

# RESPONSE OF LOCAL HIGHWAY AUTHORITIES TO THE APPLICANT'S RESPONSE AT DEADLINE 7 TO THE PROTECTIVE PROVISIONS FOR THE BENEFIT OF LOCAL HIGHWAY AUTHORITIES (REP7-190, pages 2 – 13)

## 1. Introduction

- 1.1 This document responds directly to the response of the Applicant at D7 in REP7-190 to the protective provisions put forward by the Local Highway Authorities (LHA) at D6 (REP6-142). It is submitted on behalf of all five LHA.
- 1.2 In view of the criticism of the drafting of the Prospective Provisions ("PP") submitted by the LHA at D6 contained in paragraphs 2.1.2 and 2.1.3 of REP7-190, it is worth reminding the Examination of the context for that submission.
- 1.3 For some time, it was argued by the Applicant that no PP should be included to protect the local highway network. When a set of PP were produced by the Applicant, the five LHA felt it would be helpful to the ExA to provide a combined response. To meet a deadline this necessitated some rapid drafting by committee and the production of draft PP which were not the final article but intended to be helpful in order to further the discussion with the Applicant. It was intended to be an iterative process which would progress between deadlines; however, this has not occurred.
- 1.4 Appendix 1 to this document contains the PP submitted by the Applicant at D7 with the amendments being sought by the local highway authorities at this stage. It should be apparent from Appendix 1, and the text which follows below, that the LHA have responded to the Applicant's comments in REP7-190 and very significantly reduced their amendments to those they consider absolutely essential to protect their assets. The LHA have therefore compromised in order to try and reduce the number of issues upon which the ExA and Secretary of State are required to adjudicate.
- 1.5 This document broadly follows the order set out in REP7-190 and deals with the subject matter as follows:
  - Section 2 The approach to the drafting of the Protective Provisions
  - Section 3 Design Input.
  - Section 4 Maintenance and Defects.
  - Section 5 Commuted sums and costs.
  - Section 6 Other amendments – dealt with in tabular form.
  - Section 7 Conclusions
- 1.6 Suggested revisions to the draft PP submitted by the Applicant at D7 are contained in the Appendix 1 to this document with the LHA amendments shown

as tracked changes. Appendix 2 contains a clean version of the PP incorporating the LHA amendments. Apologies for any formatting issues in respect of those documents. A request was made for a word version of the PP submitted by the Applicant at D7 however none have been received.

## **2. The approach to the drafting of the Protective Provisions.**

- 2.1 The purpose of PP in a DCO is to provide safeguards to protect assets not under the control of the undertaker but which are affected by its proposed works. The Applicant has accepted that the local highways are an asset appropriately protected by such provisions.
- 2.2 The best precedents for such PP are those contained for the protection of local highways and national highways in other DCO, including DCO which are subject to the same NPSNN. These precedents contain the type of protections for highway authorities usually contained in agreements entered into under section 278 of the Highways Act 1980 and, where one highway authority is carrying out works on another authorities' network, agreements under Part 1 of that Act.<sup>1</sup>
- 2.3 Highway schemes do not as a matter of course include PP for the benefit of highway authorities because most highway schemes are promoted by highway authorities on their own network. There are, nevertheless, some instances of highway schemes including PP<sup>2</sup>.
- 2.4 There are also several other DCO promoted under the NPSNN and other NPS which affect the national and local highways and those schemes have been required by the Applicant and the relevant local highway authorities to include PP for the benefit of their assets.<sup>3</sup>
- 2.5 Whenever other DCO propose works on the National Highway network, which it will fall to the Applicant to assume responsibility for, it insists on PP for its assets and it has draft PP which it provides to DCO promoters for inclusion in DCO<sup>4</sup>.

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<sup>1</sup> In fact the first PP for the benefit of National Highway and Local Highway Authorities in a DCO were those included in The East Midlands Gateway Rail Freight Interchange and Highway Order 2016 at the request of the Examining Authority who were concerned that delivery might be delayed if the essential provisions for the protection of the highway authorities were to be included in s.278 agreements since there can often be delay in completing such agreements. The drafting of the PP therefore followed generally the form and scope of the NH and relevant LHA s.278 agreements at that time.

<sup>2</sup> The A303 Sparkford to Ilchester Dualling DCO 2021

<sup>3</sup> The East Midlands Gateway Rail Freight Interchange and Highway Order 2016; The Northampton Gateway Rail Freight Interchange Order 2019 and The West Midlands Rail Freight Interchange Order 2020 and The Southampton to London Pipeline DCO 2020.

<sup>4</sup> The up-to-date position of the Applicant in respect of the PP it requires when other parties promote DCO can be found in Appendix 1 of its Deadline 1 submissions to the ongoing Examination into the Hinckley National Rail Freight Interchange DCO (REP1-182 in the relevant Examination Library). Appendix 1 of that document contains the current PP sought by the Applicant.

- 2.6 Accordingly, the LHA have drawn on the PP included in other DCO promoted under the NPSNN, and also the “standard” PP that the Applicant routinely requires to be included in other DCOs for protection of its network, as precedent for the PP included in this DCO. The local highway network should be entitled to the same protection for its network when work is being carried out as the Applicant requires for its own network.
- 2.7 It is anticipated that the Applicant will argue that it is different since it is a highway authority and therefore the full protections normally afforded are not necessary. This is a consistent approach it has taken in respect to try and create a distinction between its DCO and DCO promoted by others under the NPSNN. However, the Applicant will not be the highway authority for the assets which the PP are designed to protect. They will have no responsibility for them once the works are completed and that will fall to the local highway authorities.
- 2.8 As referred to previously, the LHA have significantly compromised and are not seeking the full protection normally afforded by such PP<sup>5</sup>. However, it is essential that the local highway authority are sufficiently engaged and assets protected to ensure that works carried out to its network, and the handing over of them, are appropriately dealt with.
- 2.9 It is, and always has been, apparent that full agreement will not be reached on the drafting of the PP. It is hoped that the compromise position represented in the Appendices to this document will assist in reducing the number of issues upon which the ExA and, in due course, the Secretary of State will have to adjudicate.

### **3. Design Input**

- 3.1 The PP only deal with works affecting the local highway network, not the entirety of the scheme. This is important to bear in mind when considering the rather extreme reaction to the LHA amendments to para 145 (Design Input) in the Applicant’s D7 submissions (REP7-190).
- 3.2 Nonetheless, the LHA have reviewed the position and accepts the concern of the Applicant with regard to the potential for a protracted process.
- 3.3 Accordingly, as can be seen from the Appendices, the LHA have therefore reverted substantially to the Applicant’s original version with only some amendments to seek a little more time and to improve the drafting of the provision. This represents a substantial compromise on the part of the LHA – not only will there be no need to obtain design approval from the LHA but the opportunity to influence design under these PP is limited. Therefore much rests upon the control documents.
- 3.4 This represents a different position, and level of protection, than afforded to all the other parties who have PP included in Schedule 9 Parts 1-10 of the dDCO.

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<sup>5</sup> For example, it is not seeking to approve the design which is a usual provision in such PP.

