

PART ~~14~~3

FOR THE PROTECTION OF WARWICKSHIRE COUNTY COUNCIL – AS HIGHWAY AUTHORITY

Application

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

Interpretation

2.—(1) The terms used in this Part of this Schedule are as defined in article 2 (interpretation) of this Order save where inconsistent with sub-paragraph (2) which shall prevail; and

(2) In this Part of this Schedule—

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

- (a) as constructed drawings in both PDF and AutoCAD DWG formats for anything designed by the undertaker;
- (b) list of suppliers and materials used, test results and CCTV surveys;
- (c) product data sheets, technical specifications for all materials used;
- (d) as constructed information for any utilities discovered or moved during the works;
- (e) method statements for works carried out;
- (f) in relation to road lighting, signs and traffic signals any information required by Series 1400 of the Specification for Highway Works;
- (g) [plan of temporary signage indicating new road layouts;]
- (h) organisation and methods manuals for all products used in the construction of the county highway works;
- (i) as constructed programme;
- (j) test results and records required by the Detailed Design Information and during the construction phase of the project;
- (k) RSA3 and exceptions agreed; and
- (l) health and safety file;

“the bond sum” means the sum equal to 200% of all the costs of the carrying out of the phase of the county highway works concerned and 200% of the commuted sum relating to that phase or such other sum agreed between the undertaker and the local highway authority;

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

“contractor” means any contractor or sub-contractor appointed by the undertaker to carry out the county highway works or any phase of the county highway works and approved by the local highway authority pursuant to paragraph 3(2) below;

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

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

- (a) site clearance details;
- (b) boundary environmental and mitigation fencing;
- (c) road restraints systems (vehicle and pedestrian) and supporting Road Restraint Risk Appraisal Process assessment (RRRAP);
- (d) drainage and ducting;
- (e) earthworks including supporting geotechnical assessments required by HD22/08 and any required Strengthened Earthworks Appraisal Form certification (SEAF);
- (f) pavement, pavement foundations, kerbs, footways and paved areas;
- (g) traffic signs and road markings;
- (h) traffic signal equipment and associated signal phasing and timing detail;
- (i) road lighting (including columns and brackets);
- (j) electrical work for road lighting, traffic signs and signals;
- (k) highway structures;
- (l) [Stage 2 Road Safety Audit and exceptions;]
- (m) landscaping;
- (n) utilities diversions;
- (o) [topographical survey;
- (p) identification of any land to be dedicated as highway; and
- (q) pre- construction health and safety information where relevant to the phase concerned;

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

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

“local highway authority” means—

- (a) in respect of Works Nos. 9 to 15 and 17, Leicestershire City Council; and
- (b) in respect of Work No. 16, Leicestershire County Council and Warwickshire County Council or such of them who assumes responsibility for that work as highway authority pursuant to section 8 of the 1980 Act or by agreement;

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

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

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

“Road Safety Audit” means an audit carried out in accordance with the Road Safety Audit Standard;

“Road Safety Audit Standard” means the Design Manual for Roads and Bridges Standard GG 119 or any successor document;

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

Prior approvals and security

3.—(1) No work must commence on any phase of the county highway works until the detailed design information and a programme of works in respect of that phase has been submitted to and approved by the local highway authority.

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

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

(4) No work must commence on any phase of the county highway works until a Stage 2 Road Safety Audit has been carried out in respect of that phase and all issues raised incorporated into an amended design approved by the local highway authority or any relevant exceptions approved by the local highway authority.

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

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

(7) No works must commence on any phase of the county highway works until the undertaker has:

- (a) provided confirmation of ownership to the local highway authority for any land which is to be dedicated as highway following completion of the county highway works;
- (b) obtained all necessary consents and approvals;
- (c) provided a completed collateral warranty to the local highway authority in accordance with paragraph 12 of this Part of this Schedule ;
- (d) provided a completed construction contract for that phase of the highway works to the local highway authority;
- (e) provided a copy of the certificate of insurance to the local highway authority obtained in accordance with paragraph 10 of this Part of this Schedule.

Carrying out of works

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

(2) The undertaker must comply with the ~~Local-local Highway-highway Authorities-authority's~~ road space booking processes for the carrying out of each phase of the county highway works.

