

**A14**  
**Cambridge to Huntingdon  
improvement scheme**  
Development Consent Order Application

HE/A14/EX/184

**TR010018**

HE/A14/EX/184

Updated Position Statement on Traffic Monitoring,  
Mitigation and De-trunking

October 2015

The Infrastructure Planning (Examination Procedure) Rules 2010



## A14 CAMBRIDGE TO HUNTINGDON IMPROVEMENT SCHEME

### UPDATED POSITION STATEMENT ON TRAFFIC MONITORING, MITIGATION AND DE-TRUNKING

#### 1. INTRODUCTION

2. This document sets out Highways England's position in respect of de-trunking matters, together with traffic monitoring and mitigation.

2.1 This document supplements the submissions made in the *Matters arising from Highways England's Oral Submissions made at the Issue Specific Hearing on Traffic and Transportation and associated Post Hearing Documents* (Applicant reference: HE/A14/EX/157; PINS reference: REP10-041) and responds to Cambridgeshire County Council's ("**the Council**") submissions made at Deadline 10 in respect of de-trunking.

#### 3. DE-TRUNKING

3.1 The de-trunking of the relevant sections of the A14 is governed by article 12(4) of the draft DCO. However, Highways England and the Council are intending to enter into a legal agreement to give the Council comfort in respect of the precise mechanics and process for de-trunking, particularly in respect of asset condition on handover and any required remedial works under a 'Handover Plan'.

3.2 Highways England understands the Council's concerns as to the existing drafting of article 12(4) in this context and has reviewed its submission, particularly Gregory Jones QC's opinion, on this point. Highways England does not accept the opinion that the legal agreement would be unenforceable, because it ignores the principal UK legal authority to the effect that legal agreements that are compatible with the statutory powers to which they relate are permissible and the proposed legal agreement with the Council supplements but does not displace the provisions of article 12(4). It is for this reason that it is commonplace for there to be legal agreements in the background of DCOs and other consenting instruments. However, irrespective of this, Highways England has reconsidered how the drafting of article 12(4) might be revised in order to facilitate on-going discussions between the parties about asset condition on handover and any required remedial works under the auspices of a concluded legal agreement. As such, Highways England's proposal is that article 12(4) should be modified in the following way, so that it reads:

*"(4) Subject to paragraph (4A), on such day as the undertaker may determine, the roads described in Part 3 of Schedule 3 (classification of roads, etc. – speed limits) are to cease to be trunk roads as if they had ceased to be trunk roads by virtue of an order made under section 10(2) of the 1980 Act specifying that date as the date on which they were to cease to be trunk roads."*

*(4A) The undertaker may only make a determination for the purposes of paragraph (4) with the consent of the Secretary of State, who must consult the local highway authority before deciding whether to give that consent."*

3.3 The effect of this proposed wording is to allow the conclusion of a legal agreement, so that discussions on a 'Handover Plan', including asset condition on handover and maintenance, can be saved until implementation of the legal agreement. If discussions on the 'Handover Plan' are not then successful, this mechanism should provide comfort to the Council, as it can raise any concerns to the Secretary of State before de-trunking occurs. The mechanism is, in effect, a method of dispute resolution.

- 3.4 Highways England considers that this, together with the express terms in the legal agreement prohibiting Highways England from exercising the de-trunking powers under article 12(4) until the 'Handover Plan' has properly been agreed (with input from the Secretary of State if necessary) and implemented, should give the Council the comfort it requires. The Council has the protection of the legal agreement, but if there is no agreement on a 'Handover Plan', de-trunking must be determined by the Secretary of State under article 12(4).
- 3.5 Highways England has reviewed the latest draft of the legal agreement as attached to the Council's Deadline 10 submission and has attached its own revised draft to this document in order to reflect this. Highways England has amended the draft legal agreement so that any disputes as to the 'Handover Plan' refer to this determination mechanism.
- 3.6 In this context, Highways England is confident that the parties will be able to proceed to finalise the wording of the agreement by Deadline 13, with discussions as to asset condition and remedial works continuing under the framework of the agreement.

