

SEA LINK

EN020026

Response to Action Point 32 from CAH2
requested for Deadline 7

Suffolk County Council



Table Glossary of Acronyms

<i>DCO</i>	<i>Development Consent Order</i>
<i>dDCO</i>	<i>Draft Development Consent Order</i>
<i>ES</i>	<i>Environmental Statement</i>
<i>ExA</i>	<i>The Examining Authority</i>
<i>JPEU</i>	<i>Joint Emergency Planning Unit</i>
<i>LLFA</i>	<i>Lead Local Flood Authority</i>
<i>NSIP</i>	<i>Nationally Significant Infrastructure Project</i>
<i>PPA</i>	<i>Planning Performance Agreement</i>
<i>PRoW</i>	<i>Public Rights of Way</i>
<i>OWSI</i>	<i>Outline Written Scheme of Investigation</i>
<i>REAC</i>	<i>Register of Environmental Actions and Commitments</i>
<i>SCCAS</i>	<i>Suffolk County Council Archaeological Service</i>

“The Council” / “SCC” refers to Suffolk County Council.

Purpose of this Submission

The document has been prepared by Suffolk County Council provide wording for protective provisions in the DCO for the Council in its capacity as local highway authority as requested by the Examining Authority in its list of Action Points following Compulsory Acquisition Hearing 2. A tracked changes version (from page 5) and a clean version (from page 27) of SCC’s proposed wording for protective provisions are included in this submission.

Background

1. It has not been possible to agree the Protective Provisions (“PPs”) with the applicant during the Examination and, at Deadline 7, SCC is depositing clean and track-changed versions of the PPs, as they are proposed to be amended by SCC. SCC is willing to continue discussions on the form and content of the PPs during the post-examination period.
2. SCC’s proposed amendments are designed to achieve two goals: maintain consistency with SCC’s standard arrangements (as captured in their section 278 agreement) and to address shortcomings identified in arrangements arising from other development consent orders.

Comments on certain provisions

3. **New paragraph 1(2)** – this is a “for the avoidance of doubt” provision which distinguishes between approvals sought under the PPs and approvals sought under **requirement 12** (highway works).
4. **Paragraph 2(2)** – definition of “approval period” – SCC considers working days (rather than calendar) are the most appropriate method of calculation.
5. **Paragraph 2(2)** – definition of “as built information” – this definition is new. On substantial completion of highway works, it is essential SCC receives this information. The need to provide the “as built information” is included in **paragraph 14(2)(d)**.
6. **Paragraph 2(2)** – definition of “bond” – this definition is new and essential. A bond is always required when SCC enters into a section 278 agreement with a developer. It is needed to put the highway back into a fit state for use in a timely fashion without SCC having to take the developer to court. It is important SCC has a means to take these steps without having to take costly enforcement action which would also take lots of time. Absent a bond, SCC is deprived of that certainty. The definition is an important part of amended **paragraph 22 (security)** and SCC’s preferred form of bond is included as an Annex to the PPs.
7. **Paragraph 2(2)** – definition of “commuted sum” – this definition is new. It is to be paid towards the future maintenance of the asset being provided to SCC. Corresponding references are included in **paragraphs 6(3)(c)(ix) and 10(1)(g)**.
8. **Paragraph 2(2)** – definition of “detailed design information” – this definition is new. The undertaker must provide the detailed design information before formal approval. A corresponding reference is included in **paragraphs 6(2)**.
9. **Paragraph 2(2)** – definition of “final completion” – this definition is new. While the PPs prepared by the applicant referred to “final completion” there was no definition of the term. For certainty, SCC has included a definition. Corresponding references are included in **paragraphs 15(6), 16(4) to 16(6) and 24**.

10. **Paragraph 2(2)** – definition of “maintenance period” – this definition is new. It is important the period of for the temporary highway works runs from substantial completion of works to restore the highway to its previous condition (and not from substantial completion of those works).
11. **Paragraph 2(2)** – definition of “surety” – this definition is new and is related to the definition of bond, amended **paragraph 22 (security)** and SCC’s preferred form of bond in the Annex to the PPs.
12. **Paragraph 2(2)** – definition of “performance figure” – this definition is new. It is related to new **paragraph 10 (commencement)** and must be approved in writing by SCC before any highway works can commence.
13. **Paragraph 2(2)** – definition of “works programme” – this definition is new and is related to new **paragraph 5**. The works programme must be provided 3 months before highway works commence. The programme is needed to allow SCC to plan for the works and ensure arrangements are properly co-ordinated with other works which might be planned for a certain time.
14. **Paragraph 10 (commencement)** – this paragraph is new and sets out, consistent with SCC’s usual arrangements, the information that must be provided to SCC before any phase or element of the highway works commences.

Next steps

15. SCC intends to update the Secretary of State on the status of the PPs once the ExA’s report and recommendation has been sent to the Secretary of State. Absent agreement on the PPs, SCC considers its PPs ought to be included in the Order because these align with SCC’s usual arrangements.

Protective Provisions (Tracked Changes)

PART [●] FOR THE PROTECTION OF THE HIGHWAY AUTHORITIES

Application etc.,

1. (1) The provisions of this Part of this Schedule apply for the protection of the highway authority and have effect unless otherwise agreed in writing between the undertaker and the relevant highway authority-

(2) Any approval, certificate or consent granted under this Part is separate from any approval the undertaker must obtain under requirement 12 (highway works) of Schedule 3 (requirements).

Interpretation

2. (1) Where the terms defined in article 2 (interpretation) of this Order are inconsistent with subparagraph (2), the latter prevail.

(2) In this Part of this Schedule –

“**1980 Act**” means the Highways Act 1980;

“**approval period**” means, unless otherwise agreed between the parties acting reasonably:

- (a) in respect of a request for approval for ~~Minor Works~~minor works or works required to be undertaken where there is an emergency, a period of 14 working days or less;
- (b) in respect of a request for approval for ~~Major Works~~major works, a period of 28 working days; and
- (c) in respect of a request for approval which comprises both ~~Minor Works~~minor works and ~~Major Works~~major works, a period of 28 working days,

“**as built information**” means one electronic copy of the following information where the relevant highway authority deems it reasonably necessary –

- (a) as constructed drawings in both PDF and AutoCAD DWG formats for anything designed by the undertaker;
- (b) list of suppliers and materials used, as well as any relevant test results and CCTV surveys (if required to comply with DMRB standards);
- (c) product data sheets and technical specifications for all materials used;
- (d) as constructed information for any utilities discovered or moved during the works;

(e) in relation to road lighting, signs, and traffic signals any information required by Series 1300 and 1400 of the specification for highway works or any replacement or modification of it;

(f) test results and records as required by the detailed design information and during construction phase of the project;

(g) a stage 3 road safety audit subject to any exceptions to the road safety audit standard as agreed by the undertaker and the relevant highway authority;

(h) the health and safety file; and

(i) such other information as is required by the relevant highway authority to be used to update all relevant databases;

“balancing payment” means a fee calculated pursuant to Paragraph [17], be calculated and agreed separately with the relevant highway authority;

“bond” means the bond with the surety, such bond to be in the form substantially in accordance with that set out in the Annex to this Part of this Schedule;

“CDM regulations” means the Construction (Design and Management) Regulations 2015;

“certificate of final completion” means any of the certificates referred to in Paragraphs [~~13~~15 and 1416];

“certificate of substantial completion” means any of the certificates referred to in Paragraph [~~12~~14];

“commuted sum” means the sum to be paid by the undertaker to the relevant highway authority as a contribution towards the future maintenance of the asset being provided, adopted, or transferred, , as calculated in accordance with paragraph [xxx] of this Part of this Schedule;

“detailed design information” means such of the following drawings, specifications and calculations as are relevant to the specific works –

(a) general layout including highway boundary and order limits;

(b) site clearance details;

(c) boundary, environmental and mitigation fencing;

(d) road restraints systems and supporting road restraint risk appraisal process assessment;

(e) drainage and ducting as required by DMRB CD 535 Drainage asset data and risk management and DMRB CS551 Drainage surveys – standards for Highways;

(f) earthworks including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk and any required strengthened earthworks appraisal form certification;

(g) pavement, pavement foundations, kerbs, footways and paved areas;

- (h) traffic signs and road markings;
- (i) traffic signal equipment and associated signal phasing and timing detail;
- (j) road lighting (including columns and brackets);
- (k) regime of foundation testing;
- (l) electrical work for road lighting, traffic signs and signals;
- (m) highway structures and any required structural approval in principle;
- (n) temporary traffic management including temporary restrictions on traffic, diversion routes and phasing;
- (o) landscaping;
- (p) proposed departures from DMRB standards;
- (q) walking, cycling and horse riding assessment and review report;
- (r) stage 1 and stage 2 road safety audits and exceptions agreed;
- (s) utilities diversions;
- (t) topographical survey;
- (u) health and safety information including any contamination or hazardous materials identified within the site; and
- (v) other such information that may be required by the relevant highway authority to be used to inform the detailed design of the specified works;

“Director” means, in Suffolk, Suffolk County Council's Executive Director of Growth, Highways and Infrastructure or other officer of the County Council acting under his hand.

“extraordinary expense” means the cost of repairing damage to any highway to which an existing condition survey relates pursuant to Paragraph [78] and which the relevant highway authority consider is directly attributable to use of those highways by extraordinary traffic as a result of the ~~Project~~authorised project over and above the average cost of maintaining those highways;

“final completion” means, in respect of any new permanent highway works” —~~means, the~~ completion of the maintenance period and resolution of any defects to the reasonable satisfaction of the relevant highway authority and the resolution of all matters identified during any road safety audit before the relevant highway authority takes over responsibility for maintenance;

“highway works” – means any works which fall within the sub-paragraph (j) (temporary accesses) of the definition of “pre-commencement operations” in article 2(1) (interpretation) and the works, activities or operations listed in Schedules [5 to 9] and Schedule [13] of the Order, any other works, activities or operations that are required to be undertaken on, to, above, adjacent, near or under any part of the highway as shown on the accompanying plan for each phase or element of the highway, works and for which the consent of the relevant highway authority is required pursuant to the Order;

“initial checking fee” means a fee calculated pursuant to Paragraph [1719], be calculated and agreed separately with the relevant highway authority, in accordance with the authority’s usual charges;

“maintenance period” means the period during which the undertaker is responsible for maintaining the highway works as follows –

- (a) for temporary highway works, 12 months from substantial completion of works to restore the highway to its previous condition;
- (b) for permanent highway works, 12 months from substantial completion of those works; and
- (c) in the case of landscaping and planting, the period of 5 years from completion of planting.