Without exception all of those parties have the protection of provisions requiring approval or agreement of matters relevant to their assets to a greater or lesser extent.

#### **4. Maintenance and Defects**

##### Maintenance

- 4.1 It appears that the section headed Maintenance and Latent Defect in the REP7-190 document is concerned only with the inclusion of a latent defects clause (dealt with below). None of the LHA amendments interfered with the overall regime of provisional certificate, maintenance and then final certificate.

##### Latent Defects

- 4.2 The LHA are no longer pursuing the provision requiring latent defects to be made good for a period of 12 years. The defects provision in the Appendices (paragraph 150) is as drafted by the Applicant save for the inclusion of “the relevant” in front of “local highway authority”.

#### **5. Commuted Sums and Costs**

##### Commuted Sums

- 5.1 The issue of commuted sums has already been explored in the Examination and is not repeated here. Reference should be made to the relevant submissions in respect of the rationale for the provision.<sup>6</sup>
- 5.2 This note simply reminds the ExA that there is precedence for the payment of commuted sums in the PP. Examples, all covered by the NPSNN, being:
- 5.2.1 The A303 Sparkford to Ilchester Dualling DCO 2021;
  - 5.2.2 The M25 J28 DCO 2022;
  - 5.2.3 The East Midlands Gateway and Rail Freight Interchange and Highway Order 2016;
  - 5.2.4 The Northampton Gateway Rail Freight Interchange Order 2019;
  - 5.2.5 The West Midlands Rail Freight Interchange Order 2020; and
  - 5.2.6 The “standard” protective provisions issued by the Applicant for inclusion in DCO which affect its highway network<sup>7</sup>.

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<sup>6</sup> See for example - in respect of LBH see REP3-186, REP4-318 pages 5 and 6; in respect of TfL see REP1-304 paras 4.9-4.15, REP4-359 paras 6.7-6.15, REP5-114 paras 5.1-5.5 and REP7-229 Section 3

<sup>7</sup> National Highways submission to Hinckley SRFI DCO – REP1-182

- 5.3 All the above schemes are, by definition, nationally important and provide substantial public benefit.
- 5.4 There is a distinction between the position of the local highway authorities in London (TfL and the London Borough of Havering) and the other three LHA regarding the ability of the authorities to access funds for future maintenance. TfL and LBH do not benefit from funding via the standard maintenance formula. Accordingly, the PP in the Appendices have been drafted with alternative wording to allow for the commuted sum provisions to only apply to TfL and LBH if felt appropriate.

Costs

- 5.5 The Applicant rejected the inclusion of a provision providing for the payment of costs not because such costs should not be paid but on the basis that such costs will be payable under the s.106 Agreements to be entered into.
- 5.6 The costs payable under the s.106 Agreements are not as yet agreed between all the LHA and the Applicant and in any event do not cover the full costs applicable in respect of the operation of these PP.
- 5.7 Accordingly, a costs provision has been reinstated however a sub- paragraph (2) has been added to ensure that, if the costs are payable under a s.106 agreement, they are not also payable pursuant to the PP.
- 5.8 A review of the other PP in the dDCO will reveal that all the other PP within the dDCO include a provision for the party’s costs/expenses for dealing with the operation of the PP to be paid by the Applicant. There is no reason why LHA should be different.

**6. Other amendments**

- 6.1 The table below addresses all of the amendments to the Applicant’s PP proposed by the LHA as shown tracked in the Appendix to this document. The table also identifies those additional provisions/points that the LHA are no longer pursuing.

Provision	Issue and [LBC/LHA] Response
<b>Throughout</b>	<p>Insertion of “relevant” before “local highway authority”.</p> <p>The Applicant has adopted the use of the term “relevant local highway authority” as suggested by the LHA. The LHA amendments just seek to ensure it is added at all places where needed.</p>

<b>Definition of “as built drawings”</b>	<p>In response to the LHA draft PP the Applicant has included the definition that was missing however, the Applicant’s definition is, in part vague and includes only some of the information required by the LHA definition.</p> <p>The LHA have again compromised and not reverted to the full list but have included only the additional elements felt essential.</p> <p>It should be noted that the definition of “as built drawings” included by the LHA in the Appendices is very similar to that required to be provided to the Applicant when dealing with works by others on the Applicant’s network. This can be seen from the DCOs referred to in paras 5.2.3 – 5.2.5 and the Applicant’s “standard” PP referred to in paragraph 5.2.6.</p> <p>In particular, the drafting criticism from the Applicant<sup>8</sup> with regard to the inclusion of items such as “as constructed programme” and “method statements” is curious given that those items are included in the definition of the “as built drawings”, in the Applicant’s own standard PP.<sup>9</sup> Nonetheless, the LHA have not sought to add all those items back in.</p>
<b>Definition of Commuted Sum</b>	Added back in for the purposes of Paragraph 156.
<b>Definition of “detailed information”</b>	<p>Limited additional worded has been inserted.</p> <p>Again, the wording virtually replicates that included by the Applicant in its standard PP.</p>
<b>Definition of “works”</b>	Amended to insert a missing word.
<b>Design Input – Para 145</b>	<p>(1) Amendments to insert “must” rather than “will” to comply with drafting conventions<sup>10</sup>.</p> <p>(3) Increase from 10 to 15 business days for LHA to consider and respond to design information supplied – which could be extensive.</p> <p>(4) and (6) Additional wording suggested for clarity.</p>
<b>Local operating agreement - Para 146</b>	(1) It is noted that the Applicant has responded positively to additional matters included in items (a) to (h).

<sup>8</sup> REP7-190 Page 9

<sup>9</sup> See REP1-182 App 1 National Highways Written Representations to Hinckley SRFI DCO Examination

<sup>10</sup> Para 3.3 Advice Note 15

	<p>The LHA have included two additional items both of which were accepted by the Applicant in its discussions on the contents of side agreements.</p> <p>(2) Wording amended for clarity.</p>
<b>Reinstatement – Para 147</b>	Additional words added to ensure requirement to reinstate applies whatever the reason for the survey or investigation.
<b>Inspection and Testing – Para 148</b>	<p>Amended wording suggested for clarity.</p> <p>As a compromise the LHA are no longer seeking the deletion of (7)</p>
<b>Road Safety Audits – Para 149</b>	<p>(1) Amendments to insert “must” rather than “will” to comply with drafting conventions<sup>11</sup>.</p> <p>(3) Amendments to ensure recommendations of safety audit are complied with unless it would give rise to any new or materially different environmental effects in comparison with those in the environmental statement unless otherwise agreed with the relevant local highway authority. The safety audits are undertaken by independent parties and it is appropriate that the LHA be involved in any decision not to accept the recommendations from the auditor in respect of those elements of the authorised work being carried out on the local highway network for which it is, or will be, the custodian. That is the position taken by the Applicant when it is dealing with works on its network.</p>
<b>Warranties</b>	As a compromise the LHA are no longer seeking a provision with regard to warranties
<b>Provisional Certificate – Para 151</b>	<p>(1) Amended wording suggested for clarity.</p> <p>(2) As 149(3) above.</p>
<b>Final Certificate – Para 153</b>	<p>Words added for clarity in 153 (1) (b).</p> <p>Addition of (1) (g) to carry forward obligation in 149 (3).</p> <p>Addition is to ensure traffic management finished prior to the final certificate being issued so that the impact of the works on the part of the network concerned is not still being experienced.</p>