#### 4. **MONITORING AND MITIGATION**

- 4.1 As per paragraph 2.1 of Highways England's *Matters arising from Highways England's Oral Submissions made at the Issue Specific Hearing on Traffic and Transportation and associated Post Hearing Documents* (Applicant reference: HE/A14/EX/157; PINS reference: REP10-041), Highways England and the Council have agreed to include traffic monitoring and mitigation obligations in the legal agreement between the parties (initially proposed to simply deal with de-trunking) as opposed to through DCO Requirements. This is because it has been agreed with the Council that pre-construction monitoring will need to take place in March 2016, which is before the DCO will be in force (if it is approved).
- 4.2 Highways England and the Council have recently met and agreed the scope of the pre and post construction monitoring in terms of timing, location and nature of the monitoring. An agreed note of the meeting will be supplied at Deadline 13. In light of this, Highways England has reviewed the wording proposed by the Council in the version of the legal agreement attached to its de-trunking submission at Deadline 10, and amended this in the version attached to this document to reflect Highways England's understanding of the agreement reached at the meeting.
- 4.3 The agreement will set out the circumstances where mitigation will be funded by Highways England if the monitoring shows that there are significant increases in traffic flow directly attributable to the scheme.

**DATED** \_\_\_\_\_

Draft (3):21/10/15

**(1) HIGHWAYS ENGLAND COMPANY LIMITED**

**(2) CAMBRIDGESHIRE COUNTY COUNCIL**

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**AGREEMENT**  
relating to  
**the proposed A14 Cambridge to Huntingdon  
Improvement Scheme Development Consent  
Order**

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Pinsent Masons

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**BETWEEN:-**

- (1) **HIGHWAYS ENGLAND COMPANY LIMITED** of Bridge House, 1 Walnut Tree Close, Guildford, Surrey, GU1 4LZ ("**Highways England**") and;
- (2) **CAMBRIDGESHIRE COUNTY COUNCIL** of Shire Hall, Castle Hill, Cambridge, CB3 0AP ("**the Council**").

**WHEREAS**

- (a) On 31 December 2014 the Highways Agency, an executive agency of the Department for Transport made an application ("**the Application**") on behalf of the Secretary of State for Transport for a development consent order to be made under the Planning Act 2008 ("**the Order**") to authorise the construction and operation of various improvements to the A14 between Cambridge and Huntingdon, which forms part of the strategic road network. The application was accepted for examination on 27 January 2015 by the Planning Inspectorate acting on behalf of the Secretary of State.
- (b) With effect from 1 April 2015 Highways England was designated under the Infrastructure Act 2015 as a highway authority for nearly all highways within England for which the Secretary of State for Transport (acting via the Highways Agency) was previously highway authority, including the A14 trunk road. By virtue of The Infrastructure Act 2015 (Strategic Highways Companies) (Consequential, Transitional and Savings Provisions) Regulations 2015 the Application was as from the same date effectively transferred to Highways England. Ultimately Highways England will be 'the undertaker' for the purposes of the Order, if made.
- (c) Under the Order, if made, Highways England will acquire land, construct various works and exercise powers for the purposes of, and in connection with, the improvement and upgrading of a 23-mile length of the A14 trunk road between Cambridge and Huntingdon, the widening of a 2-mile stretch of the A1 between Alconbury and Brampton, and the modification and improvement of the associated local road network within this corridor ("**the Scheme**").
- (d) The Council is the local highway authority for all roads in Cambridgeshire (in which the Scheme is solely located) which do not form part of the strategic road network (for which Highways England is the highway authority).
- (e) The Order makes provision for certain roads that currently form part of the strategic road network to be 'de-trunked' and, as such, become the responsibility of the Council. In addition, the Order also makes provision for certain new local roads and other rights of way to be constructed or altered which will also fall under the responsibility of the Council.
- (f) Construction of the Scheme also has the potential to affect the operations of the Cambridgeshire Guided Busway.
- (g) In consideration of the covenants, obligations and stipulations hereinafter contained the Parties have entered into this Agreement in order to make provision relating to the handover of the 'de-trunked roads', the design and construction or alteration of the new local roads and rights of way, and for the protection of the Cambridgeshire Guided Busway, to the satisfaction of the Council, in order that the Council can continue to perform its statutory functions as local highway authority.