“major works” means ~~Highway Works~~highway works of a substantive nature including, but not limited to, the construction of new temporary or permanent accesses, the upgrading of existing accesses and/or the realignment of existing carriageway;

“minor works” means any ~~Highway Works~~highway works which are not ~~Major Works~~major works including, but not limited to, the removal of street furniture, the erection of temporary signage, the erection of temporary scaffolding and/or the carrying out of vegetation pruning/trimming (or similar operations) in respect of an existing access arrangement;

“senior representatives” means the [project director] on behalf of the undertaker and persons notified to the undertaker by the relevant highway authority as being their senior representatives.

“performance figure” means the reasonable estimate of the cost (including the costs associated with statutory undertakers work and traffic management) plus 10% in respect of the any phase or element of the highway works submitted to and agreed by the Director pursuant to paragraph [10 (commencement)] or as amended from time to time following the approval of the Director at the request of the Developer;

“permit schemes” means as defined in Article 2 (Interpretation) of the draft Order.

“road safety audits” means the evaluation of each and all of the ~~Highway Works~~highway works, in accordance with Standard GG 119 (Revision 2.01) of the Department for Transport’s Design Manual for Roads and Bridges or any superseding Standard, in order to identify potential road safety problems that may affect any users of the highway and to recommend measures to mitigate or remove those problems;

“security” means, in respect of any phase or element of the ~~Highway Works, either:~~highway works,

- (a) ~~a letter of credit or~~ a bank bond from an acceptable credit provider in favour of the relevant highway authority to cover the undertaker’s liability to that highway authority for an amount of not less than £10,000,000 (ten million pounds); ~~or;~~
- (b) ~~such other information that evidences to the reasonable satisfaction of the relevant highway authority that the undertaker has a tangible net worth of not less than £10,000,000 (ten million pounds).~~

“substantial completion” means complete to the reasonable satisfaction of the relevant highway authority and so that the ~~Highway Works~~highway works in question can be used for the purpose and operate in the manner for which they were designed subject to the resolution of any matters raised in the stage 3 road safety audit and marks the commencement of maintenance period for the restoration of new highway works;

“surety” means the surety for the bond who has been approved by the Director pursuant to paragraph 10 (commencement) or as amended from time to time following the approval of the Director at the request of the undertaker;

“temporary works period” means such period of time as is agreed between National Grid and the relevant highway authority within which any Highway Works of a temporary nature are permitted to remain in situ on the highway, in each case such period of time to begin immediately following Substantial Completion of those ~~Highway Works;~~highway works;

“works programme” means a written programme outlining the anticipated design (including consenting), construction and phasing for the highway works and including, without limitation: (a) an indicative programme for the submission of such information to the relevant local authority; and (b) an indication as to whether any further highways agreements and/or licences beyond the scope of this Schedule are likely to be required for any phase or element of the highway works.

General

3. The undertaker agrees to act towards the highway authorities and its appointed contractors and agents at all times in good faith and to co-operate, communicate and liaise with the relevant highway authority in relation to its obligations under this Part of this Schedule.
4. The undertaker shall be the only client for the purpose of the CDM regulations and agrees to undertake the obligations of a client under the CDM regulations and to use all reasonable endeavours to ensure that each phase or element of the highway works is carried out in accordance with the CDM regulations.

Works programme

5.—(1) Subject to sub-paragraph (2) below, the undertaker must provide the relevant highway authority with a copy of the works programme not less than 3 months prior to the first commencement of the highway works.

(2) If any highway works are to be undertaken as pre- commencement operations, the obligation in sub-paragraph (1) above does not apply and the undertaker must provide the relevant highway authority with no less than two months’ notice of the those highway works.

(3) The undertaker must promptly (and, in any event, within 10 working days of any update) provide a copy of the works programme each time it is updated until the end of duration of the highway works

Formal approval

6.— (1) The undertaker (and not any contractor) must provide the application documents for any approval for the design and implementation of the highway works ~~must not~~.

(2) The undertaker (and not any contractor) must provide the detailed design information for all highway works (including confirmation as to which elements of those highway works are to be temporary or permanent in nature) which, unless agreed otherwise in writing with the director of the relevant highway authority , must be designed and constructed in accordance with the Design Manual for Roads and Bridges

~~5.~~(3) No phase or element of the highway works may commence until, in respect of that part of the highway works _

- a) a programme of design and delivery has been provided by the undertaker to the relevant highway authority at least 4 weeks in advance of the first highway application. This programme must be reviewed periodically to reflect any changes to the programme.
- ~~a)~~b) the initial checking fee in respect of that phase or element of the highway works has been paid to the relevant highway authority;
- b)c) the undertaker or its contractor has provided the relevant highway authority with full details of the design of the highways works in question, such submission to include:
- ~~i.~~ detailed specifications, drawings and plans for those highway works, including confirmation as to which elements of those highway works are to be temporary or permanent in nature;
 - ~~ii.~~ i. the name of the contractor appointed by the undertaker to undertake the highway works;
 - ~~iii.~~ supporting documentation, including proposed traffic management measures, schedules of condition, and relevant road safety audits where necessary as defined by the Design Manual for Roads and Bridges guidance document GG 119 Road Safety Audit;
 - ~~iv.~~ Details of any proposed landscaping which forms part of the highway works or otherwise falls within the highway;
 - ~~v.~~ ii. notices in respect of any related temporary stopping-up orders or traffic regulation orders (or applications for the same where not otherwise listed in Schedules [78] and [1315] respectively to the DCO);
 - ~~vi.~~ iii. evidence of all other consents and approvals necessary for those highway works to take place where relevant to the highway authority;
 - ~~vii.~~ iv. the reasonable estimate of the cost of those highway works, including the costs associated with traffic management, plus 10 (ten) per cent;
 - ~~viii.~~ v. details of the ~~Security~~security proposed to be put in place in respect of those highway works in accordance with paragraph [2022] (Security);
 - ~~ix.~~ viii.
 - ~~x.~~ vi. if relevant, the intended duration of the temporary works period;
 - ~~xi.~~ vii. any additional information required pursuant to the permit schemes; ~~and~~
 - ~~xii.~~ viii. a clear written statement that the deemed consent provisions under sub-paragraphs (2) and (7) below will have effect in relation to that submission; and
 - ~~xiii.~~ ix. (2)sufficient information to allow the relevant highway authority to calculate the commuted sum.

(4) Unless the relevant highway authority specifies within 14 working days of receipt of the information referred to in sub-~~paragraph~~(paragraphs (2) and (3) of this paragraph that any

additional information¹ is reasonably required, it will be deemed to be confirmed that all the necessary documents, plans, drawings and other technical details or information have been provided to allow for review and determination.

~~(35)~~ Following the submission of information pursuant to sub-paragraph ~~(1)~~ paragraphs (2) and (3) of this paragraph, the relevant highway authority must review and determine the submission made, acting reasonably, to it under sub-paragraph ~~(1)~~ paragraphs (2) and (3) within the approval period.

(46) Where the relevant highway authority requests, acting reasonably, the provision of any additional information pursuant to sub-paragraph (24) of this paragraph, the undertaker must as soon as reasonably practicable:

- a) use reasonable endeavours to address the concerns raised by the relevant highway authority and/or provide the additional information requested; or
- b) notify the relevant highway authority that it disagrees with the need to comply with sub-paragraph [(46)(a)] and intends to have recourse to the escalation process set out in paragraph [67] (Escalation of differences) of this Part of this Schedule below.

~~(57)~~ Where additional information has been reasonably requested by the relevant highway authority under sub-paragraph (24) above, the approval period shall be paused until such time as that additional information has been provided to it by the undertaker. and the approval period shall be re-set and start from the start of the period after the additional information has been provided.

~~(68)~~ For the avoidance of doubt, the relevant highway authority may ~~only~~ request additional information from the undertaker more than once pursuant to this paragraph ~~5(5)~~ of this Part of this Schedule ~~to the Order~~.

(79) In the event that the relevant highway authority refuses to grant approval, or any approval is issued subject to conditions which the undertaker in its sole discretion considers are unreasonable or would place it in conflict with its statutory duties and/or transmission licence obligations, the undertaker must notify the relevant highway authority in writing as soon as reasonably practicable that it intends to have recourse to the escalation process set out in paragraph [67] (Escalation of differences) of this Part of this Schedule.

(810) If the relevant highway authority has not approved or refused the submission made under sub-paragraph (1) above within the approval period, it is deemed to have approved the details as submitted.

~~(911)~~ All approval(s) issued pursuant to this paragraph (whether by agreement, or deemed consent ~~or otherwise through the escalation process set out in paragraph [6] (Escalation of differences)~~ of this Part of this Schedule) will be recorded in an approvals register which will include, as a minimum:

- a) a brief description of the highway works to which the approval relates;
- b) the date on which approval was issued or deemed to have been issued;
- c) any unique reference number(s) assigned by the relevant highway authority to that approval;

¹

*For the avoidance of doubt, the additional information requested pursuant to 11(2) should be proportionate to the highway works and in line with the requirements for standard 278 applications.

- d) the reference number(s) for all approved drawings, plans and other supporting information; and
- e) any conditions or other information attaching, or relevant to, the approval in question; and
- f) the duration of the highways works to which the approval relates; and
- g) ~~(10) All approvals pursuant to this paragraph must not be unreasonably withheld or delayed.~~ the name and job title of the officer authorising the approval.

Escalation of differences

~~6.7.~~ (1) The parties shall use their reasonable endeavours to secure the amicable resolution of any dispute or difference arising between them in accordance with the following provisions:

- a) The senior representatives shall meet as soon as reasonably practicable in order to identify a means through which matters in dispute may be resolved.
- b) If the matter is not resolved at that level within twenty (20) Working Days of either party requesting such a meeting (or such longer period as may be agreed between the parties) then the provisions of Article [62] (Arbitration) will automatically apply provided that any arbitrator must be suitably qualified and experienced and a member of the Chartered Institute of Highways and Transportation or the Institution of Civil Engineers.