(3) Each phase of the county highway works must be carried out to the satisfaction of the local highway authority in accordance with—

- (a) the relevant detailed design information and a programme of works approved pursuant to paragraph 3(1) of this Part of this Schedule or as subsequently varied by agreement between the undertaker and the local highway authority;
- (b) the Design Manual for Roads and Bridges, the Specification for Highway Works (contained within the Manual of Contract Documents for Highways Works), the Traffic Signs Manual and the Traffic Signs Regulations and General Directions 2016 and any amendment to or replacement thereof for the time being in force save to the extent that they are inconsistent

Commented [ES1]: As previously highlighted, our client is not able to agree to be subject to the usual road space booking requirements because (1) our client is bringing forward a nationally significant development and cannot be delayed because of other developers undertaking highway works; (2) our client is carrying out works on roads within the areas of three different highway authorities and needs to be able to ensure these line up. It cannot be subject to three different sets of road booking requirements. We have therefore kept the drafting consistent with all relevant authorities.

We note that our client is already required to give 28 days notice of commencement of development under 4(1).

Commented [CG2R1]: WCC cannot agree to 14 days notice of road space booking. This is unreasonable and unworkable. WCC have a policy and code of practice that all developers have to comply with for road booking which requires 84 days notice for major works. Developers regularly have to co-ordinate cross boundary road space booking in order to deliver development.

Commented [ES3R1]: drafting agreed

with the highway plans or a departure from such standards has been approved by the local highway authority;

- (c) such approvals or requirements of the local highway authority that are required by the provisions of paragraph 3 of this Part of this Schedule to be in place prior to the relevant phase of the county highway works being undertaken; and
- (d) all aspects of the Construction (Design and Management) Regulations 2015 or any statutory amendment or variation of the same and in particular the undertaker as client shall ensure that all client duties (as defined in those regulations) are undertaken to the satisfaction of the local highway authority.

~~(4)~~ The undertaker must permit and require the contractor to permit at all reasonable times persons authorised by the local highway authority (whose identity must have been previously notified to the undertaker by the local highway authority) to gain access to the land upon which the county highway works are being carried out for the purposes of inspection and supervision and the undertaker must provide to the local highway authority contact details of the nominated persons with whom the local highway authority should liaise during the carrying out of the county highway works.

~~(4)(5)~~ Unless otherwise directed by the local highway authority or as provided for in this subparagraph 5, the undertaker shall not cover up or put out of view any county highway works without the approval of the local highway authority. The undertaker shall give at least 5 working days written notice to the local highway authority whenever any of the county highway works are ready or about to be ready for examination. The undertaker shall give the local highway authority full opportunity to examine any works about to be covered up or put out of view and to examine foundations before any permanent work is placed on top. The Local Highway Authority shall arrange to inspect the relevant county highway works following receipt of the written notice, and will do this within a reasonable timescale and without undue delay

~~(5)(6)~~ At any time during the carrying out of the county highway works the local highway authority may from time to time order such changes to the County Highway Works as it considers necessary. Any such changes to the county highways works are hereinafter called “necessary changes” and the undertaker shall ensure that such necessary changes are implemented by the nominated person via the construction contract. The local highway authority may from time to time request such changes to the county highway works as it considers desirable (as opposed to necessary) for the satisfactory completion and functioning of the county highway works in consultation and agreement with the undertaker provided always that the local highway authority’s decision as to whether changes are necessary or desirable shall be final.

~~(6)(7)~~ If at any time the undertaker does not comply with any of the terms of this Part of this Schedule in respect of any phase of the county highway works having been given notice of an alleged breach and an adequate opportunity to remedy it by the local highway authority then the local highway authority shall on giving to the undertaker 14 days’ notice in writing to that effect be entitled to either—

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

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

~~(7)(8)~~ If at any time the undertaker in carrying out any phase of the county highway works causes any damage or disruption to the local road network not hereby authorised then the local highway authority is to give notice of such damage or disruption and allow the undertaker 14 days to remedy the problem. Should the undertaker fail to adequately remedy the problem to the satisfaction of the local highway authority then the local highway authority, on giving the undertaker 7 days’ notice in writing to that effect, is entitled to carry out such necessary works deemed appropriate to remedy the damage or disruption, and the undertaker shall within 28 days of receipt of the itemised costs pay to the local highway authority the costs so incurred by the local highway authority in undertaking this work.

~~(8)(9)~~ Nothing in this Part of this Schedule shall prevent the local highway authority from carrying out any work or taking such action as deemed appropriate, without prior notice to the undertaker, in the event of an emergency or danger to the public the cost to the local highway authority of such work or action being chargeable to and recoverable from the undertaker if the need for such action arises from the carrying out of the county highway works.