IT IS AGREED as follows:-

1. **INTERPRETATION**

1.1 In this Agreement, unless the context otherwise requires, words and expressions defined in the above recitals have the meanings given to them there, words and expressions defined by the Draft Order have the same meaning as they have in the Draft Order but are to be interpreted as being adjusted to the extent necessary to accord with the provisions of the Order as made, and:-

**"the Authorised Works"** means the works authorised by the Order, or any part of them;

**"the Application"** means the application submitted by the Highways Agency on behalf of the Secretary of State for Transport on 31 December 2014, pursuant to section 37 of the Planning Act 2008, for an order to be made by the Secretary of State under section 114 of that Act to authorise the construction and operation of the Scheme and to make provision for associated development and ancillary matters;

**"Business Day"** means a day other than a Saturday or a Sunday on which clearing banks are open generally for business in the City of London;

**"the Cambridgeshire Guided Busway"** means the Cambridgeshire Guided Busway, being a guided busway running between St. Ives to Milton Road, Cambridge and to Kings Hedges Road, Cambridge and from Cambridge Railway Station to the Trumpington Park & Ride site and to Addenbrooke's Hospital, all as authorised by the Cambridgeshire Guided Busway Order 2005 (SI 2005, No. 3523), and of which the Council is the operator, including any station, land, works, apparatus and equipment belonging to the Council or connected with the guided busway and any easement or other property interest held by the Council or used by it for the benefit of the guided busway;

**"the CGB Works"** means any of the Authorised Works which are situated upon, across, or within [15] metres of the Cambridgeshire Guided Busway;

**"the De-Trunked Roads"** means those roads described in Part 3 of Schedule 3 to the Draft Order;

**"the De-Trunked Roads Inspection Fee"** means the sum of £[X] to be paid by Highways England to the Council for the purposes of carrying out the inspection under Clause 3.9;

**"the Design and Check Fee"** means the sum of £[X] to be paid by Highways England to the Council for the purposes of reviewing the details submitted to it under Clauses 3.1 and 4.1;

**"the De-Trunking Date"** means the date to be determined pursuant to article



12(4) of the Draft Order;

**"Departure from Standard"** means a non-compliance with a mandatory requirement of a standard or specification in respect of design, maintenance, operation and improvement of highways used by the Council and stipulated as such in a standards management system, other policy documents, contracts or a design brief or design statement;

**"the Draft Order"** means the draft of the Order with reference number **HE/A14/EX/[XX]**;

**"the Handover Plan"** means a plan prepared by Highways England, submitted and approved pursuant to clause 3 of this Agreement and setting out any works and matters Highways England reasonably considers necessary to be carried out to the De-Trunked Roads prior to the De-Trunking Date in order that the Council can undertake its functions as local highway authority;

**"the Local Roads"** means any highway to be constructed or improved as part of the Authorised Works, in relation to which the Council will be the highway authority or otherwise be responsible for the maintenance on completion of the construction or improvement of the highway;

**"the Local Roads Inspection Fee"** means the sum of **£[X]** to be paid by Highways England to the Council for the purposes of carrying out the joint inspection with Highways England under Clause 4.7; and

**"the Secretary of State"** means the Secretary of State for Transport

- 1.2 The headings in this Agreement are for convenience only and shall not be taken into consideration in the interpretation or construction of this Agreement.
- 1.3 References in this Agreement to numbered clauses are references to the clauses of this Agreement and references in this Agreement to numbered articles and numbered works are references to the articles and works numbered in the Draft Order.
- 1.4 Words importing the singular shall include the plural and vice versa, words importing any gender include every gender and words importing persons include firms, companies and corporations and vice versa.
- 1.5 Any reference in this Agreement to a 'Party' or the 'Parties' is a reference to the parties who are signatories to this Agreement or their successors in title and commitments made in this Agreement shall be binding on those successors.
- 1.6 Any reference to any enactment includes a reference to it as amended (whether before or after the date of this Agreement) and to any other enactments which may, after the date of this Agreement, directly or indirectly replace it, with or without amendment.
- 1.7 Any reference to consent, approval or confirmation refers to consent, approval or confirmation given in writing.