<sup>11</sup> Para 3.3 Advice Note 15

<p><b>Commuted Sums – Para 156</b></p>	<p>Provision added back in as explained in 5.1 – 5.4 above.</p> <p>The drafting follows closely the drafting of Paragraph 73 of Part 7 Sch 9 of The M25 Junction 28 Development Consent Order 2022 – being protective provisions for the benefit of TfL.</p>
<p><b>Indemnity – Para 157</b></p>	<p>Provision added back in to include an indemnity which is ordinarily included in such PP.</p> <p>A review of the other PP in the dDCO will reveal that all the other PP within the dDCO (Parts 1-10 of Schedule 14) include an indemnity provision. There is no explanation as to why LHA should be different.</p> <p>See also the following PP where the Applicant has insisted on an indemnity itself:</p> <p>East Midlands Gateway DCO – Sch 19 para 12.</p> <p>Northampton Gateway DCO – Sch 13 Part 2 para 12.</p> <p>West Midlands Interchange DCO – Sch 13 Part 2 para 12.</p> <p>A303 Sparkford to Ilchester Dualling DCO – Sch 8 Part 4 para 45.</p> <p>London to Southampton Pipeline - Sch 9 Part 6 para 69</p> <p>National Highways “standard” DCO provisions para 18<sup>12</sup>.</p>
<p><b>Arbitration – Para 158</b></p>	<p>(3) Correction to cross reference</p> <p>The LHA are no longer seeking arbitration rather than an appeal to Secretary of State although they note that every other PP in the dDCO includes provision for arbitration.</p>

## 7. Conclusion

- 7.1 The LHA have significantly compromised in order to achieve as much agreement as possible.
- 7.2 It would seem that there is possibility that there will remain some provisions at issue. In that regard the ExA and the Secretary of State is requested to have regard to the need to be even handed in its approach to PP under the DCO regime. The LHA is not seeking any protection for its assets over and above that which is afforded to the national network when works are carried out on its network. Indeed, the compromises of the LHA to reach agreement will mean that even if the LHA PP are included in their entirety, there will be less protection

<sup>12</sup> See REP1-182 App 1 National Highways Written Representations to Hinckley SRFI DCO Examination



for the LHA network compared with that ordinarily afforded to the national network.

- 7.3 In so far as issues are not agreed, then the justification for the PP in the Appendices is contained in this document and the documents sign posted within it.

## APPENDIX 1

### PART 11

#### FOR THE PROTECTION OF LOCAL HIGHWAY AUTHORITIES

##### *Application*

143. The provisions of this Part of this Schedule have effect in relation to the works (as defined under paragraph 144) unless otherwise agreed in writing between the undertaker and the relevant local highway authority.

##### *Definitions*

144. In this Part of this Schedule—

“as built drawings” means –

(a) as constructed drawings of the local highway in both PDF and Autocad DWG formats or in formats reasonably agreed with the relevant local highway authority

~~(a) drawings showing the as constructed local highways in an appropriate format;~~

(b) drawings showing the location for utilities diverted and installed in the local highway: and

(c) specifications for materials used for the constructed local highway;

“business day” means a day other than a Saturday or Sunday, which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971;

“Commuted sum” means the sum to be paid by the undertaker to the relevant local highway authority for the future maintenance of any highway asset not previously forming part of the local highway network or substantially modified by the works as determined in accordance with paragraph 157

“detailed design” means drawings and other information comprising the detailed design for local roads comprised in the authorised development for the purposes of paragraph 3 of Schedule 2 of the Order;

“detailed information” means drawings, specifications and other information relating to the local highway, as relevant to the works in question, to comprise the following (insofar as both parties agree (acting reasonably) are relevant and not already provided for in any document that the undertaker is required to produce under Schedule 2 to the Order) which must~~and~~ be in accordance with the detailed design—

(a) boundary, environmental and mitigation fencing;

(b) road restraint systems (vehicle and pedestrian);

(c) drainage and ducting;

(d) earthworks including supporting geotechnical assessments required by DMRB and any required strengthened earthworks appraisal form certification;

(e) road pavements;

(f) kerbs, footways and paved areas;

(g) long and cross sectional drawings;

(h) traffic signs and road markings;

(i) traffic signal equipment and associated signal phasing and timing detail;

~~(j)~~(j) electrical work for road lighting and traffic signs;

~~(k)~~(k) highway structures;

~~(l)~~(l) landscaping, planting and any boundary features which will form part of the local highway;

~~(m)~~(m) new utilities and utility diversions ~~insofar as~~ in the existing or proposed local highway;

~~(n)~~(n) a schedule of timings for the works, including dates and durations for any closures of any part of the local highway;

- ~~(n)~~(o) \_\_\_\_\_ traffic management proposals including any diversionary routes;
- ~~(n)~~(p) \_\_\_\_\_ a schedule of the existing local highway condition prior to commencement of construction related activities;
- ~~(n)~~(q) \_\_\_\_\_ a specification of the condition in which it is proposed that the local highway will be returned once the relevant works have been completed;
- ~~(n)~~(r) \_\_\_\_\_ any temporary works structures which are to be erected or retained under the Order or otherwise.

“DMRB” means the Design Manual for Roads and Bridges published by the undertaker, or any replacement or modification of that standard for the time being in force;

“final certificate” means the final certificate issued by the relevant local highway authority under paragraph 153 of this Part;

“local highway” means any public highway including any public right of way which is maintainable, or is intended at the completion of the works in relation thereto to be maintainable by ~~at~~ the relevant local highway authority;

“maintenance period” means 12 months from the date of the provisional certificate being served under paragraph 151 of this Part unless otherwise agreed in writing between the parties;

“provisional certificate” means the certificate served under paragraph 151 of this Part;

“senior representatives” means the regional director on behalf of the undertaker and persons notified to the undertaker by the relevant local highway authority as being their senior representatives; and

“works” means any works authorised by the Order undertaken on, to, over or under any part of the local highway.

#### *Design input and commencement*

145.—(1) The undertaker ~~must~~will allow and facilitate an appropriately qualified person or persons duly appointed by the relevant local highway authority (each being a “nominated officer”) to participate in the design process for the detailed design for the works and will have reasonable regard to any representations of the nominated officer in finalising its detailed design proposal (and, without limitation, the undertaker is able to refuse implementation of any representation which would cause a breach of this Order, conflict with a permit issued under a permit scheme or would entail materially new or materially different environmental effects from those reported in the environmental statement) .

(2) Participation under sub-paragraph (1) will be in the form of invitations (given at least 10 business days in advance and sent by email) to attend design meetings relating to relevant works and the provision to the nominated officer of such drawings, cross/long sections, design proposals and other information as is reasonably required to allow the nominated officer to provide an informed response on the detailed design proposals to the undertaker.