~~(9)(10)~~ The undertaker in carrying out each phase of the county highway works must at its own expense divert or protect all utilities as may be necessary to enable the county highway works to be properly carried out and all agreed alterations to existing services must be carried out to the reasonable satisfaction of the local highway authority.

~~(10)(11)~~ The undertaker must notify the local highway authority of the intended date of opening of each phase to public traffic not less than 14 days in advance of the intended date and the undertaker must notify the local highway authority of the actual date that each phase is open to public traffic on each occasion within 14 days of that occurrence.

Payments

5.—(1) The undertaker must fund the whole of the cost of the county highway works and all costs incidental to the county highway works and must also pay to the local highway authority in respect of each phase of the county highway works a sum equal to the whole of any costs and expenses which the local highway authority incur including costs and expenses for using external staff and resources as well as costs and expenses of using in house staff and resources in relation to the county highway works and arising out of them and their implementation including—

- (a) the checking and approval of all design work carried out by or on behalf of the undertaker for that phase;
- (b) costs in relation to agreeing the programme of works for that phase;
- (c) the carrying out of the inspection of that phase; and
- (d) all legal and administrative costs in relation to (a) and (b) and (c) above, together comprising “the estimated costs”.

(2) The undertaker must pay to the local highway authority upon demand and prior to such costs being incurred the total costs that the local highway authority believe will be properly and necessarily incurred by the local highway authority in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the county highway works provided that this paragraph shall not apply to the making of any orders which duplicate orders contained in this Order.

(3) The undertaker and the local highway authority must agree a schedule of the estimated costs to be incurred pursuant to sub-paragraph (1) above in respect of each phase prior to the commencement of that phase.

(4) The undertaker must make the payments referred to in sub-paragraph (1) as follows—

- (a) the undertaker must pay a sum equal to the agreed estimated costs to the local highway authority prior to the local highway authority undertaking those tasks in respect of any phase of the county highway works; and
- (b) if at any time or times after the payment in respect of a phase referred to in paragraph (5)(4)(a) of this Part of this Schedule has become payable the local highway authority reasonably estimates that the costs in respect of that phase referred to in paragraph (1) above will exceed the estimated costs for that phase it may give notice to the undertaker of the amount by which it then reasonably estimates those costs will exceed the estimated costs (“the excess”) and the undertaker must pay to the local highway authority within 28 days of the date of that notice a sum equal to the excess.

(5) Prior to the issue of the final certificate for each phase of the county highway works pursuant to paragraph 7 of this Part of this Schedule the local highway authority must give the undertaker a final account of the costs referred to in sub-paragraph (1) and within 28 days from the expiry of the 91 day period—

- (a) if the account shows a further sum as due to the local highway authority the undertaker must pay to the local highway authority the sum shown due to it in that final account; and
- (b) if the account shows that the payment or payments previously made have exceeded those costs the local highway authority must refund the difference to the undertaker.

(6) If any payment due under any of the provisions of this Part of this Schedule is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the party to whom it was due interest at 4% above the Bank of England base rate for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

Provisional certificate and defects and maintenance period

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

- (a) a Stage 3 Road Safety Audit for that phase has been carried out;
- (b) any resulting recommendations have been complied with and any exceptions agreed;
- (c) the undertaker has provided a plan clearly identifying the extent of any land which is to become highway maintainable at public expense by the local highway authority upon the issue of the final certificate referred to in paragraph 7 of this Part of this Schedule;
- (d) the undertaker providing confirmation that any additional land which is to be dedicated as highway maintainable at public expense is so dedicated; and
- (e) the as built information has been provided to the local highway authority,

the local highway authority must issue a provisional certificate of completion in respect of that phase of the county highway works within 10 working days of receipt of a written application.

(2) The undertaker must at its own expense remedy any and all defects arising out of defective design materials or workmanship or of any other nature whatsoever in that phase of the county highway works as reasonably required to be remedied by the local highway authority and identified by the local highway authority during a period of 12 months from the date of the provisional certificate in respect of that phase.

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

Final certificate

7.—(1) The undertaker must apply to the local highway authority for the issue of the final certificate in respect of each phase at the expiration of the 12 month period in respect of that phase referred to in paragraph 6(2) of this Part of this Schedule or if later on the date on which any defects or damage arising during that period which are the responsibility of the undertaker under the provisions of paragraph 6 of this Part of this Schedule have been made good to the reasonable satisfaction of the local highway authority.

