

SCHEDULE [X]

FOR THE PROTECTION OF THE LOCAL HIGHWAY AUTHORITY

Application

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

Interpretation

2. In this Part of this Schedule—

“Commuted Sum” means the sum to be paid by the undertaker to the local highway authority for the future maintenance of Non-standard Highway Assets not previously forming part of the local highway which will be transferred to the local highway authority as calculated in accordance with paragraph 21 of this part of this Schedule

“Provisional Certificate” means a certificate issued by the local highway authority to certify that the Works to which the certificate relates have been completed in accordance with this Part and are available for use by the public;

“Maintenance Period” means the period starting from the date of commencement of the authorised development and ending upon the completion of the authorised development or the issue of the Final Certificate for the Works whichever is the later;

"Detailed Design" means such drawings and other information relating to the local highway, which must be in accordance with the detailed design required for approval by the Secretary of State under requirement 12 of Schedule 2 :

- (a) boundary, environmental and mitigation fencing;
- (b) road restraint systems (vehicle and pedestrian);
- (c) drainage and ducting;
- (d) earthworks;
- (e) road pavements;
- (f) kerbs, footways and paved areas;
- (g) traffic signs and road markings;
- (h) road lighting (including columns and brackets);
- (i) electrical work for road lighting and traffic signs;
- (j) highway structures;
- (k) landscaping, planting and any boundary features which will form part of the local highway; and
- (l) utility diversions
- (m) such other information as was submitted by the undertaker for the Secretary of State’s approval pursuant to requirement 12;

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

“Final Certificate” means a final certificate to be issued by the local highway authority when the provisions of paragraph 19 of this Part have been met

“local highway” means any public highway including public right of way which is maintainable or is intended at the completion of Works to be maintainable by the local highway authority;

“local highway authority” means Somerset County Council

“Non-standard Highway Assets” means highway assets which the local highway authority will become responsible for maintaining and which incur maintenance costs beyond the normal costs of maintaining the public highway having regard to the lists of standard and non-standard assets set out in paragraph 21 of this Part of this Schedule;

“Other Detailed Information” means:

- (a) a schedule of timings for the works, including dates and durations for any closures of any part of the local highway;
- (b) traffic management proposals including any diversionary routes and a Detailed Local Operating Agreement;
- (c) a schedule of condition of the affected local highway; and
- (d) where the local highway is occupied under this Order in connection with any Works but is not itself subject to Works, a specification of the condition in which the local highway will be returned post occupation

“Works” in this part of this Schedule means any works authorised by this Order undertaken on, to or under any local highway

Detailed Design Consultation

3.(1) The undertaker will allow and facilitate an appropriately qualified officer of the local highway authority to participate in the design process for the Works and will have reasonable regard to any views of that officer in finalising the detailed design prior to its submission to the Secretary of State for approval pursuant to requirement 12

(2) Participation under sub-paragraph (1) will be in the form of invitations to attend design meetings not less than once per calendar month and the provision to the local highway authority of such drawings, cross sections and design proposals as are required to allow the local highway authority to provide views on the detailed design proposals to the undertaker

Detailed Local Operating Agreement

4. (1) Before commencing the construction of, or the carrying out of any work authorised by Order which involves interference with a local highway (including interference with the use by the public of a local highway and temporary or permanent stopping up of any part of a local highway) the undertaker must use reasonable endeavours to agree with the local highway authority a Detailed Local Operating Agreement covering the following:

- (a) Communications and Customer Care: communication with stakeholders and identification of which party is responsible for each activity;
 - (b) Operational Areas – Scheme Operational Areas: definitions and scheme extents for the works areas, zone of influence and Free Recovery Area;
 - (c) Asset Handover: describing the scheme existing assets and activities to be undertaken to enable commencement and completion of works, and the party responsible for each;
 - (d) Asset Inspection;
 - (e) Routine Maintenance and Repair;
 - (f) Winter Maintenance and Severe Weather;
 - (g) Continuity of Technology;
 - (h) Occupancy Management;
 - (i) Incidents;
 - (j) Traffic Management: provides the key activities to be undertaken with regard to the design, installation, maintenance and removal of Traffic Management; and
 - (k) Claims made by and against the undertaker.
- (2) Any agreement completed under sub-paragraph (1) must continue in force until the completion of the authorised development or the issue of the Final Certificate, whichever is the later.
- (3) Where agreement cannot be reached under sub-paragraph (1), the terms of the detailed local operating agreement will be resolved by arbitration under article [45] (arbitration)

