



NORTHAMPTON
GATEWAY
STRATEGIC RAIL FREIGHT INTERCHANGE

**DCO DRAFTING
STATEMENT OF COMMON GROUND BETWEEN
THE APPLICANT AND HIGHWAYS ENGLAND**

DOCUMENT 7.1C

The Northampton Gateway Rail Freight Interchange Order 201X

Regulation No: 5 (2) (q)

DCO DRAFTING STATEMENT OF COMMON GROUND BETWEEN
THE APPLICANT AND HIGHWAYS ENGLAND | 6 NOVEMBER 2018

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STATEMENT OF COMMON GROUND IN RESPECT OF NORTHAMPTON GATEWAY RAIL FREIGHT INTERCHANGE

Parties

1. This statement is agreed between:-
 - 1.1 Roxhill (Junction 15) Limited ("Roxhill"); and
 - 1.2 Highways England.

Scope

2. This statement deals with the following matters in respect of the proposed development of a strategic rail freight interchange (SRFI) known as Northampton Gateway ("NG"):
 - (a) the views of the parties in relation to the Articles contained with the development consent order; and
 - (b) the views of the parties in relation to the Protective Provisions for the protection of Highways England contained in part 2 of Schedule 13 to the dDCO.
3. Other completed statements of common ground between Roxhill and Highways England deal with the transport assessment and proposed mitigation relating to the proposal (see Documents 7.1 & 7.1A) and Smart Motorways (Document 7.1B).

DCO Articles

4. The table in Appendix 1 to this statement sets out the position of the parties in relation to articles in the dDCO (Document 3.1A) upon which the Examining Authority asked for the views of Highways England and also articles which Highways England have sought to be amended.
5. The parties are in agreement in respect of the articles in the dDCO, subject to any amendments referred to in the table in Appendix 1. The amendments to the Articles will be incorporated within the version of the dDCO to be submitted by Deadline 2.

Protective Provisions

6. The protective provisions contained in Appendix 2 to this statement of common ground are agreed with the exception of the deemed approved provisions in Paragraph 15 (See paragraph 7 below). They have been amended since the dDCO submitted in August (Document 3.1A) to incorporate changes following comments by the Examining Authority in the ISH1 Table 1 to Annex G of the rule 6 letter and other agreement reached between the parties in relation to drafting. They will be incorporated within the version of the Development Consent order to be submitted by Deadline 2.
7. The issue with Paragraph 15 is that Highways England do not accept the principle of deemed approval.

Signed on behalf of Highways England:



Name and Position:

KIAZI HUSSAIN
SPATIAL PLANNING MANAGER

Signed on behalf of Roxhill (Junction 15) Ltd:



Name and Position:

Mona Thomas
Partner
LAWSON GREEN & SUTHERLAND

APPENDIX 1

Article	Topic	Position
7(3)(b)	Benefit of Order	This agreed between the parties
11	Temporary stopping up of streets	<p>This is agreed</p> <p>(i) subject to the inclusion of the highlighted text in (5) agreed between the parties; but</p> <p>(ii) with the exception of the figure in (5) which HE wish to be 56 and the Applicant is prepared to increase to 42 from 28.</p> <p><i>11.—(1) The undertaker may during and for the purposes of carrying out the authorised development, temporarily stop up, alter or divert any street and may for any reasonable time—</i></p> <p><i>(a) divert the traffic from the street; and</i></p> <p><i>(b) subject to paragraph (2), prevent all persons from passing along the street.</i></p> <p><i>(2) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.</i></p> <p><i>(3) The undertaker must not temporarily stop up, alter or divert any street for which it is not the street authority without the consent of the relevant street authority which may attach reasonable conditions to any consent but such consent must not be unreasonably withheld.</i></p> <p><i>(4) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.</i></p> <p><i>(5) If a street authority has received an application for consent under paragraph (3) accompanied by all relevant information and fails to notify the undertaker of its decision before the end of the period of 28- 42/56 days beginning with the date on which the application was made submitted with all relevant information, it is deemed to have granted consent.</i></p>
13	Accesses	This is agreed with the exception of (3) which Highways England wish to be deleted due to safety concerns regarding the deemed approval provisions.