2. **THE SCHEME**

2.1 Subject to the parties adhering to the terms of this Agreement, the Council confirms that it:

- 2.1.1 has no objection in principle to the Scheme;
- 2.1.2 will withdraw any representations made prior to the date of this Agreement that sought measures which are secured by this Agreement within [XX] Business Days of the date of this Agreement;
- 2.1.3 covenants not to make any further written or other representations in respect of the measures which are secured by this Agreement unless such a representation expresses unqualified support for the Scheme; and
- 2.1.4 will support Highways England in such a way that Highways England can progress and deliver the Scheme in accordance with the following aspirational timetable formulated by Highways England:

<b>Step/Activity</b>	<b>Commencement</b>	<b>Completion</b>
Examination	14 May 2015	13 November 2015
Secretary of State's decision on the Application		12 May 2016
Appointment of contractor		
Construction of the CGB Works		
De-Trunking Date		
Local Roads to be open for traffic		

3. **EXISTING ROADS TO BE DE-TRUNKED**

**Handover Plan**

- 3.1 Highways England agrees to consult with the Council in developing a Handover Plan for de-trunking.
- 3.2 The Handover Plan will incorporate details including, but not limited to, the following elements of or information relating to the De-Trunked Roads:
  - 3.2.1 the condition of the carriageway and structures;
  - 3.2.2 the carriageway surfacing;
  - 3.2.3 drainage;
  - 3.2.4 signage and road marking;
  - 3.2.5 lighting;

- 3.2.6 fencing
  - 3.2.7 vehicle restraint systems, to include type, condition and compliance with specifications;
  - 3.2.8 intelligent transport system equipment;
  - 3.2.9 extent of the highway boundary;
  - 3.2.10 removal of equipment not required by the Council;
  - 3.2.11 all available records; and
  - 3.2.12 any works required to be carried out by Highways England to the De-Trunked Roads before the De-Trunking Date to bring the De-Trunked Roads up to a standard reasonably required by the Council.
- 3.3 In respect of the element contained at clause 3.2.12:
- 3.3.1 Highways England may, at its absolute discretion, decide to pay a sum of money (to be agreed between the parties) to the Council in lieu of carrying out any necessary works; and
  - 3.3.2 the Handover Plan must set out the agreed position between the parties as to any liability for maintenance of the De-Trunked Roads Highways England may or may not have following the De-Trunking Date.
- 3.4 At least 12 months prior to the proposed De-Trunking Date as set out in the aspirational timetable in clause 2.1.4, Highways England will submit the proposed Handover Plan to the Council for its approval (such approval not to be unreasonably delayed or withheld). Highways England agrees that it will not determine the De-Trunking Date until the Handover Plan has been approved and fully complied with.
- 3.5 If the Council has not responded to Highways England approving or rejecting the proposed Handover Plan within 28 Business Days of its submission, or such longer period as may be agreed, the Council is deemed to have approved the proposed Handover Plan in the form submitted to it.
- 3.6 Prior to the De-Trunking Date, Highways England will carry out and complete in accordance with the Handover Plan and to the reasonable satisfaction of the Council all works and other matters covered in the Handover Plan.
- 3.7 A duly authorised officer of the Council is entitled to inspect the carrying out under the Handover Plan of any works and other matters but will have no power to direct how those works or other matters are carried out.
- 3.8 Upon Highways England being satisfied that the Handover Plan has been fully complied with, it shall serve notice ("**the Notice**") on the Council notifying it of this fact.
- 3.9 Upon receipt of the Notice, the Council must inspect all works carried out pursuant to the Handover Plan and confirm within 28 Business Days, or such longer period as may be agreed, of receipt of the Notice that the Council is reasonably satisfied that the Handover Plan has been fully complied with.
- 3.10 Should the Council not respond within 28 Business Days, or such longer period as may be agreed, of being served with the Notice, it is deemed to have confirmed that the Council is reasonably satisfied that the Handover Plan has been fully complied with.