Extraordinary traffic

~~7.8.~~ (1) Prior to the commencement of any phase or element of the highway works, the use of a highway as a construction route for the authorised development, the undertaker will:

- ~~a.~~ b) agree with the relevant highway authority a methodology for the surveying of the condition of any existing public highways likely to be affected by that phase or element of the highway works; and by that use;
- ~~b.~~ c) promptly undertake a survey of the condition of existing public highways in accordance with the agreed methodology; and
- ~~c.~~ d) share the results of any such survey with the relevant highway authority.

(2) Following the carrying out of the corresponding phase or element of the highway works, or following the final use of a highway as a construction route for the authorised development, the undertaker shall have regard to any written evidence presented to it by the relevant highway authority of damage to any highway to which an existing condition survey relates pursuant to sub-paragraph (1) of this paragraph and which the relevant highway authority reasonably considers is directly attributable to use of those highways by extraordinary traffic as a result of the highway works, the repair of which will otherwise constitute an extraordinary expense.

(3) In such circumstances, the undertaker shall have the discretion (which shall be exercised reasonably and without delay) to reimburse the relevant highway authorities for all or part of the amount of any extraordinary expenses.

(4) In the event that the undertaker elects not to reimburse the relevant highway authority for any extraordinary expenses, the relevant highway authority may have recourse to Section 59 of the 1980 Act in the usual way.

(5) Nothing in this paragraph [78] (extraordinary traffic) will restrict the undertaker or its contractors from undertaking repairs to any part of the existing public highway affected by any phase or element of the highway works at its own expense, and subject always to first obtaining the necessary approvals and permits.

Conduct of the highway works

~~8.9.~~ (1) Each phase or element of the highway works shall at all times be carried out in accordance with the approvals as recorded in the approvals register, this Order and the management plans ~~therein listed~~ in Schedule 3, Requirement 6 (management plans for approval).

Commencement

10.— (1) No phase or element of any highway works may commence until for that phase or element:

- a) technical approval has been granted by the relevant highway authority;
- b) the inspection fee (which will cover the relevant highway authority's costs of inspecting the completed works) has been paid in full;
- c) any relevant requirement under Schedule 3 has been discharged;
- d) the performance figure for that phase or element has been submitted to and approved in writing by the Director;
- e) the proposed surety for the bond in respect of that phase or element has been submitted to and approved in writing by the Director;
- f) all legal fees have been paid and the bond has been provided;
- g) the value of the commuted sum has been agreed in writing by the relevant planning authority and paid to that authority, unless otherwise agreed in writing with relevant the highway authority;
- h) permits for the works have been provided by the relevant highway authority;
- i) the undertaker has provided the relevant highway authority with the name of the contractor appointed by the undertaker to construct the highway works;
- j) the undertaker has provided the relevant highway authority with a programme of site works, including key inspection dates;
- k) for major works a suitably qualified site engineer has been appointed, whose details have been provided to the relevant highway authority for approval and any changes communicated to the relevant highway authority as soon as practicable;
- l) the details of all materials have been approved by the relevant highway authority; and
- m) supporting documentation including proposed traffic management measures and temporary works within the public highway have been provided to and approved by the relevant highway authority.

(2) Notwithstanding the undertaker complying with the requirements of sub-paragraph (1) above, the undertaker must give a minimum of 5 working days written notice to the relevant highway authority of their intention to commence works within the public highway.

(3) In this paragraph 10, “highway works” does not include works which fall within the sub-paragraph (j) (temporary accesses) of the definition of “pre-commencement operations” in article 2(1) (interpretation)

Testing of materials

9.11.—(1) Each relevant highway authority may require the testing of materials plant and workmanship used or proposed to be used in the highway works and shall have the power to reject any materials plant or workmanship so tested which each relevant highway authority may reasonably and properly find to be not in accordance with the approved information pursuant to paragraph [56] (formal approval) of this Part of this Schedule and recorded in the approvals register pursuant to paragraph [56] (formal approval) of this Part of this Schedule.

(2) The undertaker shall, as soon as is reasonably practicable, replace or repair any materials plant or workmanship which have been found to be not in accordance with the approved information pursuant to paragraph [56] (formal approval) of this Part of this Schedule and recorded in the approvals register pursuant to paragraph [56] (formal approval) of this Part of this Schedule.

(3) Subject at all times to provision of appropriate notice and compliance with any overriding health and safety or similar obligations, any person or persons duly authorised by each highway authority shall be allowed reasonable access and admission to the highway works or the places where materials or plant for the highway works may be stored or in the course of preparation manufacture or use (unless such access or admission is refused due to circumstances beyond the control of the undertaker).

Inspection of the highway works

10.12.—(1) Subject at all times to provision of appropriate notice and compliance with any overriding health and safety or similar obligations, the undertaker shall, during the progress of each and all of the highway works, give to or procure for any person or persons duly authorised by each highway authority supervised access to every part of the highway works and the site thereof and permit those person or persons to inspect the same as they proceed and all materials used or intended to be used therein and shall give effect to any reasonable and proper requirements made or reasonable and proper directions given in order to ensure conformity with the approved information pursuant to paragraph [56] (formal approval) of this Part of this Schedule and recorded in the approvals register pursuant to paragraph [56] (formal approval) of this Part of this Schedule.

(2) The undertaker shall not cover up or put out of view any works forming part of the Highway Works without the approval of the relevant highway authority and shall afford full opportunity for any person or persons duly authorised by the relevant highway authority to examine and measure any work which is about to be covered up or put out of view and to examine foundations before permanent work is placed thereon and shall give at least ~~seventy two (72) hours~~^{three working days} notice to the relevant highway authority whenever any such work or foundations is or are ready or about to be ready for examination.

(3) Each relevant highway authority shall ensure that any person or persons duly authorised by it attend, without unreasonable delay, when required by the undertaker for the purpose of examining the highway works or of examining such foundations, provided the undertaker provides the relevant highway authority with not less than three working days’ notice of the proposed examination.

Opening up of the Highway Works

~~11.13.~~ 13. (1) During the construction of each phase or element of the highway works and prior to the issue of the certificate of substantial completion for that phase or element of the highway works, the relevant highway authority may wish to open or expose any of the highway works which have been covered up without previously being inspected by the highway authority under paragraph ~~[1012]~~ (Inspection of the highway works).

(2) Where sub-paragraph (1) of this paragraph applies, the relevant highway authority may so take up or expose the relevant part of the highway works causing as little damage or inconvenience as is possible in respect of any other part or parts of the highway works (and the undertaker shall be responsible for the reasonable and proper cost of such taking up or exposure and reinstatement) provided that if the highway works or any part or parts thereof are covered up by the undertaker after giving the notice referred to in paragraph 16 of this Part of this Schedule and the relevant highway authority have failed to inspect in the period therein referred to and the relevant highway authority shall subsequently require the highway works or any part of them to be uncovered for the purposes of inspection:-

~~a.a)~~ a) if inspection reveals the relevant part or parts of the highway works to have been completed in accordance with the plans, drawings, specifications and other materials which have been approved pursuant to Paragraph ~~[56]~~ (Formal approval) and recorded in the approvals register, all costs in respect of such uncovering and inspection and of reinstating the part or parts of the highway works uncovered shall be borne by the relevant highway authority; or

~~b.b)~~ b) if inspection reveals the relevant part or parts of the highway works not to have been completed in accordance with the plans, drawings, specifications and other materials which have been approved pursuant to Paragraph ~~[56]~~ (Formal approval) and recorded in the approvals register all reasonable and proper costs in respect of uncovering and inspection and of reinstating the part or parts of the highway works uncovered shall be borne by the undertaker.

Site clearance and Certificates of Substantial Completion

~~12.14.~~ 14. (1) The obligations in this paragraph ~~1214~~ shall apply in respect of all highway works, irrespective of whether they are of a permanent or temporary nature.

(2) On substantial completion of each phase or element of the highway works, the undertaker shall:

~~a.a)~~ a) clear away and remove from the site of the highway works all construction plant and temporary works of every kind and leave the site of the highway works in a neat and tidy condition to the satisfaction of the relevant highway authority (the relevant highway authority being obliged to act reasonably); ~~and~~

~~b.b)~~ b) as defined in GG 119, carry out stage 3 of the road safety audit process and comply to the satisfaction of the relevant highway authority (the relevant highway authority being obliged to act reasonably) with recommendations arising thereunder prior to the opening of the highway works to the public;

~~e.c)~~ c) ~~Notify~~ notify the relevant highway authority of completion of the permanent highway works or any part thereof (or restoration of any temporary works or any part thereof) and apply to the relevant highway authority for a provisional certificate of substantial completion in respect of ~~any~~ the relevant works of a permanent nature; ~~and~~

d) provide the relevant highway authority with the as built information.

(3) Following an application for a ~~provisional~~ certificate of substantial completion, the relevant highway authority shall as soon as reasonably practicable –

- a. ~~Inspect~~ inspect the highway works; and
- b. ~~Provide~~ provide the undertaker with a written list of any works that are ~~require~~ required for the ~~provisional~~ certificate of substantial completion to be issued or confirmation that no further works are required for this purpose.

(4) Upon substantial completion of each phase or element of the highway works, including any additional work resulting from stage 3 of the road safety audit process to the satisfaction in all respects of the relevant highway authority (the relevant highway authority being obliged to act reasonably), the relevant highway authority shall issue a certificate of substantial completion in respect of those highway works to the undertaker, provided that all costs and expenses owing to the relevant highway authority have been paid in respect of those highway works.

(5) On the issue of the certificate of substantial completion for permanent works, the maintenance period will commence.

(6) For permanent alterations to the highway work a final certificate of completion will be issued at the end of the maintenance period subject to resolution of any matters identified in the stage 4 road safety audit.

Temporary works period and certificate of reinstatement (temporary works only)

~~13.15.~~ (1) The obligations in this paragraph 13.15 shall apply only in respect of those highway works which are of a temporary nature.

(2) The undertaker shall be permitted to retain each phase or element of the highway works in situ for the temporary works period (or such longer period as is agreed between the undertaker and the relevant highway authority) provided this does not exceed completion of the construction phase of the authorised development.

(3) The undertaker shall maintain each phase or element of the highway works in a condition satisfactory to the relevant highway authority for the temporary works period using the intervention criteria in the Highway Maintenance Operational Plan as minimum criteria.