		<p>The Applicant wishes to retain (3) but proposes to increase the days stated from 28 to 42.</p> <p>Accesses</p> <p>13.—(1) <i>The undertaker may, for the purposes of the authorised development and subject to paragraph (2), with the consent of the relevant highway authority or the relevant street authority as appropriate (such consent not to be unreasonably withheld), form and lay out such means of access (permanent or temporary) or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.</i></p> <p>(2) <i>The agreement of the relevant highway authority or the relevant street authority as appropriate is not required for the formulation, layout or improvement of a new or existing means of access described in Schedule 1 (authorised development) and carried out in accordance with the relevant provisions of Parts 2 and 3 of Schedule 13 (protective provisions).</i></p> <p>(3) <i>If a highway authority or street authority which has received an application for consent under paragraph (1) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.</i></p> <p>(4) <i>The private means of access as set out in column (2) of Part 1 of Schedule 6 (private means of access to be replaced) may be removed by the undertaker and if removed must be replaced by the means of access as set out in column (3) of Part 1 of Schedule 6 at the stage of the authorised development identified in column (4) of that Part of that Schedule.</i></p> <p>(5) <i>The private means of access as set out in column (2) of Part 2 of Schedule 6 (private means of access to be closed for which no substitute is to be provided) may be closed by the undertaker at the stage of the authorised development identified in column (3) of that Part of that Schedule without a substitute being provided.</i></p> <p>(6) <i>The undertaker must provide the private means of access as set out in column (2) of Part 3 of Schedule 6 (new private means of access created) at the stage of the authorised development identified in column (3) of that Part of that Schedule.</i></p>
14	Highway Maintenance	<p>At the DCO ISH Roxhill proposed an amendment to article 6 to clarify that the definition of “maintenance” does not apply to the maintenance of the highway works.</p>

		<p>To further clarify this Roxhill proposes a new sub-paragraph to article 14 as follows:</p> <p><i>"(6) For the purposes of this article, the definition of "maintain" in article 2 shall not apply and the word "maintain" shall be given its ordinary meaning when applied to highways."</i></p> <p>This is agreed between the parties.</p>
17	Traffic regulation	<p>This is agreed</p> <p>(i) subject to the inclusion of the highlighted text in (7) agreed between the parties; but</p> <p>(ii) with the exception of the figure in (7) which HE wish to be 56 and the Applicant is prepared to increase to 42 from 28.</p> <p>17.—(1) <i>The order referred to in column (1) of Part 1 of Schedule 9 (amendments to existing orders) is revoked as set out in column (2) of Schedule 9 upon the event listed in column (3) of Part 1 of Schedule 9 occurring.</i></p> <p>(2) <i>Without limiting the scope of the specific powers conferred by paragraph (1) but subject to the provisions of this article and the consent (such consent not to be unreasonably withheld) of the relevant traffic authority, which consent may be subject to reasonable conditions, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with the construction, operation, or maintenance of the authorised project —</i></p> <p>(a) <i>revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;</i></p> <p>(b) <i>permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road;</i></p> <p>(c) <i>suspend or authorise the use as a parking place of any highway;</i></p> <p>(d) <i>make provision as to the direction or priority of vehicular traffic on any highway; and</i></p> <p>(e) <i>permit or prohibit vehicular access to any highway; either at all times or at times, on days or during such periods as may be specified by the undertaker.</i></p> <p>(3) <i>The undertaker shall not exercise the powers in paragraph (3) unless it has—</i></p> <p>(a) <i>given not less than 4 weeks' notice in writing of its intention so to do to the chief officer of police and to the relevant traffic authority; and</i></p>

		<p>(b) advertised its intention in such manner as the relevant traffic authority may specify in writing within 7 days of the relevant traffic authority's receipt of notice of the undertaker's intention under sub-paragraph (a).</p> <p>(4) Any prohibition, restriction or other provision made by the undertaker under paragraph (3) shall—</p> <p>(a) have effect as if duly made by, as the case may be—</p> <p>(i) the relevant traffic authority as a traffic regulation order under the 1984 Act; or</p> <p>(ii) the local highway authority as an order under section 32 of the 1984 Act(a); and</p> <p>(b) be deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004 (road traffic contraventions subject to civil enforcement).</p> <p>(5) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred by paragraph (3) at any time.</p> <p>(6) Expressions used in this article and in the 1984 Act shall have the same meaning in this article as in that Act.</p> <p>(7) If the relevant traffic authority fails to notify the undertaker of its decision within 28 42/56 days of receiving an application for consent under paragraph (3) that is accompanied by all relevant information the relevant traffic authority shall be deemed to have given consent.</p>
21	Discharge of Water	<p>The Applicant has suggested the changes to Article 21 as set out below to address issues raised by Highways England. Highways England are not content with Article 21 as amended below. Discussions are ongoing.</p> <p>21. Subject to paragraphs (3), (4) and (5), the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.</p> <p>(1) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) must be</p>