(2) If the provisions of sub-paragraph (1) are satisfied and all fees due to the local highway authority under paragraph 5 of this Part of this Schedule the local highway authority must issue a final certificate for the phase of the county highway works concerned, such certificate not to be unreasonably withheld or delayed.

Security

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

- (a) prior to the commencement of each phase the county highway works within that phase will be secured by a bond from a bondsman first approved by the local highway authority

drafted substantially as detailed in Form 2 contained at paragraph 15 of this Part of this Schedule, or such other form that may be agreed between the undertaker and the local highway authority to indemnify the local highway authority against all losses, damages, costs or expenses arising from any breach of any one or more of the obligations of the undertaker in respect of that phase of the county highway works under the provisions of this Part of this Schedule provided that the maximum liability of the bond shall not exceed the bond sum relating to that phase.

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

- (a) on receipt of written confirmation (including receipt of receipted invoices evidencing payments made by the undertaker to the contractors) from the undertaker of the payments made from time to time to the contractor the local highway authority must in writing authorise the reduction of the bond sum by such proportion of the bond sum as amounts to 50% of those payments provided that an evaluation of the county highway works completed and remaining has been carried out by the undertaker and audited and agreed by the local highway authority to ensure that the stage of completion of the works is relative to the payments made by the undertaker to the contractors. The local highway authority will only be required to provide the said authorisation should it be satisfied that the monies remaining secured by the bond sum will be sufficient to cover all remaining costs and liabilities anticipated to be incurred in completing the county highway works plus an additional 10%;
- (b) within 20 working days of completion of each phase of the county highway works (as evidenced by the issuing of the provisional certificate in respect of that phase pursuant to paragraph 6(1) of this Part of this Schedule) the local highway authority must in writing release the bond provider from its obligations in respect of 50% of the bond sum relating to that phase save insofar as any claim or claims have been made against the bond and/or liability on its part has arisen prior to that date; and
- (c) Following twelve months after the issue of the final certificate for each phase of the county highway works referred to in paragraph 7 of this Part of this Schedule the local highway authority must in writing reduce the amount of the bond to a sum representing 25% of the bond sum relating to that phase save insofar as any claim or claims have been made against the bond or liability on its part has arisen prior to that date;

~~(d)~~ following the expiration of three years from the date of issue of the final certificate for each phase of the county highway works referred to in paragraph 7 of this Part of this Schedule the local highway authority must in writing release the bond provider from all its obligations in respect of the bond relating to that phase save insofar as any claim or claims have been made against the bond or liability on its part has arisen prior to that date.

Commuted sums

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

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

Insurance

10. The undertaker must prior to commencement of the county highway works effect public liability insurance with an insurer in the minimum sum of £10,000,000.00 (Ten million pounds) for any one claim against any legal liability for damage loss or injury to any property or any person arising out of or in connection with the execution of the county highway works or any part thereof by the undertaker.

Commented [ES4]: As above, this amendment is not reasonable, particularly given the nature of the works being carried out on WCC roads. Once the works are adopted highway, they will be maintainable at public expense and so WCC will not need to retain the bond following this date.

Commented [CG5R4]: As above - not agreed

Commented [ES6R4]: this is agreed by the applicant based on the scale and nature of the highway works within WCC

Indemnification

11.—(1) The undertaker must in relation to the carrying out of the county highway works take such precautions for the protection of the public and private interest as would be incumbent upon it if it were the highway authority and must indemnify the local highway authority from and against all costs expenses damages losses and liabilities arising from or in connection with or ancillary to any claim demand action or proceedings resulting from the design and carrying out of the county highway works including for the avoidance of doubt claims under Part 1 of the Land Compensation Act 1973; provided that—

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

Warranties

12. The undertaker must procure warranties from the contractor and designer of each phase to the effect that all reasonable skill care and due diligence will be exercised in designing and constructing that phase including the selection of materials, goods, equipment and plant and that any patent or latent damage or defect in the county highway works will be remedied and made good for a period of 12 years from the issue of the final certificate such warranties to be provided to the local highway authority before that phase commences.

Approvals

13.—(1) Any approvals, certificates, consents or agreements required or sought from or with the local highway authority pursuant to the provisions of this Part of this Schedule must not be unreasonably withheld or delayed and must be given in writing save that any such approvals, certificates, consents or agreements shall be deemed to have been given if it is neither given nor refused within 42 days of the specified day.

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

- (a) the day on which particulars of the matter are submitted to the local highway authority under the provisions of this Schedule; or
- (b) the day on which the undertaker provides the local highway authority with any further particulars of the matter that have been reasonably requested by the local highway authority or within 28 days of the date in sub-paragraph (a).

whichever is the later.