(3) ~~The n~~Nominated officer will have no less than ~~10~~5 business days from the date on which the undertaker supplies information pursuant to sub-paragraph (2) to provide the undertaker with any comments upon any information provided to that officer pursuant to sub-paragraph (2).

(4) No part of the works may commence until ~~the~~ undertaker has provided to the relevant local highway authority the detailed information relating to that part of the works (without prejudice to the undertaker providing parts of the detailed information insofar as it relates to the operation (as distinct from the construction) of the local highway at a later date provided the provision of that information is subject to ~~this sub-paragraph and~~ sub-paragraphs (5) to (7)).

(5) The undertaker will give the relevant local highway authority at least 10 business days to comment and provide representations by email on the detailed information provided to it under sub-paragraph (4).

(6) The undertaker will have reasonable regard to any comments, representations and recommendations made by the relevant local highway authority under paragraph (5) (and, without limitation, the undertaker is able to refuse implementation of any representation or recommendation which would cause a breach of this Order, conflict with a permit issued under a permit scheme or would entail materially new or materially different environmental effects from those reported in the environmental statement) and will ~~endeavour to~~ provide the relevant local highway authority with reasons for non-acceptance of any representation or

recommendation ~~as soon as reasonably practicable upon following~~ receipt of a request from the relevant local highway authority in writing within 10 business days of ~~such request, its decision~~.

(7) The works must not be carried out except in accordance with the detailed information (but subject to the process in sub-paragraphs (4) and (5)) or as otherwise may be agreed between the undertaker and the relevant local highway authority.

(8) This paragraph does not apply to the works to the extent the undertaker and the relevant local highway authority agree (acting reasonably) that a permit issued under a permit scheme applies to the works.

(9) This paragraph does not apply to the works to the extent that they are subject to PRO.7 of the design principles, and to the extent they are not subject to that clause of design principles, without limitation, the undertaker is able to refuse implementation of any representation or recommendation made under this paragraph where it would cause an inconsistency with the outcome of process secured under that clause of the design principles.

**146.**—(1) Before commencing the construction of, or the carrying out of any work authorised by this Order which involves works to a local highway the undertaker must use bestreasonable endeavours to agree with the relevant local highway authority a local operating agreement covering the following as relevant to the works in question—

- (a) communications and customer care arrangements for communication with stakeholders and the local community including
  - (i) the identity ~~of~~ the party responsible for each activity;
  - (ii) the identity of the contractor responsible for stakeholder engagement and communication; and
  - (iii) defined timescales for contractor responses to responses to communication;
- (b) where the undertaker takes responsibility for the local highway in which the works are proposed definition of the extents for the works areas between the highway boundary, the traffic management lead in tapers, the longitudinal coning and the end of the lead out tapers, zone of influence (being the area which is reasonably affected by those work areas, traffic management and diversion requirements and free recovery areas (as appropriate));
- (c) arrangements for the submission to the local highway authority of digital copies of all as-built drawings for the relevant work area including identification of any new limits of highway maintainable by the relevant local highway authority in accordance with paragraph 153 of this Schedule;
- (d) winter maintenance including anticipated winter treatments and severe weather arrangements to apply during the construction period and the maintenance period;
- (e) routine maintenance and repair arrangements in relation to local highways directly affected by the construction of the authorised development;
- (f) continuity of technology arrangements to apply during the construction period and the maintenance period;
- (g) arrangements for dealing with and recording incidents during the construction period and the maintenance period including appropriate provision of recovery vehicles; and
- (h) traffic management: during therelevant works.
  - (i) asset handover arrangements
  - (j) the method of reporting any claims made by and against the undertaker in respect of the works

(2) Any agreement completed under sub-paragraph (1) must be complied with by the undertaker and continue in force until such time as a final certificate has been issued by the relevant local highway authority in respect of the ~~relevant~~ works.

#### *Survey Reinstatement*

**147.** The undertaker must reinstate to the reasonable satisfaction of the relevant local highway authority any part of the local highway which has been temporarily used for survey or investigation by the undertaker pursuant to Article 20 or Article 35 of this Order or under any other power in this Order to the condition it

was in on the date on which the survey or investigation began or such other condition as may be agreed in writing by the relevant local highway authority.

#### *Inspections and testing of materials*

**148.**—(1) The undertaker must allow and facilitate any person duly appointed by the relevant local highway authority to access and inspect at all reasonable times any part of the works during their construction and before a final certificate has been issued in respect of the ~~relevant~~ works as is reasonably necessary to ensure that the works have been or are being carried out in accordance with the detailed design and to the appropriate standard.

(2) The undertaker must allow any person duly appointed by the relevant local highway authority to enter upon and inspect any part of the works which are in, over, under, or adjacent to any local highway or may affect any highway or any property of the relevant local highway authority, during the carrying out of the works, and the undertaker must give to such officer reasonable facilities for such inspection.

(3) Any testing reasonably requested by the relevant local highway authority of materials used in any works must be carried out at the undertaker's expense and in accordance with the latest version of the Manual of Contract Documents for Highway Works (or any other testing specification agreed ~~between both parties~~ the undertaker and the relevant local highway authority acting reasonably).

(4) The relevant local highway authority (or its agent) may test all or any materials used or proposed to be used in any works and the undertaker must provide such information access and materials as is reasonably necessary to facilitate such testing.

(5) The undertaker must, as soon as is reasonably practicable, and in any event within 10 business days provide the relevant local highway authority with a copy of all available test certificates and results relevant to the works that the relevant local highway authority has requested in writing.

(6) The relevant local highway authority must as soon as is reasonably practicable, and in any event within 10 business day provide the undertaker with a copy of all available test results and certificates relevant to the works that the undertaker has requested in writing.

(7) In circumstances where a work carried out by the undertaker is tested by the relevant local highway authority pursuant to the provisions of this ~~Part of the Schedule~~ and that test resulted in works being undone at the undertaker's expense (acting reasonably) and found to be satisfactory then that expense must forthwith be reimbursed by the relevant local highway authority provided that the relevant local highway authority was given a reasonable opportunity by the undertaker to inspect the works at a time when the works could have been inspected without the need to incur the expense.

#### *Road Safety Audits*

**149.**—(1) The undertaker must procure that an appropriately qualified RSA team (as defined in DMRB Volume 5 Section 2 Part 2 (GG119) or any replacement or modification of that standard) undertakes road safety audit in accordance with DMRB standard GG 119 and ~~will~~ must provide copies of the reports of such audits to the relevant local highway authority within 10 days of their receipt by the undertaker.

(2) The relevant local highway authority must be invited to participate in the road safety audit conducted under sub-paragraph (1).

(3) Where the report of the stage 3 and 4 road safety audit identifies any recommended measures in respect of the local highway, the undertaker must carry out, at its own expense and to the reasonable satisfaction of the relevant local highway authority, all these measures identified as part of stage 3 and 4 audit ~~which the undertaker considers necessary (acting reasonably) and~~ which do not give rise to any new or materially different environmental effects in comparison with those identified in the environmental statement unless otherwise agreed with the relevant local highway authority.