		<p>determined as if it were a dispute under section 106 of the Water Industry Act 1991⁽¹⁾ (right to communicate with public sewers).</p> <p>(2) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.</p> <p>(3) The undertaker must not make any opening into any public sewer or drain except—</p> <p>(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and</p> <p>(b) where that person has been given the opportunity to supervise the making of the opening.</p> <p>(4) No water may be discharged into a watercourse that flows into the highway drainage system without the consent of the relevant highway authority and such consent may be given subject to such terms and conditions as the highway authority consider appropriate such consent not to be unreasonably withheld or delayed.</p> <p>(5) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.</p> <p>(6) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2016⁽²⁾.</p> <p>(7) In this article—</p> <p>(a) “public sewer or drain” means a sewer or drain which belongs to the Environment Agency, an internal drainage board, a local authority or a sewerage undertaker; and</p> <p>(b) other expressions excluding watercourse, which are used both in this article and in the Water Resources Act 1991⁽³⁾ have the same meaning as in that Act.</p> <p>(8) If a person who has received an application for consent under paragraph (3) or approval under paragraph (4)(a) fails to notify the undertaker of its</p>
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		<p>decision within 28 42/56 days of receiving the application submitted with all relevant information, that person is deemed to have granted consent or given approval as the case may be.</p>
22	Authority to survey and investigate the land	<p>This is agreed subject to:</p> <p>(i) the inclusion of the additional words in paragraph (6) shown as highlighted text; but</p> <p>(ii) with the exception of the figure in (6) which HE wish to be 56 and the Applicant is prepared to increase to 42 from 28.</p> <p>22.—(1) <i>The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—</i></p> <p>(a) <i>survey or investigate the land;</i></p> <p>(b) <i>without limitation on the scope of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;</i></p> <p>(c) <i>without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and</i></p> <p>(d) <i>place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.</i></p> <p>(2) <i>No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner, who is not the undertaker, and occupier of the land.</i></p> <p>(3) <i>Any person entering land under the powers conferred by this article on behalf of the undertaker—</i></p> <p>(a) <i>must, if so required, produce written evidence of their authority to do so; and</i></p> <p>(b) <i>may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.</i></p> <p>(4) <i>No trial holes may be made under this article—</i></p> <p>(a) <i>in land located within the highway boundary without the consent of the relevant highway authority; or</i></p> <p>(b) <i>in a private street without the consent of the relevant street authority;</i></p> <p><i>but such consent must not be unreasonably withheld.</i></p> <p>(5) <i>The undertaker must compensate the owners and occupiers of the land for any loss or</i></p>

		<p>damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).</p> <p>(6) If either a highway authority or a street authority which has received an application for consent under paragraph (4) that includes all relevant information and fails to notify the undertaker of its decision within 28 42/56 days of receiving the application the authority is deemed to have granted the consent.</p>
34	Rights under of over streets	<p>Highway England do not wish these rights to apply to the strategic road network and the additional words in article 34 have been agreed, shown highlighted.</p> <p>34.—(1) Subject to paragraph (6) The undertaker may enter on and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.</p> <p>(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.</p> <p>(3) Paragraph (2) does not apply in relation to—</p> <ul style="list-style-type: none"> (a) any subway or underground building; or (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street. <p>(4) Subject to paragraph (5), any person who—</p> <ul style="list-style-type: none"> (a) is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land; and (b) suffers loss as a result, <p>is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.</p> <p>(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 (sharing cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.</p> <p>(6) Paragraph (1) does not apply to any street which is part of the strategic road network</p>

		The term "strategic road network" will be defined in article 2 as "that part of the highway network comprising trunk roads and motorways"
35	Temporary use of land for carrying out the authorised development	<p>Highway England wish to have additional controls over temporary accesses and accordingly the following additional highlighted text to article 35 (4), has been agreed.</p> <p>35.(1) <i>The undertaker may, in connection with the carrying out of the authorised development—</i></p> <p><i>(a) enter into and take temporary possession of—</i></p> <p><i>(i) the land specified in columns (1) and (2) of Schedule 10 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule; and</i></p> <p><i>(ii) any of the Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act⁽⁴⁾ or no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981;</i></p> <p><i>(b) remove any buildings and vegetation from that land;</i></p> <p><i>(c) construct and use temporary works (including the provision of means of access) and buildings on that land; and</i></p> <p><i>(d) construct or carry out any works on that land as are mentioned in Schedule 1 (authorised development).</i></p> <p><i>(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.</i></p> <p><i>(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—</i></p> <p><i>(a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 10; or</i></p> <p><i>(b) in the case of land referred to in paragraph (1)(a)(ii), after the end of the period of 1 year beginning with the date of completion of the</i></p>

		<p>work for which temporary possession of that land was taken unless the undertaker has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 in relation to that and or has otherwise acquired the land subject to temporary possession.</p> <p>(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works (including temporary accesses to the public highway) and restore the land to the reasonable satisfaction of the owners of the land and any temporary highway accesses to the reasonable satisfaction of the relevant highway authority; but the undertaker is not required to—</p> <ul style="list-style-type: none"> (a) replace a building removed under this article; or (b) restore the land on which any permanent works have been constructed or carried out under paragraph (1)(d). <p>(5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article.</p> <p>(6) Any dispute to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, must be determined under Part 1 of the 1961 Act.</p> <p>(7) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).</p> <p>(8) For the avoidance of doubt unless provided for in the book of reference and article 25 (compulsory acquisition of land and rights) the undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1).</p> <p>(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.</p> <p>(10) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125</p>
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		<i>(application of compulsory acquisition provisions) of the 2008 Act.</i>
36	Temporary use of land for maintaining authorised development	<p>Highway England wish to have additional controls over temporary accesses and accordingly the following additional text to article 36 (1)(c) and (5) has been agreed.</p> <p>36.—<i>(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—</i></p> <ul style="list-style-type: none"> <i>(a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development;</i> <i>(b) enter on any land within the Order limits for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and</i> <i>(c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for those purposes provided that any temporary access to the public highway shall be subject to the approval of the relevant highway authority.</i> <p><i>(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—</i></p> <ul style="list-style-type: none"> <i>(a) any house or garden belonging to a house; or</i> <i>(b) any building (other than a house) if it is for the time being occupied.</i> <p><i>(3) Not less than 28 days before entering on and taking temporary possession of land under this article, the undertaker must serve notice of the intended entry on the owners and occupiers of the land.</i></p> <p><i>(4) The undertaker may remain in possession of land under this article only for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.</i></p> <p><i>(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works (including temporary accesses to the public highway) and restore the land to the reasonable satisfaction of the owners of the land and any temporary highway accesses to the reasonable satisfaction of the relevant highway authority.</i></p>