Expert Determination

~~13.14.~~—(1) Article 52 (arbitration) does not apply to this Part 3 of Schedule 13 except in respect of sub-paragraph (5).

(2) Any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 28 days of the notification of the dispute.

Commented [ES7]: WCC drafting: (1) Any approvals, certificates, consents or agreements required or sought from or with the local highway authority pursuant to the provisions of this Part of this Schedule must not be unreasonably withheld or delayed and must be given in writing

Commented [ES8R7]: ES Comment: Our client requires a mechanism to be included to avoid delays in the council approving the details provided. The Council would be able to refuse the application on day 41 to avoid approval being deemed if it were not satisfied with the details provided.

Commented [JA9R7]: Cannot agree to a deemed consent clause, as a public body WCC has to act reasonably, no detailed information has been provided in respect of the highway schemes so we are not in a position to say whether or not reviews can reasonably be carried out within 42 days.

Commented [ES10R7]: Deemed consent is vital to providing certainty of delivery of a project of this nature

Commented [JA11R7]: WCC cannot agree to this, as previously replied there has been no receipt of any detailed design work or utilities information to understand the scale and complexity of the proposed highway scheme

Commented [ES12R7]: Our client has agreed as many of WCC's requirements as it can however, the drafting shown sets out its final position on this issue.

As previously stated our client requires deemed approvals to ensure it is able to proceed with the project without unreasonable delays. While our client understands WCC concerns with deemed approval, this is not a case of it imposing a deemed approval on WCC. The drafting simply ensures that there is a process so that if WCC fails to engage, the development is not stalled. We do not consider this drafting unreasonable as it would be open to WCC to refuse the application if it had concerns over the information submitted to avoid deemed approval being granted.

Deemed approvals have been discussed at numerous examinations and have been approved in numerous made DCOs including DCOs made by the SoS for Transport dealing with highway works.

Commented [ES13R7]: For the avoidance of doubt, our client's position is that deemed approval provisions are required to secure the delivery of the Project. For consistency the applicant is taking this approach with all highway authorities.

Commented [JA14R7]: WCC fully understand the position outlined, however as a public body WCC cannot unreasonably delay processing applications it receives, nor engage in an approved DCO process. As previously advised, WCC has not received sufficient detailed design work or investigations to understand the scale and complexity of the proposed scheme, the processing of such information as an equivalent to a section 278 application will take considerably longer than 42 days and therefore it is not considered

(4) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert’s appointment;
- (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission; and
- (c) issue a decision within 42 days of receipt of the submissions under paragraph (b); and (d) give reasons for the decision.

(5) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 52.

(6) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

~~14.15.~~ Form 2 as referred to in paragraph 8 of this Part of this Schedule—

Form 2

Bond – Local Highway Authority

BY THIS BOND [] [(Company Regn No)] whose registered office is situate at [] (“**the undertaker**”) and [] [(Company Regn No)] whose registered office is situate at [] (“**the Surety**”) are jointly and severally bound to [] of [] (“the []”) this [] day of [] 202[] in the sum of [] pounds (£[Surety Sum]) to the payment of which sum the undertaker and the Surety hereby jointly and severally bind themselves their successors and assigns

WHEREAS under a Development Consent Order known as The Hinckley National Rail Freight Interchange Order 202[X] (“the DCO”) the undertaker is empowered to commence execute perform and complete the highway works mentioned therein in such manner and within such time and subject to such conditions and stipulations as are particularly specified and set forth in the DCO and also to pay to the local highway authority such sums as are therein provided **NOW THE CONDITIONS** of this Bond are such that if the undertaker shall duly observe and perform all the terms provisions covenants conditions and stipulations of Part 3 of Schedule 13 of the DCO on the undertaker’s part to be observed and performed according to the true purpose intent and meaning thereof or if on default by the undertaker the Surety shall satisfy and discharge the damages sustained by the local highway authority thereby up to the amount of this Bond then this obligation shall be null and void but otherwise shall be and remain in full force and effect in accordance with the provisions of the DCO (and including any reductions as provided for in the DCO) but no allowance of time by the local highway authority under the DCO nor any forbearance or forgiveness in or in respect of any matter or thing concerning the DCO on the part of the local highway authority shall in any way release the Surety from any liability under this Bond

It is hereby agreed that this Bond will be reduced and released in accordance with paragraph 8 of Part 3 of Schedule 13 of the DCO.

[Attestation]