#### *Defects in local highways constructed by the undertaker*

**150.**—(1) Until such time as a final certificate has been issued in respect of any works, the undertaker must make good any defects in the works constructed by the undertaker to the reasonable satisfaction of the relevant local highway authority.

(2) The undertaker must submit to the relevant local highway authority such details and information relating to making good any defects under sub-paragraph (1) as the relevant local highway authority and the undertaker agree is reasonable in the circumstances.

### *Provisional Certificate*

**151.**—(1) Subject to sub-paragraph (2), when the undertaker considers that the works have reached completion so that they are available for use by the public it must serve a provisional certificate on the relevant local highway authority and must allow the relevant local highway authority the opportunity to inspect the works to identify any defects or incomplete works ~~and the undertaker must give proper consideration to any representations and recommendations made by the relevant local highway authority and make good such defects pursuant to paragraph 150 or~~ and complete any incomplete works.

(2) The undertaker must not serve a provisional certificate on the relevant local highway authority under sub-paragraph (1) until either—

- (a) a stage 3 road safety audit has been carried out in respect of the works in question in accordance with GG119 of DMRB and ~~in the opinion of the undertaker~~ any recommended measures identified in the audit which do not give rise to any new or materially different environmental effects in comparison with those identified in the environmental statement ~~(and which the undertaker considers to be necessary,~~ have been completed unless otherwise agreed with the relevant local highway authority; or
- (b) the relevant local highway authority has been provided an opportunity to inspect the works and the undertaker has, in its opinion, completed any further works or measures required to address any safety deficiencies or defects identified as a result of the inspection.

(3) The relevant local highway authority must issue to the undertaker, on request from the undertaker a counter-signed provisional certificate in relation to any part of the works, after completion of that part of the works once a stage 3 safety audit has been carried out in accordance with sub-paragraph (2).

### *Maintenance*

**152.**—(1) Subject to paragraph (2), the undertaker must maintain the works throughout the maintenance period to a standard appropriate to their use by the public in accordance with DMRB.

(2) Nothing in paragraph (1) makes the undertaker responsible for the maintenance of any street works or maintenance works undertaken by any person other than the undertaker or which does not form part of the authorised development during the maintenance period.

### *Final Certificate*

**153.**—(1) The relevant local highway authority must as soon as reasonably practicable and in any event within 10 working days of the last of paragraph (a) to (f) of this sub-paragraph being satisfied issue a final certificate in respect of the works where—

- (a) the maintenance period has passed;
- (b) all incomplete works and identified defects requiring remediation under sub-paragraph 150(1) have been remedied to the relevant local highway authority's reasonable satisfaction; and
- (c) the undertaker has given the relevant local highway authority a reasonable opportunity to inspect the relevant works in readiness for the issue of a final certificate and has given due consideration and acted accordingly in respect of any representations and recommendations made by the relevant local highway authority in respect of the works;
- (d) the undertaker has provided the relevant local highway authority with a health and safety file in respect of the relevant works to the relevant local highway authority's reasonable satisfaction;
- (e) the undertaker has provided the relevant local highway authority with as built drawings and such detailed information as the relevant local highway authority has requested (acting reasonably) in relation to the relevant works as built; and
- (f) any sewers which the local drainage authority consider should be constructed to dispose of soil and surface water drainage in connection with the relevant Works and in order to make them appropriate for public use have been constructed.
- (g) a stage 4 safety audit in accordance with GG119 of the DMRB has been completed and any recommended measures identified in the audit which do not give rise to any new or materially



different environmental effects in comparison with those identified in the environmental statement have been completed unless otherwise agreed with the relevant local highway authority.

(h) the relevant works are not subject to any ongoing traffic management measures or routing of construction traffic related to the authorised development

(2) The issue of a final certificate by the relevant local highway authority amounts to an acknowledgment by the relevant local highway authority that the construction alteration or diversion (as the case may be) of a highway has been completed to its reasonable satisfaction for the purposes of article 10 (construction and maintenance of new, altered or diverted streets and other structures) of the Order.

#### *Emergency Work*

**154.** Nothing in this Part of this Schedule prevents the local highway authority from carrying out any work or taking such action as deemed appropriate forthwith without prior notice to the undertaker in the event of an emergency or danger to the public.

#### *Land interests*

**155.** Following the issuing of the final certificate under paragraph 153 in respect of any part of the local highway, the undertaker must, if requested by the relevant local highway authority, in respect of a local highway which is to be maintainable by the relevant local highway authority following, and as a result of, the completion of those works either—

- (a) execute and complete a transfer to the relevant local highway authority at nil consideration of any land and rights which have been compulsorily acquired under this Order and which are necessary for the maintenance and operation of a local highway; or
- (b) exercise article 20 (compulsory acquisition of land) and article 28 (compulsory acquisition of rights and imposition of restrictive covenants) as applied by article 31 (application of the 1981 Act) and 32 (modification of the 2017 Regulations) of this Order to directly vest in the relevant local highway authority land or interest which may be necessary for the maintenance and operation of a local highway,

unless otherwise agreed between the undertaker and the relevant local highway authority.

#### *Commuted Sums*

##### **156.**

(1) [Where this paragraph applies in accordance with sub- paragraph 7] The undertaker must use reasonable endeavours to agree with the relevant local highway authority a schedule of new highway assets which are proposed to become the maintenance responsibility of the relevant local highway authority as a result of the authorised development.

(2) Where the schedule prepared under sub-paragraph (1) cannot be agreed, the matters of dispute shall be determined in accordance with paragraph 158.

(3) Following agreement of the schedule under sub-paragraph (1) or determination under sub-paragraph (2), the relevant local highway authority must prepare a calculation of the commuted sum based on maintenance the local highway authority considers to be required for the schedule of highway assets agreed under sub-paragraph (1) or determined under sub-paragraph (2) and must use reasonable endeavours to agree it with the undertaker.

(4) The undertaker must be provided with a complete breakdown of the calculation of the commuted sum by the relevant local highway authority under sub-paragraph (3) including any assumptions used.

(5) Where the calculation prepared under sub-paragraph (3) cannot be agreed, the matters of dispute shall be determined in accordance with paragraph 158.

(6) The undertaker must pay the commuted sum to the relevant local highway authority in one instalment within 10 business days of the later of:

(a) the date of completion of the relevant works to which the commuted sum applies as evidenced by the issue of the provisional certificate in respect of those works; or

(b) the date of agreement of the value of the commuted sum under sub-paragraph (3) or determination under sub-paragraph (5).