	<p>(6) <i>The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.</i></p> <p>(7) <i>Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, must be determined under Part 1 of the 1961 Act.</i></p> <p>(8) <i>Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).</i></p> <p>(9) <i>Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.</i></p> <p>(10) <i>Section 13 (refusal to give possession to the acquiring authority) of the 1965 Act⁽⁵⁾ applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act.</i></p> <p>(11) <i>In this article, "maintenance period", in relation to any part of the authorised development, means the period of 5 years beginning with the date on which that part of the authorised development is first brought into use.</i></p>
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APPENDIX 2

SCHEDULE 1

Article []

PROTECTIVE PROVISIONS

PART 2

FOR THE PROTECTION OF HIGHWAYS ENGLAND

Application

1. The provisions of this Schedule shall have effect unless otherwise agreed in writing between the undertaker and Highways England and shall apply to the HE Works .

Interpretation

2.—(1) The terms used in this Schedule are as defined in article 2 of this Order save where inconsistent with subparagraph (2) below which shall prevail; and

(2) In this Schedule—

“As Built Information” means one digital copy of the following information where applicable to the Phase in question—

- (a) As constructed drawings in both PDF and AutoCAD DWG formats for anything designed by the Undertaker; in compliance with Interim Advice Note 184 or any successor document;
- (b) List of suppliers and materials used;
- (c) Product data sheets, technical specifications for all materials used;
- (d) As constructed information for any Utilities discovered or moved during the works;
- (e) Method Statements for works carried out;
- (f) In relation to road lighting, signs, and traffic signals any information required by Series 1300 and 1400 of the Specification for Highway Works;
- (g) Organisation and methods manuals for all products used in the construction of the authorised development;
- (h) As constructed programme;
- (i) Test results and records as required by the Detailed Design Information and during construction phase of the project;
- (j) RSA 3 and exceptions agreed;
- (k) Health and Safety File; and
- (l) Other such information as is necessary to enable Highways England to update all relevant databases and to ensure compliance with the Highways England *Asset Data Management Manual* as shall be in operation at the relevant time including, for the avoidance of doubt, CCTV surveys.

“the Bond Sum” means the sum equal to 120% of the cost of the carrying out of the Phase of the HE Works concerned (to include all costs plus any Commuted Sum) or such other sum agreed between the undertaker and Highways England;

“the Cash Surety” means the sum of £150,000 or such other sum agreed between the undertaker and Highways England;

“County Highway Works” means those parts of the authorised development to be carried out in the areas identified as Works Nos. 7,9,12,13,14,15, 16 and 17 on the works plans, the general arrangement of which is shown on the highway plans and any ancillary works thereto;

“Commuted Sum” means such sum as shall be calculated for each phase as provided for in paragraph 9 of this Schedule and to be used to fund the future cost of maintaining the HE Works;

“Contractor” means any contractor or sub-contractor appointed by the undertaker to carry out the HE Works or any Phase of the HE Works and approved by Highways England pursuant to paragraph 3(3) below;

“Detailed Design Information” means drawings specifications and calculations as appropriate for the following which shall all be in accordance with the general arrangements of the HE Works shown on the highway plans unless otherwise agreed between Highways England and the undertaker—

