of any such third party claim or demand, specifying the nature of the indemnity liability in reasonable detail;

(b) not make any admission of liability, agreement or compromise in relation to the indemnity liability without first consulting the undertaker and considering their representations.

(5) The undertaker acknowledges that Highways England may receive statutory compensation claims and that Highways England may not be able to comply with sub-paragraph (4) above in respect of such claims.

(6) Where Highways England considers that sub-paragraph (5) applies to any claim or demand it must give notice of that view as part of the relevant notice provided pursuant to sub-paragraph (4)(a) above.

(7) Highways England must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands and penalties to which the indemnity under this paragraph 6 applies where it is within Highways England's reasonable gift and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of Highways England's control. If reasonably requested to do so by the undertaker, Highways England must provide an explanation of how any claim has been mitigated or minimised or where mitigation or minimisation is not possible an explanation as to why.

## **Arbitration**

**7.** Any difference or dispute arising between the undertaker and Highways England under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Highways England, be determined by arbitration in accordance with article 42 (arbitration).

## **Notices**

**8.** A notice or other document required to be served on Highways England under this Part of the Schedule must be served by post to Antony Firth, Head of Planning and Development, Operations, Yorkshire and the North East Region, Highways England, Lateral, 8 City Walk, Leeds, LS11 9AT or such other postal address which Highways England may from time to time notify to the undertaker.