(7) [This paragraph only applies to Transport for London and the London Borough of Havering]

#### Costs and Indemnity

157. (1) Subject to paragraph (2) the undertaker must pay to the relevant local highway authority in respect of the works a sum equal to the whole of any costs and expenses reasonably incurred by that relevant local highway authority in respect of:

(a) participating in the design of any part of the authorised development

(b) carrying out any inspections reasonably required in connection with any of the provisions of this Part of this Schedule

(c) negotiating, completing, implementing and monitoring compliance with the relevant local operating agreement pursuant to paragraph 146

(d) participation in road safety audits relating to the works pursuant to paragraph 149

(e) issuing any approvals/certificates pursuant to paragraphs 151 and 153

(f) agreeing any commuted sum pursuant to paragraph 156

(g) the transfer or vesting in the relevant local highway authority of any land and rights acquired by the undertaker pursuant to paragraph 155

(2) No costs shall be payable under paragraph (1) if they are the subject of an obligation to pay costs to a relevant local highway authority under the provisions of an agreement entered into between that local highway authority as local planning authority and the undertaker under section 106 of the 1990 Act.

(3) The undertaker must pay the costs and expenses referred to in sub-paragraph (1) to the relevant local highway authority within 28 business days of the relevant local highway authority advising the undertaker that they have been incurred and no final certificate will be issued under paragraph 153 if any payment due to be paid at that point has not been paid.

(4) The undertaker will indemnify and keep indemnified the relevant local highway authority against any liability, loss, costs, claim arising out of or incidental to the relevant works other than any caused by any negligent act, default or omission of the relevant local highway authority.

#### *Disputes*

~~156,158.~~—(1) In the event of any disagreement between the Parties arising out of or in connection with this agreement which requires the agreement of the Parties jointly or the approval of the local highway authority and which cannot be resolved within 10 business days of the disagreement arising, either party may request a review of the issue in disagreement by the parties giving notice in writing to their senior representatives.

(2) The senior representatives will consider any such request and use all reasonable endeavours in good faith to reach agreement to resolve any disagreement.

(3) Where agreement is not reached by the senior representatives within 10 business days of a request being made under sub-paragraph (1), the disagreement may be the subject of an appeal to the Secretary of State under article 65 (appeals to the Secretary of State) of this Order.



## APPENDIX 2

### PART 11

#### FOR THE PROTECTION OF LOCAL HIGHWAY AUTHORITIES

##### *Application*

**143.** The provisions of this Part of this Schedule have effect in relation to the works (as defined under paragraph 144) unless otherwise agreed in writing between the undertaker and the relevant local highway authority.

##### *Definitions*

**144.** In this Part of this Schedule—

“as built drawings” means –

- (a) as constructed drawings of the local highway in both PDF and Autocad DWG formats or in formats reasonably agreed with the relevant local highway authority
- (a) drawings showing the location for utilities diverted and installed in the local highway: and
- (b) specifications for materials used for the constructed local highway;

“business day” means a day other than a Saturday or Sunday, which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971;

“Commuted sum” means the sum to be paid by the undertaker to the relevant local highway authority for the future maintenance of any highway asset not previously forming part of the local highway network or substantially modified by the works as determined in accordance with paragraph 157

“detailed design” means drawings and other information comprising the detailed design for local roads comprised in the authorised development for the purposes of paragraph 3 of Schedule 2 of the Order;

“detailed information” means drawings, specifications and other information relating to the local highway, as relevant to the works in question, to comprise the following (insofar as both parties agree (acting reasonably) are relevant and not already provided for in any document that the undertaker is required to produce under Schedule 2 to the Order) which must be in accordance with the detailed design—

- (c) boundary, environmental and mitigation fencing;
- (d) road restraint systems (vehicle and pedestrian);
- (e) drainage and ducting;
- (f) earthworks including supporting geotechnical assessments required by DMRB and any required strengthened earthworks appraisal form certification;
- (g) road pavements;
- (h) kerbs, footways and paved areas;
- (i) long and cross sectional drawings;
- (j) traffic signs and road markings;
- (k) traffic signal equipment and associated signal phasing and timing detail;
- (l) electrical work for road lighting and traffic signs;
- (m) highway structures;
- (n) landscaping, planting and any boundary features which will form part of the local highway;
- (o) new utilities and utility diversions in the existing or proposed local highway;
- (p) a schedule of timings for the works, including dates and durations for any closures of any part of the local highway;

- (q) traffic management proposals including any diversionary routes;
- (r) a schedule of the existing local highway condition prior to commencement of construction related activities;
- (s) a specification of the condition in which it is proposed that the local highway will be returned once the relevant works have been completed;
- (t) any temporary works structures which are to be erected or retained under the Order or otherwise.

“DMRB” means the Design Manual for Roads and Bridges published by the undertaker, or any replacement or modification of that standard for the time being in force;

“final certificate” means the final certificate issued by the relevant local highway authority under paragraph 153 of this Part;

“local highway” means any public highway including any public right of way which is maintainable, or is intended at the completion of the works in relation thereto to be maintainable by a relevant local highway authority;

“maintenance period” means 12 months from the date of the provisional certificate being served under paragraph 151 of this Part unless otherwise agreed in writing between the parties;

“provisional certificate” means the certificate served under paragraph 151 of this Part;

“senior representatives” means the regional director on behalf of the undertaker and persons notified to the undertaker by the relevant local highway authority as being their senior representatives; and

“works” means any works authorised by the Order undertaken on, to, over or under any part of the local highway.

#### *Design input and commencement*

**145.—**(1) The undertaker must allow and facilitate an appropriately qualified person or persons duly appointed by the relevant local highway authority (each being a “nominated officer”) to participate in the design process for the detailed design for the works and will have reasonable regard to any representations of the nominated officer in finalising its detailed design proposal (and, without limitation, the undertaker is able to refuse implementation of any representation which would cause a breach of this Order, conflict with a permit issued under a permit scheme or would entail materially new or materially different environmental effects from those reported in the environmental statement) .

(2) Participation under sub-paragraph (1) will be in the form of invitations (given at least 10 business days in advance and sent by email) to attend design meetings relating to relevant works and the provision to the nominated officer of such drawings, cross/long sections, design proposals and other information as is reasonably required to allow the nominated officer to provide an informed response on the detailed design proposals to the undertaker.

(3) The nominated officer will have no less than 15 business days from the date on which the undertaker supplies information pursuant to sub-paragraph (2) to provide the undertaker with any comments upon any information provided to that officer pursuant to sub-paragraph (2).

(4) No part of the works may commence until the undertaker has provided to the relevant local highway authority the detailed information relating to that part of the works (without prejudice to the undertaker providing parts of the detailed information insofar as it relates to the operation (as distinct from the construction) of the local highway at a later date provided the provision of that information is subject to sub-paragraphs (5) to (7)).

(5) The undertaker will give the relevant local highway authority at least 10 business days to comment and provide representations by email on the detailed information provided to it under sub-paragraph (4).

(6) The undertaker will have reasonable regard to any comments, representations and recommendations made by the relevant local highway authority under paragraph (5) (and, without limitation, the undertaker is able to refuse implementation of any representation or recommendation which would cause a breach of this Order, conflict with a permit issued under a permit scheme or would entail materially new or materially different environmental effects from those reported in the environmental statement) and will provide the relevant local highway authority with reasons for non-acceptance of any representation or recommendation following receipt of a request from the relevant local highway authority in writing within 10 business days of such request..