- (a) site clearance details;
- (b) boundary, environmental and mitigation fencing;
- (c) road restraints systems and supporting Road Restraint Risk Appraisal Process assessment (RRRAP);
- (d) drainage and ducting as required by Series 500 of the Specification for Highways Works, HD 43/04, IAN 147/12 and SD 15 Parts 1 – 6 inclusive;
- (e) earthworks including supporting geotechnical assessments required by HD22/08 and any required Strengthened Earthworks Appraisal Form certification (SEAF);
- (f) pavement, pavement foundations, kerbs, footways and paved areas;
- (g) traffic signs and road markings;
- (h) traffic signal equipment and associated signal phasing and timing detail;
- (i) road lighting (including columns and brackets);
- (j) electrical work for road lighting, traffic signs and signals;
- (k) motorway communications as required by the Designs Manual for Roads and Bridges;
- (l) highway structures and any required structural Approval in Principle (AIP);
- (m) landscaping;
- (n) agreed departures from DMRB standard;
- (o) a report of walking, cycling and horse riding carried out in accordance with the Design Manual for Roads and Bridges Standard HD42/17 or any successor document;
- (p) Stage 2 Road Safety Audit and exceptions agreed and in the event that any works are not commenced within five years of the date of the Stage 1 Road Safety Audit a further Stage 1 Road Safety Audit and exceptions agreed
- (q) Utilities diversions;
- (r) topographical survey;
- (s) maintenance and repair strategy in accordance with Designing for Maintenance Interim Advice Note 69/15 or any successor document; and
- (t) health and safety information including any asbestos survey required by GD05/16 or any successor document.

where relevant to the Phase concerned.

“Dilapidation Survey” means a survey of the condition of the roads, bridges and retaining walls which will be the subject of the physical works comprised in the Phase concerned

“Estimated Costs” means the estimated costs in respect of each Phase agreed pursuant to paragraphs 5(1)(b) to (d) and (5) of this Schedule;

“the Excess” means the amount by which Highways England estimates that the costs referred to in paragraph 5(1)(b) to (d) will exceed the Estimated Costs pursuant to paragraph 5(5)(b);

“HE Works” means those parts of the authorised development to be carried out in the areas identified as Works Nos. 8 and 11 on the works plans, the general arrangement of which is shown on the highway plans and any ancillary works thereto;

“Nominated Persons” means the undertakers representatives or the Contractors representatives on site during the carrying out of the HE Works as notified to Highways England from time to time;

“Phase” means that part of the HE Works which is to be carried out in separate phases in the areas identified as Works Nos 8 and 11 on the works plans or such other phasing arrangements as shall be agreed with Highways England;

“Programme of Works” means a document setting out the sequence and timetabling of the phase of the HE Works in question;

“Road Safety Audit” means an audit carried out in accordance with the Road Safety Audit Standard – a member of Highways England East Midlands Asset Delivery Road Safety Team will be part of the approved audit team;

“Road Safety Audit Standard” means the Design Manual for Roads and Bridges Standard HD 19/15 or any successor document;

“Utilities” means any pipes wires cables or equipment belonging to any person or body having power or consent to undertake street works under the New Roads and Street Works Act 1991;and

“Winter Maintenance” means maintenance of the road surface to deal with snow and ice.

Prior Approvals and Security

3.—(1) No work must commence on any Phase of the HE Works until the Detailed Design Information and a Programme of Works in respect of that Phase has been submitted to and approved by Highways England.

(2) Highways England must nominate a person who will be a single point of contact on behalf of Highways England for consideration of the Detailed Design Information and who shall co-ordinate the Highways England response to the details submitted.

(3) No works must commence on any Phase of the HE Works other than by a Contractor employed by the undertaker for that Phase but first approved by Highways England.

(4) No work must commence on any Phase of the HE Works until Highways England has agreed the Bond Sum for that Phase and the undertaker has provided security for the carrying out of those works as provided for in paragraph 9 below or some other form of security acceptable to Highways England.

(5) No work must commence on any Phase of the HE Works until Stage 1 and Stage 2 Road Safety Audits have been carried out in respect of that Phase and all recommendations raised incorporated into an amended design approved by Highways England or any relevant exceptions approved by Highways England.

(6) No work must commence on any Phase of the HE Works until the undertaker demonstrates to the satisfaction of Highways England that the Walking, Cycling and Horse Riding Assessment and Review process for that Phase has been adhered to in accordance with the Design Manual for Roads and Bridges Standard HD 42/17 or any successor document.

(7) No work must commence on any Phase of the HE Works until a scheme of traffic management has been submitted by the undertaker and approved by Highways England for that Phase such scheme to be capable of amendment by agreement between the undertaker and Highways England from time to time.

(8) No work must commence on any Phase of the HE Works until stakeholder liaison has taken place for that Phase in accordance with a scheme for such liaison agreed between the undertaker and Highways England.

(9) No work must commence on any Phase of the HE Works until Highways England has approved the audit brief and CVs for all Road Safety Audits and exceptions to items raised if appropriate for that Phase in accordance with the Road Safety Audit Standard.

(10) No work must commence on any Phase of the HE Works until the undertaker has agreed the Commuted Sum for that Phase with Highways England to be calculated in accordance with paragraph 9 of this Schedule.

(11) No work must commence on any Phase of the HE Works until a Dilapidation Survey for that Phase has been carried out by the undertaker and has been submitted to and approved in writing by Highways England.

(12) No work must commence on any Phase of the HE Works until the scope of all routine maintenance to be carried out by the undertaker during the construction of the Phase concerned has been agreed in writing by Highways England such maintenance shall only include Winter Maintenance of the Phase concerned where;

- (a) access to carry out such maintenance by Highways England is not available by virtue of the works being carried out on that Phase; and
- (b) any Winter Maintenance is needed immediately prior to the opening of any carriageway to traffic where that carriageway had been closed for the purposes of the carrying out of the Phase concerned .