(4) On the expiry of the temporary works period, the undertaker shall promptly clear away and remove from the site of the highway works all highway works of every kind (including construction plant and equipment) and reinstate the site of the highway works to the satisfaction of the relevant highway authority (the relevant highway authority being obliged to act reasonably).

(5) The relevant highway authority shall thereafter, and as soon as reasonably practicable, issue to the undertaker the certificate of reinstatement in respect of the relevant highway works and the maintenance period commences on the issue of that certificate.

(6) At the end of the maintenance period and subject to any defect arising within that period, being rectified to the satisfaction of the relevant highway authority, that authority will issue the certificate of final completion.

(7) In this paragraph, “Highway Maintenance Operational Plan” means the most recent operational plan published on the Suffolk County Council’s website.

Defects correction period and certificate of final completion ~~(permanent works only)~~

~~14.16.~~ (1) The obligations in this paragraph ~~14.16~~ shall apply only in respect of those highway works which are of a permanent nature.

(2) The undertaker shall maintain each phase or element of the highway works for a period of ~~eighteen (18) months (unless the relevant highway authority agrees in writing to a lesser period) from the issue of the related certificate of substantial completion)~~

- ~~a) in the case of minor works, twelve (12) months (unless the relevant highway authority agrees in writing a lesser period) from the issue of the related certificate of substantial completion; and~~
- ~~b) in the case of Major Works, eighteen (18) months (unless the relevant highway authority agrees in writing a lesser period) from the issue of the related certificate of substantial completion;~~

and prior to the expiration of ~~the relevant~~that period, the undertaker shall reinstate and make good any damage or defect which may have arisen from any cause whatsoever or be discovered during the said period (including any defect in or damage to the surface water drainage system) so as to place the highway and the relevant highway works in a condition satisfactory to the relevant highway authority (the highway authority being obliged to act reasonably).

(3) After the expiration of the period of ~~twelve (12)~~18 months from substantial completion, the undertaker shall (unless it is agreed between the parties that it is to be carried out sooner or that it is no longer required) carry out stage 4 of the road safety audit and comply to the satisfaction in all respects of the relevant highway authority (the highway authority being obliged to act reasonably) with any recommendations arising thereunder.

(4) After:

- a. the expiration of the ~~relevant~~ period referred to in sub-paragraph (2) (or such lesser period as agreed in writing by the relevant highway authority under sub-paragraph (2)); and
- b. any defects have been made good as therein provided, including any improvements arising under stage 4 of the road safety audit to the satisfaction of the relevant highway authority (the relevant highway authority being obliged to act reasonably); and
- c. the undertaker has provided a plan showing the land over which the highways works have been constructed and a health and safety file complying with the CDM regulations, including a separate health and safety file for each structure;

the relevant highway authority shall as soon as reasonably practicable issue to the undertaker the certificate of final completion in respect of the relevant highway works, provided that the certificate of final completion shall in the case of road gullies extend only as far as their points of entry to the surface water sewers where those are not being adopted by the highway authority as highway drains.

(5) Upon issue of a certificate of final completion:

- a. any part of the highway works to which that certificate of final completion shall relate which is not already public highway shall be adopted by the relevant highway authority as part of the public highway; and

- b. the highway works so certified shall from then and at all times be maintainable at the public expense and the undertaker shall have no further liability under this Schedule in respect to the same.

Permit Schemes

~~15.~~17.— The undertaker agrees that the provisions in this Part of this Schedule operate in parallel to the permit schemes, each of which is given effect in article [12] (Application of the permit schemes) of this Order.

~~16.~~18.— Unless otherwise agreed in writing by the relevant highway authority, in the event of a conflict with the provisions of this Part of this Schedule and either or both of the permit schemes, the terms of the permit scheme will prevail.

Payments and Costs

~~17.~~19.— The undertaker must pay to the relevant highway authority –

- a) an initial checking fee, to be calculated and agreed separately with the relevant highway authority, in relation to each phase or element of the highway works for which formal approval is sought, such sum to be ~~payable~~paid prior to the submission of an application for formal approval;
- b) a balancing payment, to be calculated and agreed separately with the relevant highway authority, such sum to be ~~payable~~paid, if required, prior to commencement of the phase or element of the highway works in question including recovery of additional costs for changes during the construction phase;
- c) the reasonable costs incurred by the relevant highway authorities in undertaking any road safety audits, such sum to be ~~payable~~paid prior to the commencement of the road safety audits in question;
- d) the reasonable costs incurred by the relevant highway authorities in monitoring the implementation of any recommendations arising from any road safety audits undertaken, such sum to be ~~payable~~paid upon production of a valid invoice for the same;
- e) the reasonable cost of any temporary and permanent traffic regulation orders, such sum to be ~~payable~~paid prior to the commencement of any work on the making of such Order;
- f) the reasonable cost of any other road traffic orders required to facilitate the highway works, such to be ~~payable~~paid prior to the commencement of any work on the making of such Order;
~~and~~
- g) the inspection fee mentioned in paragraph 10 (commencement), such sum to be paid in accordance with that provision;
- h) the reasonable cost of reviewing any management plan referred to in requirement 6 (management plans for approval) such sum to be paid on completion of the review;
- i) the reasonable cost of undertaking a structural review of the highway and, where necessary, modifying the same to accommodate abnormal indivisible loads, such sum to be paid prior to the commencement of any highway works;

- j) the reasonable cost of dealing with the extraordinary traffic regime under paragraph 8 (extraordinary traffic);
- k) the legal costs reasonably and properly incurred by the relevant highway authority for or in connection with the preparation and negotiation of this Part of this Schedule; and
- g) any value added tax which is payable by the relevant highway authority in respect of such payments referred to in this paragraph [1719] and for which it cannot obtain reinstatement from HM Revenue and Customs.

18.20.— (1) All funding and charging arrangements between the undertaker and the relevant highway authorities shall be in accordance with the following overarching principles:

- a) the charging must relate exclusively to the relevant highway authority's recovery of its costs in respect of the highway works and more broadly for the provision of services it is authorised but not required (by an enactment) to provide;
- b) where the services of the relevant highway authority's maintenance contractor are required these will be charged at the rates within the relevant highway authority's maintenance contract and subject to the conditions of the same;
- b)c) charges are to be incurred on a not-for profit basis (year by year) and, taking one year with another, the income from the charges for such services must not exceed the cost of providing them;
- e)d) there shall be full transparency with regard to costs incurred; and
- d) ~~the relevant highway authority shall use all reasonable endeavours to keep costs payable by the undertaker to a minimum including by, but not limited to, sharing resources between the highway authorities, avoiding unnecessary duplication of time and/or effort, and making the best use of available information having due regard to statutory obligations.~~
- e) if significant changes are made to the approved design during construction the highway authority reserves the right to recover any additional costs incurred.

(2) All invoices submitted in connection with the costs and/or payments must comply with the principles set out in sub-paragraph (1) and be accompanied by a written report summarising all tasks carried out or activities undertaken which have given rise to such costs and such other supporting information as is reasonable for the undertaker to request in the circumstances.

19.21.— ~~Interest at a rate equivalent to 4% above the Bank of England base rate from time to time shall be payable in respect of any sum due to any relevant highway authority under this Part of this Schedule which is outstanding for more than twenty eight (28) days from the date on which it was demanded or, in the event that a dispute or difference regarding such payment is referred to arbitration pursuant to article [62], the said twenty eight (28) day period shall run from the date of the decision of the arbitrator (such interest to be charged on the amount outstanding each day from the date of issue of a written demand for any sum due or in the event that a dispute or difference regarding such payment is referred to arbitration pursuant to article [62] such interest to be charged on the amount outstanding each day from the date of issue of the decision of the arbitrator).~~

Security

~~22.~~ (1) Prior to the commencement of each phase or element of the highway works the undertaker must provide the relevant highway authority with a bank for the value of the performance figure in relation to commencement of that phase or part thereof, element.

~~20.~~ (2) Without expense to the relevant highway authority the undertaker and the surety shall provide the security prior to commencing each phase or element of the highway works enter into the bond for that phase or element and the undertaker and surety shall be bound to the relevant highway authority in the amount of the performance figure for the relevant phase or element.

(2)

(3) Should the undertaker default in the execution of its obligations in carrying out any or all of the relevant phase or element of the highway works, and to maintain the same in accordance with the provisions of this Part of this Schedule then the relevant highway authority may (subject to the provisions contained in this Part) itself complete that the relevant phase or element of the highway works that has been commenced by the undertaker and maintain the same and call as aforesaid having first called upon the undertaker to reimburse it bond for the cost to be expended in respect of the same provided that: so doing –

(a) ~~(a)~~ unless there is a danger to users of the highway, the relevant highway authority shall first give 28 not less than 5 working days prior written notice (or lesser period as may in the circumstances be reasonable) of its intention to commence work under this sub-paragraph (2)(3);

(b) ~~(b)~~ any notice served under this sub-paragraph (2)(b) shall specify the period of the notice (“the notice period”); the extent of the work which the relevant highway authority proposes to carry out; and full details of all matters in respect of which the relevant highway authority Director considers that the highway works have work has not been carried out in accordance with the terms of this Part of this Schedule; and

(c) ~~(c)~~ if before the expiry of the notice period, the undertaker serves written notice upon the relevant highway authority that it the undertaker intends diligently to execute the works specified in the notice in accordance with the terms of this Part of this Schedule, and specifies a time to complete that the relevant highway authority considers reasonable in the circumstances the relevant highway authority shall not be entitled to execute the relevant part or parts of the highway work specified in the notice served under this paragraph unless the undertaker then fails to execute those works within the agreed time scale.

(4) If the undertaker should default in the execution of its obligations in carrying out any phase or element of the highway works or to maintain the same in accordance with the provisions of this Part of this Schedule then the relevant highway authority will call upon the bond to provide the full performance figure amount in accordance with this Part of this Schedule.

Insurance

~~21.~~ ~~23.~~ (1) Prior to the commencement of the highway works the undertaker must have in place public liability insurance in the minimum sum of £10,000,000.000 (ten million pounds) in respect of any one claim against any legal liability for damage loss or injury to any property or any person as a direct result of the execution of highway works or use of the strategic local road network by the undertaker.