(7) The works must not be carried out except in accordance with the detailed information (but subject to the process in sub-paragraphs (4) and (5)) or as otherwise may be agreed between the undertaker and the relevant local highway authority.

(8) This paragraph does not apply to the works to the extent the undertaker and the relevant local highway authority agree (acting reasonably) that a permit issued under a permit scheme applies to the works.

(9) This paragraph does not apply to the works to the extent that they are subject to PRO.7 of the design principles, and to the extent they are not subject to that clause of design principles, without limitation, the undertaker is able to refuse implementation of any representation or recommendation made under this paragraph where it would cause an inconsistency with the outcome of process secured under that clause of the design principles.

**146.**—(1) Before commencing the construction of, or the carrying out of any work authorised by this Order which involves works to a local highway the undertaker must use best endeavours to agree with the relevant local highway authority a local operating agreement covering the following as relevant to the works in question—

- (a) communications and customer care arrangements for communication with stakeholders and the local community including
  - (i) the identity of the party responsible for each activity;
  - (ii) the identity of the contractor responsible for stakeholder engagement and communication; and
  - (iii) defined timescales for contractor responses to responses to communication;
- (b) where the undertaker takes responsibility for the local highway in which the works are proposed definition of the extents for the works areas between the highway boundary, the traffic management lead in tapers, the longitudinal coning and the end of the lead out tapers, zone of influence (being the area which is reasonably affected by those work areas, traffic management and diversion requirements and free recovery areas (as appropriate);
- (c) arrangements for the submission to the local highway authority of digital copies of all as-built drawings for the relevant work area including identification of any new limits of highway maintainable by the relevant local highway authority in accordance with paragraph 153 of this Schedule;
- (d) winter maintenance including anticipated winter treatments and severe weather arrangements to apply during the construction period and the maintenance period;
- (e) routine maintenance and repair arrangements in relation to local highways directly affected by the construction of the authorised development;
- (f) continuity of technology arrangements to apply during the construction period and the maintenance period;
- (g) arrangements for dealing with and recording incidents during the construction period and the maintenance period including appropriate provision of recovery vehicles; and
- (h) traffic management: during the works.
- (i) asset handover arrangements
- (j) the method of reporting any claims made by and against the undertaker in respect of the works

(2) Any agreement completed under sub-paragraph (1) must be complied with by the undertaker and continue in force until such time as a final certificate has been issued by the relevant local highway authority in respect of the works.

#### *Survey Reinstatement*

**147.** The undertaker must reinstate to the reasonable satisfaction of the relevant local highway authority any part of the local highway which has been temporarily used for survey or investigation by the undertaker pursuant to Article 20 or Article 35 of this Order or under any other power in this Order to the condition it was in on the date on which the survey or investigation began or such other condition as may be agreed in writing by the relevant local highway authority.

### *Inspections and testing of materials*

**148.**—(1) The undertaker must allow and facilitate any person duly appointed by the relevant local highway authority to access and inspect at all reasonable times any part of the works during their construction and before a final certificate has been issued in respect of the works as is reasonably necessary to ensure that the works have been or are being carried out in accordance with the detailed design and to the appropriate standard.

(2) The undertaker must allow any person duly appointed by the relevant local highway authority to enter upon and inspect any part of the works which are in, over, under, or adjacent to any local highway or may affect any highway or any property of the relevant local highway authority, during the carrying out of the works, and the undertaker must give to such officer reasonable facilities for such inspection.

(3) Any testing reasonably requested by the relevant local highway authority of materials used in any works must be carried out at the undertaker's expense and in accordance with the latest version of the Manual of Contract Documents for Highway Works (or any other testing specification agreed between the undertaker and the relevant local highway authority acting reasonably).

(4) The relevant local highway authority (or its agent) may test all or any materials used or proposed to be used in any works and the undertaker must provide such information access and materials as is reasonably necessary to facilitate such testing.

(5) The undertaker must, as soon as is reasonably practicable, and in any event within 10 business days provide the relevant local highway authority with a copy of all available test certificates and results relevant to the works that the relevant local highway authority has requested in writing.

(6) The relevant local highway authority must as soon as is reasonably practicable, and in any event within 10 business day provide the undertaker with a copy of all available test results and certificates relevant to the works that the undertaker has requested in writing.

(7) In circumstances where a work carried out by the undertaker is tested by the relevant local highway authority pursuant to the provisions of this Part and that test resulted in works being undone at the undertaker's expense (acting reasonably) and found to be satisfactory then that expense must forthwith be reimbursed by the relevant local highway authority provided that the relevant local highway authority was given a reasonable opportunity by the undertaker to inspect the works at a time when the works could have been inspected without the need to incur the expense.

### *Road Safety Audits*

**149.**—(1) The undertaker must procure that an appropriately qualified RSA team (as defined in DMRB Volume 5 Section 2 Part 2 (GG119) or any replacement or modification of that standard) undertakes road safety audit in accordance with DMRB standard GG 119 and must provide copies of the reports of such audits to the relevant local highway authority within 10 days of their receipt by the undertaker.

(2) The relevant local highway authority must be invited to participate in the road safety audit conducted under sub-paragraph (1).

(3) Where the report of the stage 3 and 4 road safety audit identifies any recommended measures in respect of the local highway, the undertaker must carry out, at its own expense and to the reasonable satisfaction of the relevant local highway authority, all the measures identified as part of stage 3 and 4 audit which do not give rise to any new or materially different environmental effects in comparison with those identified in the environmental statement unless otherwise agreed with the relevant local highway authority.

### *Defects in local highways constructed by the undertaker*

**150.**—(1) Until such time as a final certificate has been issued in respect of any works, the undertaker must make good any defects in the works constructed by the undertaker to the reasonable satisfaction of the relevant local highway authority.

(2) The undertaker must submit to the relevant local highway authority such details and information relating to making good any defects under sub-paragraph (1) as the relevant local highway authority and the undertaker agree is reasonable in the circumstances.

### *Provisional Certificate*

**151.**—(1) Subject to sub-paragraph (2), when the undertaker considers that the works have reached completion so that they are available for use by the public it must serve a provisional certificate on the

relevant local highway authority and must allow the relevant local highway authority the opportunity to inspect the works to identify any defects or incomplete works and the undertaker must give proper consideration to any representations and recommendations made by the relevant local highway authority and make good such defects and complete any incomplete works.

(2) The undertaker must not serve a provisional certificate on the relevant local highway authority under sub-paragraph (1) until either—

- (a) a stage 3 road safety audit has been carried out in respect of the works in question in accordance with GG119 of DMRB and any recommended measures identified in the audit which do not give rise to any new or materially different environmental effects in comparison with those identified in the environmental statement ( have been completed unless otherwise agreed with the relevant local highway authority; or
- (b) the relevant local highway authority has been provided an opportunity to inspect the works and the undertaker has, in its opinion, completed any further works or measures required to address any safety deficiencies or defects identified as a result of the inspection.

(3) The relevant local highway authority must issue to the undertaker, on request from the undertaker a counter-signed provisional certificate in relation to any part of the works, after completion of that part of the works once a stage 3 safety audit has been carried out in accordance with sub-paragraph (2).