Carrying out of works

4.—(1) The undertaker must prior to commencement of each Phase of the HE Works give Highways England 28 days' notice in writing of the date on which that Phase will start unless otherwise agreed by Highways England.

(2) The undertaker must comply with Highways England's usual road space booking procedures prior to and during the carrying out of each Phase of the HE Works and no HE Works for which a road space booking is required shall commence without a road space booking having first been secured. It will be necessary for an assessment of the highway network and impact of any road closures on diversion routes to be carried out including any impact related to the County Highway Works. It is acknowledged by Highways England that in the event that the aforementioned assessment indicates no safety or operational concerns then the HE Works can proceed at the same time as Highways England's M1 J13-16 Smart Motorway scheme with road space booking being shared where practicable. In the event that the aforementioned assessment indicates that both schemes cannot be accommodated at the same time then Highways England, in its absolute discretion shall decide when a road space booking can be issued to the undertaker.

(3) Each Phase of the HE Works must be carried out to the satisfaction of Highways England in accordance with—

- (a) the relevant Detailed Design Information and a Programme of Works approved pursuant to paragraph 3(1) above or as subsequently varied by agreement between the undertaker and Highways England;
- (b) the Design Manual for Roads and Bridges, the Specification for Highway Works (contained within the Manual of Contract Documents for Highway Works) all relevant interim advice notes, the Traffic Signs Manual and the Traffic Signs Regulations and General Directions 2016 and any amendment to or replacement thereof for the time being in force save to the extent that they are inconsistent with the general arrangement of the HE Works as shown on the highway plans or a departure from such standards has been approved by Highways England;
- (c) such approvals or requirements of Highways England that are required by the provisions of paragraph 3 to be in place prior to the relevant Phase of the HE Works being undertaken; and
- (d) all aspects of the Construction (Design and Management) Regulations 2015 or any statutory amendment or variation of the same and in particular the undertaker, as client, shall ensure that all client duties (as defined in the said regulations) are undertaken to the satisfaction of Highways England.

(4) The undertaker must permit and require the Contractor to permit at all reasonable times persons authorised by Highways England (whose identity shall have been previously notified to the undertaker by Highways England) to gain access to the HE Works and the County Highway Works for the purposes of inspection and supervision and the undertaker must provide to Highways England contact details of the Nominated Persons with whom Highways England should liaise during the carrying out of the HE Works.

(5) At any time during the carrying out of the HE Works the Nominated Persons must act upon any reasonable request made by Highways England in relation to the carrying out of the HE Works as soon as practicable following such request being made to the Nominated Persons save to the extent that the contents of such request are inconsistent with or fall outside the Contractors obligations under its contract with the undertaker or the undertakers obligations in this Order.

(6) If at any time the undertaker does not comply with any of the terms of this Schedule in respect of any Phase of the HE Works having been given notice of an alleged breach and an adequate opportunity to remedy it by Highways England then Highways England shall on giving to the undertaker 14 days' notice in writing to that effect be entitled to either (i) carry out and complete that Phase of the HE Works and any maintenance works which the undertaker would have been responsible for on the undertaker's behalf; or (ii) carry out such necessary works of reinstatement of the highway and other land and premises of Highways England and in either case the undertaker must within 28 days of receipt of the itemised costs pay to Highways England the costs so incurred by Highways England.

(7) If at any time the undertaker in carrying out the authorised development causes any damage or disruption to the strategic road network not hereby authorised then Highways England shall give notice of such damage or disruption and allow the undertaker 14 days to remedy the problem. Should the undertaker fail to adequately remedy the problem to the satisfaction of Highways England then Highways England shall on giving to the undertaker 7 days' notice in writing to that effect be entitled to carry out such necessary works as Highways England acting reasonably deem appropriate to remedy the damage or disruption and the undertaker must within 28 days of receipt of the itemised costs pay to Highways England the costs so incurred by Highways England.

(8) Nothing in this Schedule shall prevent Highways England from carrying out any work or taking such action as deemed appropriate forthwith without prior notice to the undertaker in the event of an emergency or danger to the public the cost to Highways England of such work or action being chargeable to and recoverable from the undertaker if the need for such action arises from the carrying out of the authorised development. For the avoidance of doubt this provision applies to all areas of the authorised development including any area of traffic management deployed under the traffic management plan approved pursuant to paragraph 3 (7) to facilitate delivery of the authorised development.

(9) For the avoidance of doubt it is confirmed that the undertaker in carrying out each Phase of the HE Works must at its own expense divert or protect all Utilities as may be necessary to enable the HE Works to be properly carried out and all agreed alterations to existing services must be carried out to the reasonable satisfaction of Highways England.