Indemnity

~~22.~~ ~~24.~~ (1) The undertaker shall, from the date of commencement of each phase or element of the highway works indemnify the relevant highway authority against all claims, charges, costs,

expenses, liability or losses whatsoever arising out of any or all of that phase or element of the highway works provided that the undertaker's indemnity will not extend to any claims submitted to the relevant highway authority arising out of the negligence of the relevant highway authority's employees or arising after the issue of the certificate of final completion pursuant to Paragraph [1315 and 1416] or expiry of the temporary works period: (including re-instatement).

(2) The relevant highway authority shall:

- (a) notify the undertaker immediately upon receipt of any claims, charges, costs, expenses, liability or losses referred to in sub-paragraph (1);
- (b) at all times after that date keep the undertaker fully informed;
- (c) permit and assist the undertaker to make such investigations and/or tests as the undertaker may reasonably deem necessary to verify such claims, charges, costs, expenses, liability or losses;
- (d) not accept or compromise any claims, charges, costs, expenses, liability or losses to which this indemnity relates without the prior approval of the undertaker as to its validity and as to the amount of the settlement; and
- (e) at the consider a request of the undertaker to instruct such a reputable firm of solicitors as the undertaker may reasonably specify in respect of the conduct of negotiations and/or proceedings in respect of any claims, charges, costs, expenses, liability or losses to which this indemnity relates, provided always that, if such solicitors are instructed, the undertaker will be responsible for all their costs.

(3) The indemnity in sub-paragraph (1) above includes:

- a) all fees incurred by claimants which the relevant highway authority is obliged to pay, and those of the relevant highway authority or its agent or contractor, in negotiating any claims (together with VAT payable on the claimants' professional advisors' fees);
- b) statutory interest payments to claimants and their professional advisors; and
- c) the relevant highway authority's reasonable and proper legal costs in making the compensation, fees and interest payments, which are not covered by sub-paragraph (e) of this clause [22].

Arbitration

23.25.— Any dispute under this Part of this Schedule shall be settled by arbitration in accordance with article [62] (arbitration).

ANNEX

BOND

DATED [REDACTED]

(1) [REDACTED]

(2) [REDACTED]

BOND

relating to the development of land at
[REDACTED] Suffolk

BY THIS BOND [REDACTED] LIMITED of [REDACTED]

(1) [REDACTED] (the "Undertaker"); and

(2) [REDACTED] (the "Surety") are held and firmly bound to **SUFFOLK COUNTY COUNCIL** of Endeavour House 8 Russell Road Ipswich Suffolk IP1 2DH (the "**County Council**") in the sum of £[REDACTED] ([REDACTED] Pounds Sterling) to be paid to the County Council for the payment of which sum the Undertaker and the Surety bind themselves their successors and assigns jointly and severally.

IN WITNESS whereof the Undertaker and the Surety have hereunto affixed their respective Common Seals and delivered the same on but not before this day of [REDACTED]

1. The Protective Provisions included in Part [5] of Schedule 15 to the National Grid (Sea Link) Order 202[REDACTED] set out the terms of the carrying out of works in the highway.

2. It is intended that this Bond shall be construed as one with the said Protective Provisions insofar as it relates to the works in relation to which the Undertaker has elected to provide the Security by way of a Bond and which are particularised in the Annex attached hereto ('relevant **Highway Works**').

Now the condition of the above-written Bond is such that if the Undertaker shall duly perform and observe all the terms provisions conditions and stipulations of the said Protective Provisions (in so far as they relate to the relevant Highway Works in relation to which the Undertaker has elected to provide the Security by way of a Bond) on the Undertaker's part to be performed and observed according to the true intent and meaning thereof or if on default by the Undertaker the Surety shall duly satisfy and discharge the damages sustained by the County Council up to the amount of the above-written Bond then the above-written Bond shall be null and void but otherwise shall remain in full force and effect provided always that the giving by the County Council of any extension of time for performing the said Protective Provisions or any stipulations therein contained and on the part of the Undertaker to be performed or any other forgiveness or forbearance on the part of the County Council or its successors or assigns shall not in any way release the Surety from any liability under the above-written Bond.

Executed as a Deed (but not delivered until the date of this Deed) by affixing the common seal of [THE UNDERTAKER] in the presence of

.....
Full Name (Director)

.....
Signature of Director

.....
Full Name (Director/Secretary)

.....
Signature of Director/Secretary

Executed as a Deed (but not delivered until the date of this Deed) by affixing the common seal of [SURETY] in the presence of

.....
Full Name (Director)

.....
Signature of Director

.....
Full Name (Director)

.....
Signature of Director

Protective Provisions (Clean)

PART ● FOR THE PROTECTION OF THE HIGHWAY AUTHORITIES

Application etc.,

1. (1) The provisions of this Part of this Schedule apply for the protection of the highway authority and have effect unless otherwise agreed in writing between the undertaker and the relevant highway authority

(2) Any approval, certificate or consent granted under this Part is separate from any approval the undertaker must obtain under requirement 12 (highway works) of Schedule 3 (requirements).

Interpretation

2. (1) Where the terms defined in article 2 (interpretation) of this Order are inconsistent with subparagraph (2), the latter prevail.

(2) In this Part of this Schedule –

“**1980 Act**” means the Highways Act 1980;

“**approval period**” means, unless otherwise agreed between the parties acting reasonably:

- (d) in respect of a request for approval for minor works or works required to be undertaken where there is an emergency, a period of 14 working days or less;
- (e) in respect of a request for approval for major works, a period of 28 working days; and
- (f) in respect of a request for approval which comprises both minor works and major works, a period of 28 working days,

“**as built information**” means one electronic copy of the following information where the relevant highway authority deems it reasonably necessary –

- (a) as constructed drawings in both PDF and AutoCAD DWG formats for anything designed by the undertaker;
- (b) list of suppliers and materials used, as well as any relevant test results and CCTV surveys (if required to comply with DMRB standards);
- (c) product data sheets and technical specifications for all materials used;
- (d) as constructed information for any utilities discovered or moved during the works;
- (e) in relation to road lighting, signs, and traffic signals any information required by Series 1300 and 1400 of the specification for highway works or any replacement or modification of it;

(f) test results and records as required by the detailed design information and during construction phase of the project;

(g) a stage 3 road safety audit subject to any exceptions to the road safety audit standard as agreed by the undertaker and the relevant highway authority;

(h) the health and safety file; and

(i) such other information as is required by the relevant highway authority to be used to update all relevant databases;

“balancing payment” means a fee calculated pursuant to Paragraph [17], be calculated and agreed separately with the relevant highway authority;

“bond” means the bond with the surety, such bond to be in the form substantially in accordance with that set out in the Annex to this Part of this Schedule;

“CDM regulations” means the Construction (Design and Management) Regulations 2015;

“certificate of final completion” means any of the certificates referred to in Paragraphs [15 and 16];

“certificate of substantial completion” means any of the certificates referred to in Paragraph [14];

“commuted sum” means the sum to be paid by the undertaker to the relevant highway authority as a contribution towards the future maintenance of the asset being provided, adopted, or transferred, , as calculated in accordance with paragraph [xxx] of this Part of this Schedule;

“detailed design information” means such of the following drawings, specifications and calculations as are relevant to the specific works –

- (a) general layout including highway boundary and order limits;
- (b) site clearance details;
- (c) boundary, environmental and mitigation fencing;
- (d) road restraints systems and supporting road restraint risk appraisal process assessment;
- (e) drainage and ducting as required by DMRB CD 535 Drainage asset data and risk management and DMRB CS551 Drainage surveys – standards for Highways;
- (f) earthworks including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk and any required strengthened earthworks appraisal form certification;
- (g) pavement, pavement foundations, kerbs, footways and paved areas;
- (h) traffic signs and road markings;
- (i) traffic signal equipment and associated signal phasing and timing detail;
- (j) road lighting (including columns and brackets);

- (k) regime of foundation testing;
- (l) electrical work for road lighting, traffic signs and signals;
- (m) highway structures and any required structural approval in principle;
- (n) temporary traffic management including temporary restrictions on traffic, diversion routes and phasing;
- (o) landscaping;
- (p) proposed departures from DMRB standards;
- (q) walking, cycling and horse riding assessment and review report;
- (r) stage 1 and stage 2 road safety audits and exceptions agreed;
- (s) utilities diversions;
- (t) topographical survey;
- (u) health and safety information including any contamination or hazardous materials identified within the site; and
- (v) other such information that may be required by the relevant highway authority to be used to inform the detailed design of the specified works;

“Director” means, in Suffolk, Suffolk County Council's Executive Director of Growth, Highways and Infrastructure or other officer of the County Council acting under his hand.

“extraordinary expense” means the cost of repairing damage to any highway to which an existing condition survey relates pursuant to Paragraph [8] and which the relevant highway authority consider is directly attributable to use of those highways by extraordinary traffic as a result of the authorised project over and above the average cost of maintaining those highways;

“final completion” means, in respect of any new permanent highway works, the completion of the maintenance period and resolution of any defects to the reasonable satisfaction of the relevant highway authority and the resolution of all matters identified during any road safety audit before the relevant highway authority takes over responsibility for maintenance;

“highway works” – means any works which fall within the sub-paragraph (j) (temporary accesses) of the definition of “pre-commencement operations” in article 2(1) (interpretation) and the works, activities or operations listed in Schedules [5 to 9] and Schedule [13] to the Order, any other works, activities or operations that are required to be undertaken on, to, above, adjacent, near or under any part of the highway as shown on the accompanying plan for each phase or element of the highway, works and for which the consent of the relevant highway authority is required pursuant to the Order;

“initial checking fee” means a fee calculated pursuant to Paragraph [19], be calculated and agreed separately with the relevant highway authority, in accordance with the authority’s usual charges;

“maintenance period” means the period during which the undertaker is responsible for maintaining the highway works as follows –

- (a) for temporary highway works, 12 months from substantial completion of works to restore the highway to its previous condition;

- (b) for permanent highway works, 12 months from substantial completion of those works; and
- (c) in the case of landscaping and planting, the period of 5 years from completion of planting.

“major works” means highway works of a substantive nature including, but not limited to, the construction of new temporary or permanent accesses, the upgrading of existing accesses and/or the realignment of existing carriageway;

“minor works” means any highway works which are not major works including, but not limited to, the removal of street furniture, the erection of temporary signage, the erection of temporary scaffolding and/or the carrying out of vegetation pruning/trimming (or similar operations) in respect of an existing access arrangement;

“senior representatives” means the [project director] on behalf of the undertaker and persons notified to the undertaker by the relevant highway authority as being their senior representatives.