Detailed Design and Other Detailed Information Approval

- 5.(1) Before commencing the construction of, or the carrying out of any Works the undertaker must provide to the local highway authority the Detailed Design (as approved by the Secretary of State pursuant to requirement 12) and the Other Detailed Information
- (2) The undertaker must not commence construction of the Works to which the Detailed Design relates until approval has been given by the local highway authority to the Other Detailed Information
- (3) The Works must not be constructed except in accordance with the Detailed Design and Other Detailed Information as may be approved in writing by the local highway authority or as otherwise agreed in writing between the undertaker and the local highway authority

Inspection and Testing of Materials

6. (1) Any officer of the local highway authority duly appointed for the purpose may at all reasonable times, enter upon and inspect any part of the authorised development which—
- (a) is in, over, under or adjacent to any local highway, or

(b) which may affect any local highway or any property of the local highway authority, during the carrying out of the Works, and the undertaker shall give to such officer all reasonable facilities for such inspection

(2) The testing of materials used in any Works affecting local highways shall be carried out at the expense of the undertaker in accordance with Manual of Contract Documents for Highway Works. The local highway authority must be supplied with copies of all test certificates and results which have been requested by it in writing as soon as reasonably practicable. Notwithstanding the foregoing, the local highway authority have full power to test all or any materials used or proposed to be used in any work to the local highway and the undertaker must provide such information and materials as is reasonably necessary to facilitate such testing.

(3) The undertaker must not alter, disturb or in any way interfere with any property of the local highway authority on or under any local highway, or the access thereto (except to the extent authorised under the powers conferred by this Order) , without the prior written consent of the local highway authority.

Road Safety Audits

7. (1) The undertaker must procure that an appropriately qualified independent safety auditor has undertaken road safety audit stages 1, 2, 3 and 4 on the Works in accordance with DMRB Volume 5 Section 2 Part 2 (GG 119) or any replacement or modification of that standard and must provide copies of such audits to the local highway authority as soon as practicable.
- (2) The local highway authority must be invited to participate in the stage 2, 3 and stage 4 road safety audits conducted under sub-paragraph (1)
- (3) The undertaker must carry out at its own expense any works which the stage 3 and 4 road safety audits identify to the reasonable satisfaction of the local highway authority and prior to any local highway being transferred or returned to the control of the local highway authority
- (4) The undertaker will use reasonable endeavours to agree with the local highway authority a programme for any works to be carried out under sub-paragraph (3), which programme must include timing of any closures of any part of the highway, traffic management arrangements, signage and diversion routes where required.
- (5) The carrying out of works under sub-paragraph (3) are Works under this Order
8. In relation to those part of the Works to which the Road Safety Audits do not apply (comprising the sections of rights of way which do not interface with the local road network) upon notification by the undertaker that such Works have been undertaken and following an inspection of the Works by the local highway authority the undertaker will agree with the local highway authority any additional works which may be required to resolve any safety deficiencies or defects and a programme for the completion of those further works and will complete such works at its own expense to the reasonable satisfaction of the local highway authority.

Implementation of Works

9. Provision shall be made in accordance with the local highway authority's reasonable requirements at the site of the Works to prevent mud and other materials from being carried on to the adjacent local highway by vehicles and plant. The operational local highway in the vicinity of the site of the Works shall be swept as required to ensure its safe use at all times as a public highway.
10. The undertaker shall not, except with the consent of the local highway authority, erect or retain on or over a local highway to which the public continues to have access any scaffolding or other structure which obstructs the local highway.
11. Except in an emergency or where necessary to secure or maintain the safety of the public, no direction or instruction may be given by the local highway authority to the contractors, servants or agents of the undertaker regarding any Works without the prior consent in writing of the undertaker.
12. In exercising the powers conferred by the Order in relation to any local highway the undertaker shall have regard to the potential disruption of traffic which may be caused, shall seek to minimise such disruption so far as is reasonably practicable and shall at no time prevent or unreasonably impede access by emergency service vehicles to any property.
13. The undertaker must, if reasonably so required by the local highway authority, provide and maintain during such time as the undertaker may occupy any part of a local highway for the purpose of the construction of any part of the authorised development, temporary ramps for vehicular or pedestrian traffic, or both, and any other traffic measures required to protect the safety of road users in accordance with chapter 8 of the Traffic Signs Manual or as may be necessary to prevent undue interference with the flow of traffic in the local highway

Transfer of Highway Land and Rights

14. (1) If required by the local highway authority the undertaker shall execute and complete at the undertaker's expense a transfer to the local highway authority of any land and rights compulsorily acquired by the undertaker pursuant to articles [23 and 26] of the Order or otherwise for the construction, operation and maintenance of the local highway or to facilitate it, or as is incidental to it, at nil consideration PROVIDED THAT the undertaker has completed to the local highway authority's satisfaction all necessary works within the local highway for which that land and rights were acquired.
- (2) Sub-paragraph (1) above does not apply in relation to any land within the local highway compulsorily acquired by the undertaker that has been or is proposed to be permanently stopped up and rights extinguished pursuant to article 16 of the Order.