(10) During the construction of each Phase of the HE Works the undertaker shall be responsible for all routine maintenance at its cost within that Phase (including Winter Maintenance where required to be undertaken by the undertaker in accordance with sub paragraph 3 (12)). All routine maintenance must be carried out in accordance with the scope of routine maintenance operations agreed by Highways England pursuant to paragraph 3(12).

Payments

5.—(1) The undertaker must fund the whole of the cost of the HE Works and all costs incidental to the HE Works and must also pay to Highways England in respect of each Phase of the HE Works a sum equal to the whole of any costs and expenses which Highways England incur including costs and expenses for using external staff and resources as well as costs and expenses of using in house staff and resources in relation to the HE Works and arising out of them and their implementation including without prejudice to the generality thereof—

- (a) the checking and approval of all design work carried out by or on behalf of the undertaker for that Phase;
- (b) costs in relation to agreeing the Programme of Works for that Phase;
- (c) the carrying out of supervision of that Phase; and
- (d) all administrative costs in relation to (a) and (b) above,

together comprising “the Estimated Costs”.

(2) The sums referred to in sub paragraph (1) above do not include any sums payable from the undertaker to the Contractor but do include any value added tax which is payable by Highways England in respect of such costs and expenses and for which it cannot obtain reinstatement from HM Revenue and Customs.

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

(4) The undertaker must make the payments of the Estimated Costs as follows—

- (a) the undertaker must pay a sum equal to the anticipated cost of the tasks referred to in sub paragraphs 5(1)(a)(b) and (d) to Highways England prior to Highways England undertaking those tasks;
- (b) the undertaker must pay a sum equal to the anticipated cost of the tasks referred to in sub paragraph 5(1)(c) prior to commencing that Phase;
- (c) if at any time or times after the payment in respect of a Phase referred to in sub-paragraphs (4)(a) and (b) above has become payable and Highways England reasonably estimates that the costs in respect of that Phase referred to in sub-paragraph (1) above will exceed the Estimated Costs for that Phase it may give notice to the undertaker of the amount by which it then reasonably estimates those costs will exceed the Estimated Costs (“the Excess”) and the undertaker must pay to Highways England within 28 days of the date of that notice a sum equal to the Excess.

(5) Within 91 days of the issue of the handover certificate for each Phase of the HE Works pursuant to paragraph 7 Highways England must give the undertaker a final account of the costs referred to in sub paragraph (1) above and within 28 days from the expiry of the 91 day period—

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

(6) If any payment due under any of the provisions of this Schedule is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the other party interest at 1% above the rate payable in respect of compensation under Section 32 of the Land Compensation Act 1961 for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

Provisional Certificate

6. As soon as—

- (a) each Phase of the HE Works has been completed; and
- (b) a Stage 3 Road Safety Audit for that Phase has been carried out and any resulting recommendations complied with and any exceptions agreed,

Highways England must forthwith issue a provisional certificate of completion in respect of that Phase such certificate not to be unreasonably withheld or delayed.

Handover Certificate and Defects Period

7.—(1) As soon as, in respect of a Phase—

- (a) The undertaker has carried out a Dilapidation Survey of the area previously surveyed pursuant to sub paragraph 3(11) and completed any remedial works necessary to bring that area into as good a condition as when it was originally surveyed, such works to be first area with Highways England;
- (b) the undertaker has provided a plan clearly identifying the extent of any land which is to become highway maintainable at public expense together with any ancillary equipment that will become the responsibility of the highway authority; and
- (c) the As Built Information has been provided to Highways England,

Highways England must forthwith issue a handover certificate in respect of that Phase such certificate not to be unreasonably withheld or delayed.

(2) The undertaker must at its own expense remedy any defects in any Phase of the HE Works as are reasonably required to be remedied by Highways England during a period of 12 months from the date of the handover certificate in respect of that Phase. All identified defects shall be remedied in accordance with the following timescales—

- (a) in respect of matters of urgency, within 24 hours of receiving notification for the same (urgency to be determined at the absolute discretion of Highways England);
- (b) in respect of matters which Highways England consider to be serious defects or faults, within 14 days of receiving notification of the same or if a road space booking is required at the time when the road space is available whichever is the later ; and
- (c) in respect of all other defects notified to the undertaker, within 4 weeks of receiving notification of the same or if a road space booking is required at the time when the road space is available whichever is the later.

(3) Following the issue of the handover certificate in respect of a Phase Highways England shall be responsible for the HE Works within that Phase which shall thereafter be maintained by and at the expense of Highways England save for any soft landscaping works which shall be established and thereafter maintained for a period of 3 years by and at the expense of the undertaker.

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

Final Certificate

8. Highways England must issue of the final certificate in respect of each Phase at the expiration of the 12 month period in respect of that Phase referred to in paragraph 7(2) or if later on the date on which any defects or damage arising from defects during that period have been made good to the reasonable satisfaction of Highways England such certificate not to be unreasonably withheld or delayed.