“performance figure” means the reasonable estimate of the cost (including the costs associated with statutory undertakers work and traffic management) plus 10% in respect of the any phase or element of the highway works submitted to and agreed by the Director pursuant to paragraph [10 (commencement)] or as amended from time to time following the approval of the Director at the request of the Developer;

“permit schemes” means as defined in Article 2 (Interpretation) of the draft Order.

“road safety audits” means the evaluation of each and all of the highway works, in accordance with Standard GG 119 (Revision 2.01) of the Department for Transport’s Design Manual for Roads and Bridges or any superseding Standard, in order to identify potential road safety problems that may affect any users of the highway and to recommend measures to mitigate or remove those problems;

“security” means, in respect of any phase or element of the highway works,

a bank bond from an acceptable credit provider in favour of the relevant highway authority to cover the undertaker’s liability to that highway authority for an amount of not less than £10,000,000 (ten million pounds);

“substantial completion” means complete to the reasonable satisfaction of the relevant highway authority and so that the highway works in question can be used for the purpose and operate in the manner for which they were designed subject to the resolution of any matters raised in the stage 3 road safety audit and marks the commencement of maintenance period for the restoration of new highway works;

“surety” means the surety for the bond who has been approved by the Director pursuant to paragraph 10 (commencement) or as amended from time to time following the approval of the Director at the request of the undertaker;

“temporary works period” means such period of time as is agreed between National Grid and the relevant highway authority within which any Highway Works of a temporary nature are permitted to remain in situ on the highway, in each case such period of time to begin immediately following Substantial Completion of those highway works;

“works programme” means a written programme outlining the anticipated design (including consenting), construction and phasing for the highway works and including, without limitation: (a) an indicative programme for the submission of such information to the relevant local authority; and (b) an indication as to whether any further highways agreements and/or licences beyond the scope of this Schedule are likely to be required for any phase or element of the highway works.

General

3. The undertaker agrees to act towards the highway authorities and its appointed contractors and agents at all times in good faith and to co-operate, communicate and liaise with the relevant highway authority in relation to its obligations under this Part of this Schedule.
4. The undertaker shall be the only client for the purpose of the CDM regulations and agrees to undertake the obligations of a client under the CDM regulations and to use all reasonable endeavours to ensure that each phase or element of the highway works is carried out in accordance with the CDM regulations.

Works programme

5.—(1) Subject to sub-paragraph (2) below, the undertaker must provide the relevant highway authority with a copy of the works programme not less than 3 months prior to the first commencement of the highway works.

(2) If any highway works are to be undertaken as pre- commencement operations, the obligation in sub-paragraph (1) above does not apply and the undertaker must provide the relevant highway authority with no less than two months' notice of the those highway works.

(3) The undertaker must promptly (and, in any event, within 10 working days of any update) provide a copy of the works programme each time it is updated until the end of duration of the highway works

Formal approval

6.— (1) The undertaker (and not any contractor) must provide the application documents for any approval for the design and implementation of the highway works..

(2) The undertaker (and not any contractor) must provide the detailed design information for all highway works (including confirmation as to which elements of those highway works are to be temporary or permanent in nature) which, unless agreed otherwise in writing with the director of the relevant highway authority , must be designed and constructed in accordance with the Design Manual for Roads and Bridges

(3) No phase or element of the highway works may commence until, in respect of that part –

- a) a programme of design and delivery has been provided by the undertaker to the relevant highway authority at least 4 weeks in advance of the first highway application. This programme must be reviewed periodically to reflect any changes to the programme.
- b) the initial checking fee in respect of that phase or element of the highway works has been paid to the relevant highway authority;
- c) the undertaker or its contractor has provided the relevant highway authority with full details of the design of the highways works in question, such submission to include:
 - i. the name of the contractor appointed by the undertaker to undertake the highway works;
 - ii. notices in respect of any related temporary stopping-up orders or traffic regulation orders (or applications for the same where not otherwise listed in Schedules [8] and [15] respectively to the DCO);

- iii. evidence of all other consents and approvals necessary for those highway works to take place where relevant to the highway authority;
- iv. the reasonable estimate of the cost of those highway works, including the costs associated with traffic management, plus 10 (ten) per cent;
- v. details of the security proposed to be put in place in respect of those highway works in accordance with paragraph [22] (Security);
- vi. if relevant, the intended duration of the temporary works period;
- vii. any additional information required pursuant to the permit schemes;
- viii. a clear written statement that the deemed consent provisions under sub-paragraphs (2) and (7) below will have effect in relation to that submission; and
- ix. sufficient information to allow the relevant highway authority to calculate the commuted sum.

(4) Unless the relevant highway authority specifies within 14 working days of receipt of the information referred to in sub-paragraphs (2) and (3) of this paragraph that any additional information² is reasonably required, it will be deemed to be confirmed that all the necessary documents, plans, drawings and other technical details or information have been provided to allow for review and determination.

(5) Following the submission of information pursuant to sub-paragraphs (2) and (3) of this paragraph, the relevant highway authority must review and determine the submission made, acting reasonably, to it under sub-paragraphs (2) and (3) within the approval period.

(6) Where the relevant highway authority requests, acting reasonably, the provision of any additional information pursuant to sub-paragraph (4) of this paragraph, the undertaker must as soon as reasonably practicable:

- c) use reasonable endeavours to address the concerns raised by the relevant highway authority and/or provide the additional information requested; or
- d) notify the relevant highway authority that it disagrees with the need to comply with sub-paragraph [(6)(a)] and intends to have recourse to the escalation process set out in paragraph [7] (Escalation of differences) of this Part of this Schedule below.

(7) Where additional information has been reasonably requested by the relevant highway authority under sub-paragraph (4) above, the approval period shall be paused until such time as that additional information has been provided to it by the undertaker and the approval period shall be re-set and start from the start of the period after the additional information has been provided.

(8) For the avoidance of doubt, the relevant highway authority may request additional information from the undertaker more than once pursuant to this paragraph of this Part of this Schedule.

(9) In the event that the relevant highway authority refuses to grant approval, or any approval is issued subject to conditions which the undertaker in its sole discretion considers are unreasonable

²

*For the avoidance of doubt, the additional information requested pursuant to 11(2) should be proportionate to the highway works and in line with the requirements for standard 278 applications.

or would place it in conflict with its statutory duties and/or transmission licence obligations, the undertaker must notify the relevant highway authority in writing as soon as reasonably practicable that it intends to have recourse to the escalation process set out in paragraph [7] (Escalation of differences) of this Part of this Schedule.

(10) If the relevant highway authority has not approved or refused the submission made under subparagraph (1) above within the approval period, it is deemed to have approved the details as submitted.

(11) All approval(s) issued pursuant to this paragraph (whether by agreement or deemed consent) of this Part of this Schedule) will be recorded in an approvals register which will include, as a minimum:

- a) a brief description of the highway works to which the approval relates;
- b) the date on which approval was issued or deemed to have been issued;
- c) any unique reference number(s) assigned by the relevant highway authority to that approval;
- d) the reference number(s) for all approved drawings, plans and other supporting information;
and
- e) any conditions or other information attaching, or relevant to, the approval in question;
- f) the duration of the highways works to which the approval relates; and
- g) the name and job title of the officer authorising the approval.

Escalation of differences

7.—(1) The parties shall use their reasonable endeavours to secure the amicable resolution of any dispute or difference arising between them in accordance with the following provisions:

- c) The senior representatives shall meet as soon as reasonably practicable in order to identify a means through which matters in dispute may be resolved.
- d) If the matter is not resolved at that level within twenty (20) Working Days of either party requesting such a meeting (or such longer period as may be agreed between the parties) then the provisions of Article [62] (Arbitration) will automatically apply provided that any arbitrator must be suitably qualified and experienced and a member of the Chartered Institute of Highways and Transportation or the Institution of Civil Engineers.

Extraordinary traffic

8.— (1) Prior to the commencement of any phase or element of the highway works, the use of a highway as a construction route for the authorised development, the undertaker will:

- b) agree with the relevant highway authority a methodology for the surveying of the condition of any existing public highways likely to be affected by that phase or element of the highway works and by that use;
- c) promptly undertake a survey of the condition of existing public highways in accordance with the agreed methodology; and

d) share the results of any such survey with the relevant highway authority.

(2) Following the carrying out of the corresponding phase or element of the highway works, or following the final use of a highway as a construction route for the authorised development, the undertaker shall have regard to any written evidence presented to it by the relevant highway authority of damage to any highway to which an existing condition survey relates pursuant to subparagraph (1) of this paragraph and which the relevant highway authority reasonably considers is directly attributable to use of those highways by extraordinary traffic as a result of the highway works, the repair of which will otherwise constitute an extraordinary expense.

(3) In such circumstances, the undertaker shall have the discretion (which shall be exercised reasonably and without delay) to reimburse the relevant highway authorities for all or part of the amount of any extraordinary expenses.

(4) In the event that the undertaker elects not to reimburse the relevant highway authority for any extraordinary expenses, the relevant highway authority may have recourse to Section 59 of the 1980 Act in the usual way.

(5) Nothing in this paragraph [8] (extraordinary traffic) will restrict the undertaker or its contractors from undertaking repairs to any part of the existing public highway affected by any phase or element of the highway works at its own expense, and subject always to first obtaining the necessary approvals and permits.

Conduct of the highway works

9.— (1) Each phase or element of the highway works shall at all times be carried out in accordance with the approvals as recorded in the approvals register, this Order and the management plans listed in Schedule 3, Requirement 6 (management plans for approval).

Commencement

10.— (1) No phase or element of any highway works may commence until for that phase or element:

- a) technical approval has been granted by the relevant highway authority;
- b) the inspection fee (which will cover the relevant highway authority's costs of inspecting the completed works) has been paid in full;
- c) any relevant requirement under Schedule 3 has been discharged;
- d) the performance figure for that phase or element has been submitted to and approved in writing by the Director;
- e) the proposed surety for the bond in respect of that phase or element has been submitted to and approved in writing by the Director;
- f) all legal fees have been paid and the bond has been provided;
- g) the value of the commuted sum has been agreed in writing by the relevant planning authority and paid to that authority, unless otherwise agreed in writing with relevant the highway authority;
- h) permits for the works have been provided by the relevant highway authority;

- i) the undertaker has provided the relevant highway authority with the name of the contractor appointed by the undertaker to construct the highway works;
- j) the undertaker has provided the relevant highway authority with a programme of site works, including key inspection dates;
- k) for major works a suitably qualified site engineer has been appointed, whose details have been provided to the relevant highway authority for approval and any changes communicated to the relevant highway authority as soon as practicable;
- l) the details of all materials have been approved by the relevant highway authority; and
- m) supporting documentation including proposed traffic management measures and temporary works within the public highway have been provided to and approved by the relevant highway authority.