Defects

15. (1) Where the undertaker carries out any Works to any local highway it shall make good any defects in those works, including those defects notified to it by the local highway authority prior to the issue of the Final Certificate to the reasonable satisfaction of the local highway authority.
- (2) The carrying out of any remedial works required under sub-paragraph (1) are Works under this Order.

(3) The carrying out of any remedial works required under sub-paragraph (1) shall require the submission of, for the local highway authority's approval, such items of Detailed Design and Other Detailed Information to the local highway authority as the local highway authority deems to be reasonable in the circumstances but always including a description of the works to be carried out, a schedule of timings for the works, including dates and durations for any closures of any part of the local highway and traffic management proposals.

Indemnity

16. (1) The undertaker will hold the local highway authority harmless and indemnified from and against any liability, loss, costs or claims whatsoever arising under any statute or common law in respect of damage to property or personal injury or of the death of any person whomsoever arising out of or incidental to the carrying out of the Works (other than those arising out of or in consequence of any negligent act of the local highway authority) provided that no claim shall be settled or liability accepted by the local highway authority without first obtaining the written approval of the undertaker, such approval not to be unreasonably withheld or delayed AND FURTHER the undertaker will indemnify the local highway authority in respect of any claims costs or proceedings whatsoever arising under Part I and Part II of the Land Compensation Act 1973 in respect of the use of the Works or any part thereof.
- (2) The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by the local highway authority, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the undertaker from any liability under this Part.

Provisional Certificate

17. (1) When the undertaker considers that the Works have reached completion (which shall include the carrying out of a Stage 3 safety audit in accordance with GG19 of DMRB and the completion of works resulting from the audit and in the case of those Works not subject to a road safety audit the inspection of the works by the local highway authority and the completion of any further works required to address any safety deficiencies or defects) it shall notify the local highway authority and shall allow the local highway authority the opportunity to inspect the Works and the undertaker shall give proper consideration to any representations that are made by the local highway authority
- (2) On completion of the Works to the satisfaction of the local highway authority and in accordance with this Part the local highway authority shall issue the Provisional Certificate to the undertaker.

Maintenance

18. (1) Notwithstanding the provisions of Article 13 the undertaker shall maintain the local highway within the Order limits and the Works to the reasonable satisfaction of the local highway authority throughout the Maintenance Period

(2) If for any reason the maintenance of the Works or the local highway is not completed to the reasonable satisfaction of the local highway authority in accordance with this Part the local highway authority may require:

(a) the undertaker procures, at its own expense, the carrying out of such maintenance necessary in order for the local highway authority to be so satisfied; or

(b) the local highway authority shall carry out such necessary works and the undertaker shall indemnify the local highway authority for its costs in doing so.

(3) The undertaker shall indemnify the local highway authority against all claims for damages and compensation which may be brought against the local highway authority arising out of the maintenance of the Works and the local highway by the undertaker

(4) The undertaker and the local highway authority shall at all times co-operate with each other to enable the maintenance of the Works and local highway to be carried out promptly, effectively and without undue disruption to the existing highway network and in particular shall assist each other in the promotion and publication of any necessary traffic regulation orders and dealing with any other statutory requirements including those of any utility companies.

Final Certificate

19. No earlier than 52 weeks from the date of issue of the Provisional Certificate and provided that:

(a) all identified defects requiring remediation have been completed such that the local highway authority consider the Final Certificate may be properly issued;

(b) a Stage 4 safety audit has been carried out (if such Stage 4 safety audit is required in accordance with GG19 of DMRB in connection with the Works) and any additional works, alterations or amendments to the Works reasonably required by the local highway authority as a result of the Stage 4 safety audit are completed to the local highway authority's satisfaction;

(c) the undertaker has given the local highway authority an opportunity to inspect the Works and has given proper consideration to any representations that are made by the local highway authority; and

(d) the undertaker has paid to the local highway authority any Commuted Sum due in relation to the local highway to which the Provisional Certificate relates

(e) the undertaker has provided the local highway authority with such detailed information as the local highway authority shall reasonably require in relation to the Works as built

(f) all costs charges, expenses payable to the local highway authority pursuant to this Part have been paid

the local highway authority shall issue the Final Certificate.