- 3.11 Upon receiving notice from the Council of a defect with any works carried out by Highways England to bring the De-Trunked Roads up to a standard reasonably required by the Council under the Handover Plan within [12 months] of the De-Trunking Date, should Highways England, acting reasonably, agree with the Council's assessment, it will ensure that such defects are corrected promptly and to the reasonable satisfaction of the Council.
- 3.12 Clause 8 does not apply to any disputes in connection with the provisions of this Clause 3 and such disputes are to be referred for final determination to the Secretary of State for Transport.

#### **4. NEW OR IMPROVED LOCAL ROADS**

##### **Detailed design consultation**

- 4.1 Highways England will consult the Council in respect of the detailed design of any of the Authorised Works which form part of the Local Roads and shall have due regard to any comments provided by the Council within a reasonable timescale before finalising the detailed design. This consultation will include, but will not be limited to, providing to the Council:
- 4.1.1 statements of proposed design standards;
  - 4.1.2 proposed Departure from Standard;
  - 4.1.3 detailed design drawings, specifications and schedules;
  - 4.1.4 draft Approvals in Principle for structures;
  - 4.1.5 design and check certificates for structures; and
  - 4.1.6 road safety audit reports and any exception reports.

4.2 Highways England will not construct any part of a Local Road which includes a Departure from Standard until the Council has approved any such Departure from Standard (such approval not to be unreasonably withheld or delayed).

4.3 Highways England will consult with the Council in determining the precise extent and boundaries of the Local Roads.

##### **Construction monitoring**

- 4.4 At any time during the construction of any of the Authorised Works that form part of the Local Roads, a duly authorised officer of the Council is entitled to inspect the carrying out of those works but will have no power to direct how they are carried out.
- 4.5 Nothing in this agreement shall prevent the Council from carrying out its statutory duties or any responsibilities under the Draft Order to monitor or inspect the Authorised Works.

##### **Handover process**

- 4.6 The Council will not have any liability for maintenance of the Local Roads pursuant to article 11(1) or (2) of the Draft Order until clauses 4.8 to 4.10 below have been complied with.
- 4.7 Prior to the Local Roads being opened to public traffic following construction of any of the Authorised Works that form part of the Local Roads, Highways England and the Council will jointly inspect the Local Roads to ensure that they are of a reasonable

standard in order for the Council to perform its statutory functions as highway authority for the Local Roads.

- 4.8 Within 28 Business Days, or such longer period as may be agreed, following any such inspection, the Council will confirm to Highways England whether it reasonably considers that the Local Roads are of a reasonable standard for the Council to perform its statutory functions as highway authority for them as part of its road network and the Local Roads will be open for public use and the Council will assume responsibility for them as highway authority from the day after that confirmation (or from such other day as may be agreed between the Parties).
- 4.9 Should the Council not provide to Highways England the confirmation mentioned in clause 4.8, the Council will be deemed to have confirmed that it considers the Local Roads are of a reasonable standard for the Council to perform its statutory functions as highway authority for them as part of its road network and the Local Roads will be open for public use and the Council will be deemed to have assumed responsibility for them as highway authority from the day following 28 Business Days, or such longer period as may be agreed, after the inspection mentioned in clause 4.8.
- 4.10 Within 28 Business Days, or such longer period as may be agreed, of the Council assuming statutory responsibility for the Local Roads pursuant to clause 4.8 or 4.9, Highways England will deliver to the Council all information, in such format as may be agreed, in Highways England's possession reasonably required by the Council that is relevant to safe use, maintenance, asset management, and operation of the Local Roads.