(2) Notwithstanding the undertaker complying with the requirements of sub-paragraph (1) above, the undertaker must give a minimum of 5 working days written notice to the relevant highway authority of their intention to commence works within the public highway.

(3) In this paragraph 10, “highway works” does not include works which fall within the sub-paragraph (j) (temporary accesses) of the definition of “pre-commencement operations” in article 2(1) (interpretation)

Testing of materials

11.— (1) Each relevant highway authority may require the testing of materials plant and workmanship used or proposed to be used in the highway works and shall have the power to reject any materials plant or workmanship so tested which each relevant highway authority may reasonably and properly find to be not in accordance with the approved information pursuant to paragraph [6] (formal approval) of this Part of this Schedule and recorded in the approvals register pursuant to paragraph [6] (formal approval) of this Part of this Schedule.

(2) The undertaker shall, as soon as is reasonably practicable, replace or repair any materials plant or workmanship which have been found to be not in accordance with the approved information pursuant to paragraph [6] (formal approval) of this Part of this Schedule and recorded in the approvals register pursuant to paragraph [6] (formal approval) of this Part of this Schedule.

(3) Subject at all times to provision of appropriate notice and compliance with any overriding health and safety or similar obligations, any person or persons duly authorised by each highway authority shall be allowed reasonable access and admission to the highway works or the places where materials or plant for the highway works may be stored or in the course of preparation manufacture or use (unless such access or admission is refused due to circumstances beyond the control of the undertaker).

Inspection of the highway works

12.— (1) Subject at all times to provision of appropriate notice and compliance with any overriding health and safety or similar obligations, the undertaker shall, during the progress of each and all of the highway works, give to or procure for any person or persons duly authorised by each highway authority supervised access to every part of the highway works and the site thereof and permit those person or persons to inspect the same as they proceed and all materials used or intended to be used therein and shall give effect to any reasonable and proper requirements made or reasonable and proper directions given in order to ensure conformity with the approved information pursuant to paragraph [6] (formal approval) of this

Part of this Schedule and recorded in the approvals register pursuant to paragraph [6] (formal approval) of this Part of this Schedule.

(2) The undertaker shall not cover up or put out of view any works forming part of the Highway Works without the approval of the relevant highway authority and shall afford full opportunity for any person or persons duly authorised by the relevant highway authority to examine and measure any work which is about to be covered up or put out of view and to examine foundations before permanent work is placed thereon and shall give at least three working days' notice to the relevant highway authority whenever any such work or foundations is or are ready or about to be ready for examination.

(3) Each relevant highway authority shall ensure that any person or persons duly authorised by it attend, without unreasonable delay, when required by the undertaker for the purpose of examining the highway works or of examining such foundations, provided the undertaker provides the relevant highway authority with not less than three working days' notice of the proposed examination.

Opening up of the Highway Works

13.— (1) During the construction of each phase or element of the highway works and prior to the issue of the certificate of substantial completion for that phase or element of the highway works, the relevant highway authority may wish to open or expose any of the highway works which have been covered up without previously being inspected by the highway authority under paragraph [12] (Inspection of the highway works).

(2) Where sub-paragraph (1) of this paragraph applies, the relevant highway authority may so take up or expose the relevant part of the highway works causing as little damage or inconvenience as is possible in respect of any other part or parts of the highway works (and the undertaker shall be responsible for the reasonable and proper cost of such taking up or exposure and reinstatement) provided that if the highway works or any part or parts thereof are covered up by the undertaker after giving the notice referred to in paragraph 16 of this Part of this Schedule and the relevant highway authority have failed to inspect in the period therein referred to and the relevant highway authority shall subsequently require the highway works or any part of them to be uncovered for the purposes of inspection:-

- a) if inspection reveals the relevant part or parts of the highway works to have been completed in accordance with the plans, drawings, specifications and other materials which have been approved pursuant to Paragraph [6] (Formal approval) and recorded in the approvals register, all costs in respect of such uncovering and inspection and of reinstating the part or parts of the highway works uncovered shall be borne by the relevant highway authority; or
- b) if inspection reveals the relevant part or parts of the highway works not to have been completed in accordance with the plans, drawings, specifications and other materials which have been approved pursuant to Paragraph [6] (Formal approval) and recorded in the approvals register all reasonable and proper costs in respect of uncovering and inspection and of reinstating the part or parts of the highway works uncovered shall be borne by the undertaker.

Site clearance and Certificates of Substantial Completion

14.— (1) The obligations in this paragraph 14 shall apply in respect of all highway works, irrespective of whether they are of a permanent or temporary nature.

(2) On substantial completion of each phase or element of the highway works, the undertaker shall:

- a) clear away and remove from the site of the highway works all construction plant and temporary works of every kind and leave the site of the highway works in a neat and tidy condition to the satisfaction of the relevant highway authority (the relevant highway authority being obliged to act reasonably);
- b) as defined in GG 119, carry out stage 3 of the road safety audit process and comply to the satisfaction of the relevant highway authority (the relevant highway authority being obliged to act reasonably) with recommendations arising thereunder prior to the opening of the highway works to the public;
- c) notify the relevant highway authority of completion of the permanent highway works or any part thereof (or restoration of any temporary works or any part thereof) and apply to the relevant highway authority for a certificate of substantial completion in respect of the relevant works; and
- d) provide the relevant highway authority with the as built information.

(3) Following an application for a certificate of substantial completion, the relevant highway authority shall as soon as reasonably practicable –

- c. inspect the highway works; and
- d. provide the undertaker with a written list of any works that are required for the certificate of substantial completion to be issued or confirmation that no further works are required for this purpose.

(4) Upon substantial completion of each phase or element of the highway works, including any additional work resulting from stage 3 of the road safety audit process to the satisfaction in all respects of the relevant highway authority (the relevant highway authority being obliged to act reasonably), the relevant highway authority shall issue a certificate of substantial completion in respect of those highway works to the undertaker, provided that all costs and expenses owing to the relevant highway authority have been paid in respect of those highway works.

(5) On the issue of the certificate of substantial completion for permanent works, the maintenance period will commence.

(6) For permanent alterations to the highway work a final certificate of completion will be issued at the end of the maintenance period subject to resolution of any matters identified in the stage 4 road safety audit.

Temporary works period and certificate of reinstatement (temporary works only)

15.— (1) The obligations in this paragraph 15 shall apply only in respect of those highway works which are of a temporary nature.

(2) The undertaker shall be permitted to retain each phase or element of the highway works in situ for the temporary works period (or such longer period as is agreed between the undertaker and the relevant highway authority) provided this does not exceed completion of the construction phase of the authorised development.

(3) The undertaker shall maintain each phase or element of the highway works in a condition satisfactory to the relevant highway authority for the temporary works period using the intervention criteria in the Highway Maintenance Operational Plan as minimum criteria.

(4) On the expiry of the temporary works period, the undertaker shall promptly clear away and remove from the site of the highway works all highway works of every kind (including construction plant and equipment) and reinstate the site of the highway works to the satisfaction of the relevant highway authority (the relevant highway authority being obliged to act reasonably).

(5) The relevant highway authority shall thereafter, and as soon as reasonably practicable, issue to the undertaker the certificate of reinstatement in respect of the relevant highway works and the maintenance period commences on the issue of that certificate.

(6) At the end of the maintenance period and subject to any defect arising within that period, being rectified to the satisfaction of the relevant highway authority, that authority will issue the certificate of final completion.

(7) In this paragraph, “Highway Maintenance Operational Plan” means the most recent operational plan published on the Suffolk County Council’s website.

Defects correction period and certificate of final completion ()

16.— (1) The obligations in this paragraph 16 shall apply only in respect of those highway works which are of a permanent nature.

(2) The undertaker shall maintain each phase or element of the highway works for a period of eighteen (18) months (unless the relevant highway authority agrees in writing to a lesser period) from the issue of the related certificate of substantial completion)

and prior to the expiration of that period, the undertaker shall reinstate and make good any damage or defect which may have arisen from any cause whatsoever or be discovered during the said period (including any defect in or damage to the surface water drainage system) so as to place the highway and the relevant highway works in a condition satisfactory to the relevant highway authority (the highway authority being obliged to act reasonably).

(3) After the expiration of the period of twelve (18) months from substantial completion, the undertaker shall (unless it is agreed between the parties that it is to be carried out sooner or that it is no longer required) carry out stage 4 of the road safety audit and comply to the satisfaction in all respects of the relevant highway authority (the highway authority being obliged to act reasonably) with any recommendations arising thereunder.

(4) After:

- d. the expiration of the period referred to in sub-paragraph (2) (or such lesser period as agreed in writing by the relevant highway authority under sub-paragraph (2)); and
- e. any defects have been made good as therein provided, including any improvements arising under stage 4 of the road safety audit to the satisfaction of the relevant highway authority (the relevant highway authority being obliged to act reasonably); and
- f. the undertaker has provided a plan showing the land over which the highways works have been constructed and a health and safety file complying with the CDM regulations, including a separate health and safety file for each structure;

the relevant highway authority shall as soon as reasonably practicable issue to the undertaker the certificate of final completion in respect of the relevant highway works, provided that the certificate of final completion shall in the case of road gullies extend only as far as their points

of entry to the surface water sewers where those are not being adopted by the highway authority as highway drains.

(5) Upon issue of a certificate of final completion:

- c. any part of the highway works to which that certificate of final completion shall relate which is not already public highway shall be adopted by the relevant highway authority as part of the public highway; and
- d. the highway works so certified shall from then and at all times be maintainable at the public expense and the undertaker shall have no further liability under this Schedule in respect to the same.

Permit Schemes

17.— The undertaker agrees that the provisions in this Part of this Schedule operate in parallel to the permit schemes, each of which is given effect in article [12] (Application of the permit schemes) of this Order.