Costs and Expenses

20. The undertaker must indemnify the local highway authority in respect of all costs, charges and expenses which the local highway authority may reasonably incur, have to pay or sustain—

- (a) in the examination or approval of the Other Detailed Information under this Part; and
- (b) in inspecting the construction of the Works including any works required by the local highway authority under this Part; and
- (c) in carrying out any surveys or tests by the local highway authority which are reasonably required in connection with the construction of the Works
- (d) in the transfer pursuant to paragraph 14 to the local highway authority of the land and rights acquired by the undertaker.

Commuted Sum for Maintenance of Non-Standard Highway Assets

21. (1) The undertaker must, within 3 months of the date of the approval of the Detailed Design under requirement 12, prepare a list of assets not previously forming part of the local highway for which the local highway authority will be responsible for maintenance following the completion of the Works.

(2) The undertaker must use reasonable endeavours to agree a schedule of items on the list agreed under sub-paragraph (1) which are Non-Standard Highway Assets having regard to the following:

(a) Standard highway assets include:

- (i) Carriageways surfaced in concrete asphaltic materials (non-pigmented binder and non-coloured aggregates)
- (ii) Carriageways in shared surface roads courtyards and housing squares surfaced in 200mm x 100mm x 80mm rectangular concrete block paving (optional)
- (iii) Footway surfaced in concrete asphaltic materials (non-pigmented binder or coloured aggregates)
- (iv) Footways adjacent to block paved carriageways also surfaced in 200mm x 100mm x 65mm thick concrete block paving (optional)
- (v) Cycleways surfaced in concrete asphaltic materials (red pigmented binders and/or aggregates)
- (vi) Pre-cast concrete kerbing
- (vii) Gully drainage, connection pipes and gravity draining highway carrier drains
- (viii) Galvanised pedestrian guard railing
- (ix) Standard highway lighting layouts, columns and lanterns
- (x) Standard illuminated and non-illuminated highway signs
- (xi) Passively safe sign posts where required for highway safety
- (xii) Bollards and marker posts manufactured from plastic derivatives or recycled plastic/rubber
- (xiii) Road markings

- (xiv) Grass verges
 - (b) Non-standard Highway Assets include:
 - (i) any culvert, bridge, retaining wall or other structure
 - (ii) Special features such as noise fencing, vehicle restraint barrier, pedestrian guard railing, knee rails and fences, gates
 - (iii) Landscaping features such as planting, trees, hedging
 - (iv) Sustainable Drainage Systems (“SuDS”) or non-standard highway drainage features such as:
 - (aa) Flow control devices and attenuation storage
 - (bb) SuDS including maintenance of any landscaping
 - (cc) Oil or petrol interceptors including the disposal of contaminated waste
 - (dd) Pumping stations and their energy charges
 - (ee) Watercourses and swales
- (3) Where the schedule prepared under paragraph (2) cannot be agreed, the determination of the schedule will be referred to arbitration under article 45 (arbitrator)
- (4) Following agreement of the schedule under sub-paragraph (2) or determination under sub-paragraph (3), the local highway authority must prepare a calculation of the Commuted Sum based on the maintenance the local highway authority considers to be required for the schedule of Non-standard Highway Assets agreed under sub-paragraph (2) or determined under sub-paragraph (3) and must under reasonable endeavours to agree it with the undertaker
- (5) The undertaker must be provided with a complete breakdown of the calculation of the Commuted Sum by the local highway authority under sub-paragraph (4) including any assumptions used
- (6) Where the calculation prepared under sub-paragraph (4) cannot be agreed, the determination of the Commuted Sum will be referred to arbitration under article [45] (arbitration)
- (7) The undertaker must pay the Commuted Sum to the local highway authority in one instalment within 10 days of the later of:
 - (a) the date of completion of the authorised development
 - (b) The date of agreement of the value of the Commuted Sum under sub-paragraph (4) or determination under sub-paragraph (6)

Works in the Event of an Emergency or Danger to the Public

22. 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.

Dispute Resolution

23. Any difference arising between the undertaker and the local highway authority under this Part of this Schedule (other than in difference as to the meaning or construction of this Part of this Schedule) shall be resolved by arbitration under article [45] (arbitration).