#### **Defects**

- 4.11 Upon receiving notice from the Council of a defect with the Local Roads within 12 months of the Council becoming highway authority for the Local Roads pursuant to clause 4.8 or 4.9, should Highways England, acting reasonably, agree with the Council's assessment, it will ensure that any defects in the Local Roads are corrected promptly and to the reasonable satisfaction of the Council.

### **5. TRAFFIC MONITORING AND MITIGATION**

- 5.1 A traffic impact monitoring scheme shall be agreed in writing between the Council and Highways England.
- 5.2 Highways England must implement the traffic impact monitoring scheme as approved unless otherwise agreed between the parties.
- 5.3 The scheme for traffic impact monitoring must include:
- 5.3.1 a before and after survey to assess the changes in traffic on the Council's road network resulting from the Scheme (to include completion of any works in respect of the removal of the Huntingdon Railway Viaduct) following its completion compared to pre-construction baseline levels;
  - 5.3.2 the locations to be monitored and the methodology to be used to collect the required traffic data. The locations will be where the impact of the Scheme is predicted to be minimal but where local communities are sceptical of the prediction. The locations to be monitored are to be agreed with the Council but will include Gravely Way Hilton, High Street Madingley, Park Street Dry Drayton and Huntingdon Road Brampton;
  - 5.3.3 the periods over which traffic will be monitored;
  - 5.3.4 the method of assessment of traffic data;

- 5.3.5 control sites to monitor background growth;
  - 5.3.6 provision for the monitoring to occur no less than 3 months before the implementation of traffic management on the existing A14 due to construction of the works, that may impact survey results;
  - 5.3.7 agreement of baseline traffic levels, and;
  - 5.3.8 the mechanism for the submission of survey data and interpretative reports to the Council.
- 5.4 Monitored increases in traffic significantly in excess of agreed predictions and/or baseline levels will be subject to consultation between the Council, Highways England and the relevant planning authority to ascertain if the impact is solely attributable to the Scheme. Where it is reasonably concluded after such consultation that the monitored increase is solely attributable to the Scheme and is materially adverse, and where mitigation by other committed developments, and committed interventions by the Council and other local authorities are inadequate, Highways England will fund appropriate, reasonable and necessary mitigation as reasonably agreed between the parties.
- 5.5 With respect to the Council's Principal (A Class) Road network (for the purposes of this Clause, "**the network**") outside of the city of Cambridge:
- 5.5.1 Highways England will demonstrate that the impacts of changes in traffic due to the Scheme alone, predicted by traffic modelling, will not cause significant worsening of congestion and delay on the network in the future year.
  - 5.5.2 If there is no significant worsening of congestion and delay on the network the Council shall not require Highways England to consider providing or funding traffic monitoring or mitigation on this portion of the network.
  - 5.5.3 If there is likely to be significant worsening of congestion and delay on the network as a result of the Scheme the Council may require, after consulting with Highways England and relevant stakeholders, Highways England to consider providing or funding reasonable and appropriate mitigation and ultimately fund or provide such mitigation as is reasonably agreed, save that Highways England shall only be required to consider funding or providing mitigation where there is a significant contribution by the A14 to the problem, and where mitigation by other committed developments, and committed interventions by the Council and other local authorities still results in a residual significant adverse impact.

## 6. **CAMBRIDGESHIRE GUIDED BUSWAY**

7. The Council and Highways England will proceed as soon as reasonably practicable and in any event before Highways England commences the CGB Works to enter into an asset protection agreement regulating the carrying out of the CGB Works if reasonably required by the Council.

## 8. **FEES AND CHARGES**

- 8.1 Highways England will pay the De-Trunked Roads Inspection Fee, or such proportion as may be agreed, to the Council on approval of the Handover Plan.
- 8.2 Highways England will pay the Design and Check Fee, or such proportion as may be agreed, to the Council prior to the start of construction of Local Roads.