18.— Unless otherwise agreed in writing by the relevant highway authority, in the event of a conflict with the provisions of this Part of this Schedule and either or both of the permit schemes, the terms of the permit scheme will prevail.

Payments and Costs

19.— The undertaker must pay to the relevant highway authority –

- a) an initial checking fee, to be calculated and agreed separately with the relevant highway authority, in relation to each phase or element of the highway works for which formal approval is sought, such sum to be paid prior to the submission of an application for formal approval;
- b) a balancing payment, to be calculated and agreed separately with the relevant highway authority, such sum to be paid, if required, prior to commencement of the phase or element of the highway works in question including recovery of additional costs for changes during the construction phase;
- c) the reasonable costs incurred by the relevant highway authorities in undertaking any road safety audits, such sum to be paid prior to the commencement of the road safety audits in question;
- d) the reasonable costs incurred by the relevant highway authorities in monitoring the implementation of any recommendations arising from any road safety audits undertaken, such sum to be paid upon production of a valid invoice for the same;
- e) the reasonable cost of any temporary and permanent traffic regulation orders, such sum to be paid prior to the commencement of any work on the making of such Order;
- f) the reasonable cost of any other road traffic orders required to facilitate the highway works, such to be paid prior to the commencement of any work on the making of such Order;
- g) the inspection fee mentioned in paragraph 10 (commencement), such sum to be paid in accordance with that provision;

- h) the reasonable cost of reviewing any management plan referred to in requirement 6 (management plans for approval) such sum to be paid on completion of the review;
- i) the reasonable cost of undertaking a structural review of the highway and, where necessary, modifying the same to accommodate abnormal indivisible loads, such sum to be paid prior to the commencement of any highway works;
- j) the reasonable cost of dealing with the extraordinary traffic regime under paragraph 8 (extraordinary traffic);
- k) the legal costs reasonably and properly incurred by the relevant highway authority for or in connection with the preparation and negotiation of this Part of this Schedule; and
- l) any value added tax which is payable by the relevant highway authority in respect of such payments referred to in this paragraph [19] and for which it cannot obtain reinstatement from HM Revenue and Customs.

20.— (1) All funding and charging arrangements between the undertaker and the relevant highway authorities shall be in accordance with the following overarching principles:

- a) the charging must relate exclusively to the relevant highway authority's recovery of its costs in respect of the highway works and more broadly for the provision of services it is authorised but not required (by an enactment) to provide;
- b) where the services of the relevant highway authority's maintenance contractor are required these will be charged at the rates within the relevant highway authority's maintenance contract and subject to the conditions of the same;
- c) charges are to be incurred on a not-for profit basis (year by year) and, taking one year with another, the income from the charges for such services must not exceed the cost of providing them;
- d) there shall be transparency with regard to costs incurred; and
- e) if significant changes are made to the approved design during construction the highway authority reserves the right to recover any additional costs incurred.

(2) All invoices submitted in connection with the costs and/or payments must comply with the principles set out in sub-paragraph (1) and be accompanied by a written report summarising all tasks carried out or activities undertaken which have given rise to such costs and such other supporting information as is reasonable for the undertaker to request in the circumstances.

21.— Interest at 4% above the Bank of England base rate from time to time shall be payable in respect of any sum due to any relevant highway authority under this Part of this Schedule which is outstanding for more than twenty eight (28) days from the date on which it was demanded or, in the event that a dispute or difference regarding such payment is referred to arbitration pursuant to article [62], the said twenty eight (28) day period shall run from the date of the decision of the arbitrator (such interest to be charged on the amount outstanding each day from the date of issue of a written demand for any sum due or in the event that a dispute or difference regarding such payment is referred to arbitration pursuant to article [62] such interest to be charged on the amount outstanding each day from the date of issue of the decision of the arbitrator).

Security

22.— (1) The undertaker must provide the relevant highway authority with a bank for the value of the performance figure in relation to each phase or element of the highway works before the commencing of that phase or element.

(2) Without expense to the relevant highway authority the undertaker and the surety shall prior to commencing each phase or element of the highway works enter into the bond for that phase or element and the undertaker and surety shall be bound to the relevant highway authority in the amount of the performance figure for the relevant phase or element.

(3) Should the undertaker default in the execution of its obligations in carrying out the relevant phase or element of the highway works and to maintain the same in accordance with the provisions of this Part of this Schedule then the relevant highway authority may (subject to the provisions contained in this Part) itself complete the relevant phase or element that has been commenced by the undertaker and maintain the same as aforesaid having first called upon the bond for the cost to be expended in so doing –

- (a) unless there is a danger to users of the highway the relevant highway authority shall give not less than 5 working days prior written notice (or lesser period as may in the circumstances be reasonable) of its intention to commence work under paragraph 22(3);
- (b) any notice served under this paragraph shall specify the period of the notice (“the notice period”) the extent of the work which the relevant highway authority proposes to carry out and full details of all matters in respect of which the Director considers that the highway work has not been carried out in accordance with the terms of this Part of this Schedule; and
- (c) if before the expiry of the notice period the undertaker serves written notice upon the relevant highway authority that the undertaker intends diligently to execute the works specified in the notice in accordance with the terms of this Part of this Schedule and specifies a time to complete that the relevant highway authority considers reasonable in the circumstances the relevant highway authority shall not be entitled to execute the relevant part or parts of the highway work specified in the notice served under this paragraph unless the undertaker then fails to execute those works within the agreed time scale.

(4) If the undertaker should default in the execution of its obligations in carrying out any phase or element of the highway works or to maintain the same in accordance with the provisions of this Part of this Schedule then the relevant highway authority will call upon the bond to provide the full performance figure amount in accordance with this Part of this Schedule.

Insurance

23.— (1) Prior to the commencement of the highway works the undertaker must have in place public liability insurance in the minimum sum of £10,000,000.000 (ten million pounds) in respect of any one claim against any legal liability for damage loss or injury to any property or any person as a direct result of the execution of highway works or use of the local road network by the undertaker.

Indemnity

24.— (1) The undertaker shall, from the date of commencement of each phase or element of the highway works indemnify the relevant highway authority against all claims, charges, costs, expenses, liability or losses whatsoever arising out of any or all of that phase or element of the highway works provided that the undertaker’s indemnity will not extend to any claims submitted

to the relevant highway authority arising out of the negligence of the relevant highway authority's employees or arising after the issue of the certificate of final completion pursuant to Paragraph [15 and 16] or expiry of the temporary works period (including re-instatement).

(2) The relevant highway authority shall:

- (a) notify the undertaker immediately upon receipt of any claims, charges, costs, expenses, liability or losses referred to in sub-paragraph (1);
- (b) at all times after that date keep the undertaker fully informed;
- (c) permit and assist the undertaker to make such investigations and/or tests as the undertaker may reasonably deem necessary to verify such claims, charges, costs, expenses, liability or losses;
- (d) not accept or compromise any claims, charges, costs, expenses, liability or losses to which this indemnity relates without the prior approval of the undertaker as to its validity and as to the amount of the settlement; and
- (e) consider a request of the undertaker to instruct a reputable firm of solicitors in respect of the conduct of negotiations and/or proceedings in respect of any claims, charges, costs, expenses, liability or losses to which this indemnity relates, provided always that, if such solicitors are instructed, the undertaker will be responsible for all their costs.

(3) The indemnity in sub-paragraph (1) above includes:

- d) all fees incurred by claimants which the relevant highway authority is obliged to pay, and those of the relevant highway authority or its agent or contractor, in negotiating any claims (together with VAT payable on the claimants' professional advisors' fees);
- e) statutory interest payments to claimants and their professional advisors; and
- f) the relevant highway authority's reasonable and proper legal costs, which are not covered by sub-paragraph (e) of this clause [22].

Arbitration

25.— Any dispute under this Part of this Schedule shall be settled by arbitration in accordance with article [62] (arbitration).

ANNEX

BOND

DATED [REDACTED]

~~(1)~~(2) [REDACTED] [UNDERTAKER]

(2) [SURETY]

BOND
relating to the development of land at
[REDACTED] Suffolk

BY THIS BOND [] LIMITED of []

- (1) [] (the "Undertaker"); and
- (2) [] (the " Surety") are held and firmly bound to **SUFFOLK COUNTY COUNCIL** of Endeavour House 8 Russell Road Ipswich Suffolk IP1 2DH (the "**County Council**" in the sum of £[] ([] Pounds Sterling) to be paid to the County Council for the payment of which sum the Undertaker and the Surety bind themselves their successors and assigns jointly and severally.

IN WITNESS whereof the Undertaker and the Surety have hereunto affixed their respective Common Seals and delivered the same on but not before this day of []

- 1. The Protective Provisions included in Part [5] of Schedule 15 to the National Grid (Sea Link) Order 202[*] set out the terms of the carrying out of works in the highway.
- 2. It is intended that this Bond shall be construed as one with the said Protective Provisions insofar as it relates to the works in relation to which the Undertaker has elected to provide the Security by way of a Bond and which are particularised in the Annex attached hereto ('relevant **Highway Works**').

Now the condition of the above-written Bond is such that if the Undertaker shall duly perform and observe all the terms provisions conditions and stipulations of the said Protective Provisions (in so far as they relate to the relevant Highway Works in relation to which the Undertaker has elected to provide the Security by way of a Bond) on the Undertaker's part to be performed and observed according to the true intent and meaning thereof or if on default by the Undertaker the Surety shall duly satisfy and discharge the damages sustained by the County Council up to the amount of the above-written Bond then the above-written Bond shall be null and void but otherwise shall remain in full force and effect provided always that the giving by the County Council of any extension of time for performing the said Protective Provisions or any stipulations therein contained and on the part of the Undertaker to be performed or any other forgiveness or forbearance on the part of the County Council or its successors or assigns shall not in any way release the Surety from any liability under the above-written Bond.

Executed as a Deed (but not delivered until the date of this Deed) by affixing the common seal of **[THE UNDERTAKER]** in the presence of

.....
Full Name (Director)

.....
Signature of Director

.....
Full Name (Director/Secretary)

.....
Signature of Director/Secretary

Executed as a Deed (but not delivered until the date of this Deed) by affixing the common seal of [SURETY] in the presence of

.....
Full Name (Director)

.....
Signature of Director

.....
Full Name (Director)

.....
Signature of Director