#### *Maintenance*

**152.**—(1) Subject to paragraph (2), the undertaker must maintain the works throughout the maintenance period to a standard appropriate to their use by the public in accordance with DMRB.

(2) Nothing in paragraph (1) makes the undertaker responsible for the maintenance of any street works or maintenance works undertaken by any person other than the undertaker or which does not form part of the authorised development during the maintenance period.

#### *Final Certificate*

**153.**—(1) The relevant local highway authority must as soon as reasonably practicable and in any event within 10 working days of the last of paragraph (a) to (f) of this sub-paragraph being satisfied issue a final certificate in respect of the works where—

- (b) the maintenance period has passed;
- (c) all incomplete works and identified defects requiring remediation under sub-paragraph 150(1) have been remedied to the relevant local highway authority’s reasonable satisfaction; and
- (d) the undertaker has given the relevant local highway authority a reasonable opportunity to inspect the relevant works in readiness for the issue of a final certificate and has given due consideration and acted accordingly in respect of any representations and recommendations made by the relevant local highway authority in respect of the works;
- (e) the undertaker has provided the relevant local highway authority with a health and safety file in respect of the relevant works to the relevant local highway authority’s reasonable satisfaction;
- (f) the undertaker has provided the relevant local highway authority with as built drawings and such detailed information as the relevant local highway authority has requested (acting reasonably) in relation to the relevant works as built; and
- (g) any sewers which the local drainage authority consider should be constructed to dispose of soil and surface water drainage in connection with the relevant Works and in order to make them appropriate for public use have been constructed.
- (h) a stage 4 safety audit in accordance with GG119 of the DMRB has been completed and any recommended measures identified in the audit which do not give rise to any new or materially different environmental effects in comparison with those identified in the environmental statement have been completed unless otherwise agreed with the relevant local highway authority.
- (i) the relevant works are not subject to any ongoing traffic management measures or routing of construction traffic related to the authorised development

(2) The issue of a final certificate by the relevant local highway authority amounts to an acknowledgment by the relevant local highway authority that the construction alteration or diversion (as the case may be) of a highway has been completed to its reasonable satisfaction for the purposes of article 10 (construction and maintenance of new, altered or diverted streets and other structures) of the Order.

#### *Emergency Work*

**154.** Nothing in this Part of this Schedule prevents the local highway authority from carrying out any work or taking such action as deemed appropriate forthwith without prior notice to the undertaker in the event of an emergency or danger to the public.

#### *Land interests*

**155.** Following the issuing of the final certificate under paragraph 153 in respect of any part of the local highway, the undertaker must, if requested by the relevant local highway authority, in respect of a local highway which is to be maintainable by the relevant local highway authority following, and as a result of, the completion of those works either—

- (a) execute and complete a transfer to the relevant local highway authority at nil consideration of any land and rights which have been compulsorily acquired under this Order and which are necessary for the maintenance and operation of a local highway; or
- (b) exercise article 20 (compulsory acquisition of land) and article 28 (compulsory acquisition of rights and imposition of restrictive covenants) as applied by article 31 (application of the 1981 Act) and 32 (modification of the 2017 Regulations) of this Order to directly vest in the relevant local highway authority land or interest which may be necessary for the maintenance and operation of a local highway,

unless otherwise agreed between the undertaker and the relevant local highway authority.

#### *Commuted Sums*

#### **156.**

(1) [Where this paragraph applies in accordance with sub- paragraph 7] The undertaker must use reasonable endeavours to agree with the relevant local highway authority a schedule of new highway assets which are proposed to become the maintenance responsibility of the relevant local highway authority as a result of the authorised development.

(2) Where the schedule prepared under sub-paragraph (1) cannot be agreed, the matters of dispute shall be determined in accordance with paragraph 158.

(3) Following agreement of the schedule under sub-paragraph (1) or determination under sub-paragraph (2), the relevant local highway authority must prepare a calculation of the commuted sum based on maintenance the local highway authority considers to be required for the schedule of highway assets agreed under sub-paragraph (1) or determined under sub-paragraph (2) and must use reasonable endeavours to agree it with the undertaker.

(4) The undertaker must be provided with a complete breakdown of the calculation of the commuted sum by the relevant local highway authority under sub-paragraph (3) including any assumptions used.

(5) Where the calculation prepared under sub-paragraph (3) cannot be agreed, the matters of dispute shall be determined in accordance with paragraph 158.

(6) The undertaker must pay the commuted sum to the relevant local highway authority in one instalment within 10 business days of the later of:

- (a) the date of completion of the relevant works to which the commuted sum applies as evidenced by the issue of the provisional certificate in respect of those works; or
- (b) the date of agreement of the value of the commuted sum under sub-paragraph (3) or determination under sub-paragraph (5).

(7) [This paragraph only applies to Transport for London and the London Borough of Havering]

### *Costs and Indemnity*

**157.** (1) Subject to paragraph (2) the undertaker must pay to the relevant local highway authority in respect of the works a sum equal to the whole of any costs and expenses reasonably incurred by that relevant local highway authority in respect of:

- (a) participating in the design of any part of the authorised development
- (b) carrying out any inspections reasonably required in connection with any of the provisions of this Part of this Schedule
- (c) negotiating, completing, implementing and monitoring compliance with the relevant local operating agreement pursuant to paragraph 146
- (d) participation in road safety audits relating to the works pursuant to paragraph 149
- (e) issuing any approvals/certificates pursuant to paragraphs 151 and 153
- (f) agreeing any commuted sum pursuant to paragraph 156
- (g) the transfer or vesting in the relevant local highway authority of any land and rights acquired by the undertaker pursuant to paragraph 155

(2) No costs shall be payable under paragraph (1) if they are the subject of an obligation to pay costs to a relevant local highway authority under the provisions of an agreement entered into between that relevant local highway authority as local planning authority and the undertaker under section 106 of the 1990 Act.

(3) The undertaker must pay the costs and expenses referred to in sub-paragraph (1) to the relevant local highway authority within 28 business days of the relevant local highway authority advising the undertaker that they have been incurred and no final certificate will be issued under paragraph 153 if any payment due to be paid at that point has not been paid.

(4) The undertaker will indemnify and keep indemnified the relevant local highway authority against any liability, loss, costs, claim arising out of or incidental to the relevant works other than any caused by any negligent act, default or omission of the relevant local highway authority.

### *Disputes*

**158.**—(1) In the event of any disagreement between the Parties arising out of or in connection with this agreement which requires the agreement of the Parties jointly or the approval of the local highway authority and which cannot be resolved within 10 business days of the disagreement arising, either party may request a review of the issue in disagreement by the parties giving notice in writing to their senior representatives.

(2) The senior representatives will consider any such request and use all reasonable endeavours in good faith to reach agreement to resolve any disagreement.

(3) Where agreement is not reached by the senior representatives within 10 business days of a request being made under sub-paragraph (1), the disagreement may be the subject of an appeal to the Secretary of State under article 65 (appeals to the Secretary of State) of this Order.