8.3 Highways England will pay the Local Roads Inspection Fee, or such proportion as may be agreed, to the Council prior to the start of construction of Local Roads.

9. **THIRD PARTY CLAIMS**

9.1 If the Council receives any claim arising under Part 1 or Part 2 of the Land Compensation Act 1973 or the Noise Insulation Regulations 1975 in respect of any of the Authorised Works relating to the De-Trunked Roads, the Council will immediately on receipt of the claim send a copy of it to Highways England, who will thereafter be solely responsible for dealing with the claim.

10. **DISPUTE RESOLUTION**

10.1 This Clause 8 is subject to Clause **Error! Reference source not found.**

10.2 Highways England and the Council will not use any means or take any action or procure any other person to take any action that would have the effect of nullifying or rendering less effective this Agreement.

10.3 Without prejudice to any other provision of this Agreement, Highways England and the Council will attempt to resolve any lack of agreement, dispute or difference between them arising out of this Agreement ('**Dispute**') by discussion and agreement in accordance with this clause.

10.4 If any dispute has not been resolved within 21 days of the dispute arising, Highways England will call a meeting for the purpose of resolving the dispute by serving not less than 5 Business Days' written notice on the Council.

10.5 Each party agrees to procure that a senior representative with sufficient knowledge and authority in respect of the matter in dispute will attend any meeting called in accordance with clause 10.4 above and will co-operate in good faith with the other to resolve the Dispute as amicably as possible and within 10 Business Days of the meeting called for that purpose.

10.6 If the senior representatives fail to resolve the dispute within the time allotted by clause 10.5:

10.6.1 a Dispute as to the meaning or construction of this Agreement shall be referred to and determined by an independent solicitor or barrister of at least 10 years' standing, acting as an expert and who is experienced in drafting, negotiating and advising on agreements similar to this Agreement, such independent person to be agreed between the Parties or failing such agreement to be nominated by the President or the Vice President or other duly authorised officer of the Law Society on the application of either party, having given written notice to the others, and the costs associated with the expert and determination of the Parties shall be borne as the expert shall direct; and

10.6.2 any other Dispute arising shall be referred to and determined by an independent engineer of at least 10 years' standing, acting as an expert and who is experienced in drafting, negotiating and advising on agreements similar to this Agreement, such independent person to be agreed between the Parties or failing such agreement to be nominated by the President or the Vice President or other duly authorised officer of the Institution of Civil Engineers on the application of any party, having given written notice to the others, and the costs associated with the expert and determination of the Parties shall be borne as the expert shall direct.

11. **NOTICES**

11.1 Any notice served or given or plans, drawings or documents supplied under or in relation to this Agreement shall (in the case of a notice) be in writing, must refer to the relevant provision of this Agreement, and will in all cases be deemed to be sufficiently given, served or supplied if addressed or supplied to Highways England or the Council as the case may be, and sent by first class post, courier service or registered post to:

(a) in the case of Highways England, to:

[TBC]

(b) in the case of the Council, to:

[TBC]

12. **RIGHTS OF THIRD PARTIES**

Only Highways England and the Council may enforce the terms of this Agreement and no third party may enforce any such term by virtue of the Contracts (Rights of Third Parties) Act 1999.

13. **VARIATIONS**

No variation of this Agreement shall be effective unless it is in writing and is signed by or on behalf of a duly authorised representative of each of the Parties.

14. **NEGLIGENCE ETC.**

Nothing in this Agreement shall impose any liability on Highways England or the Council with respect to any damage, cost, expense or loss which is attributable to the negligence, neglect or default of the other party or of any person in its employment, or of its contractors or agents, and any liability of Highways England or the Council under this agreement shall be reduced proportionately to the extent to which any damage, cost, expense or loss is attributable to the negligence, neglect or default of the other party or of any person in its employment, or of its contractors or agents.

**IN WITNESS** of which, this Agreement is:

[Insert execution blocks]