Security

9.—(1) Subject to paragraph 3(4) above the undertaker must provide security for the carrying out of the HE Works as follows—

- (a) prior to the commencement of each Phase the HE Works within that Phase must be secured by a bond from a bondsman first approved by Highways England substantially in the form of the draft bond attached at Annex 1 or such other form that may be agreed between the undertaker and Highways England to indemnify Highways England against all losses, damages, costs or expenses arising from any breach of any one or more of the obligations of the undertaker in respect of that Phase under the provisions of this Schedule provided that the maximum liability of the bond shall not exceed the Bond Sum relating to that Phase; and

- (b) prior to the commencement of the HE Works the undertaker must provide the Cash Surety which may be utilised by Highways England in the event of the undertaker failing to meet its obligations to make payments under paragraph 5 or to carry out works the need for which arises from a breach of one or more of the obligations of the undertaker (which shall for the avoidance of doubt be a single cash surety for the entirety of the HE Works).
- (2) Each Bond Sum and the cash surety (the latter in respect of the final phase only) shall be progressively reduced as follows—
- (a) on receipt of written confirmation (including receipt of receipted invoices evidencing payments made by the undertaker to the Contractors) from the undertaker of the payments made from time to time to the Contractor Highways England must in writing authorise the reduction of the Bond Sum by such proportion of the Bond Sum as amounts to 80% of those payments provided that an evaluation of the HE Works completed and remaining has been carried out by the undertaker and audited and agreed by Highways England to ensure that the stage of completion of the works is relative to the payments made by the undertaker to the Contractors. Highways England shall only be required to provide the said authorisation should it be satisfied that the monies remaining secured by the Bond Sum shall be sufficient to cover all remaining costs and liabilities anticipated to be incurred in completing the HE Works plus an additional 20%;
 - (b) within 20 working days of completion of each Phase of the HE Works (as evidenced by the issuing of the provisional certificate in respect of that Phase pursuant to paragraph 6(1)) Highways England must in writing release the bond provider from its obligations in respect of 80% of the Bond Sum relating to that Phase (“the Revised Bond Sum”) save insofar as any claim or claims have been made against the bond and/or liability on its part has arisen prior to that date in which case Highways England will retain a sufficient sum to meet all necessary costs; and
 - (c) within 20 working days of the issue of the final certificate for each Phase of the HE Works referred to in paragraph 8 Highways England must in writing release the bond provider from its obligations in respect of the Revised Bond Sum relating to that Phase and (in respect of the final phase) release the remainder of the cash surety to the undertaker save insofar as any claim or claims have been made against the bond or liability on its part has arisen prior to that date in which case Highways England will retain a sufficient sum to meet all necessary costs.

Commuted sums

10. The undertaker must pay to Highways England the Commuted Sum calculated in accordance with FS Guidance S278 Commuted Lump Sum Calculation Method dated 18 January 2010 within 28 days of the date that each Phase of the HE Works becomes maintainable by Highways England pursuant to paragraph 7(3).

Insurance

11. The undertaker must prior to commencement of the HE Works effect public liability insurance with an insurer in the minimum sum of £10,000,000.00 (Ten million pounds) against any legal liability for damage loss or injury to any property or any person as a direct result of the execution of the HE Works or any part thereof by the undertaker.

Indemnification

12.—(1) The undertaker must in relation to the carrying out of the HE Works take such precautions for the protection of the public and private interest as would be incumbent upon it if it were the highway authority and must indemnify Highways England from and against all costs expenses damages losses and liabilities arising from or in connection with or ancillary to any claim demand action or proceedings resulting from the design and carrying out of the HE Works provided that—

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

(2) The undertaker must notify Highways England of the intended date of opening of each Phase to public traffic not less than 14 days in advance of the intended date and the undertaker must notify Highways England of the actual date that each Phase is open to public traffic on each occasion within 14 days of that occurrence.

Warranties

13. The undertaker must procure warranties from the contractor and designer of each Phase to the effect that all reasonable skill care and due diligence will be exercised in designing and constructing that Phase including the selection of materials, goods, equipment and plant such warranties to be provided to Highways England before that Phase commences.

Land Transfer

14.—(1) Following the issuing of the final certificates for all the HE Works Highways England may serve notice on the undertaker that it wishes to take a freehold transfer of land within the then extent of highway land which is not in the ownership of HE but has been acquired by the undertaker for the purposes of carrying out the HE Works.

(2) If the undertaker receives a notice under sub paragraph 14(1) then the undertaker must co-operate in a freehold transfer of the land which is the subject of the notice and complete such transfer as soon as reasonably practicable at no cost to Highways England which, for the avoidance of doubt, shall include the undertaker being responsible for the reasonable legal costs incurred by Highways England in connection with such transfer.

Approvals

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

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

- (a) the day on which particulars of the matter are received by Highways England under the provisions of this Schedule; or
- (b) the day on which the undertaker provides Highways England with any further particulars of the matter that have been reasonably requested by Highways England within 28 days of the date in sub paragraph (2)(a)

whichever is the later.

Expert Determination

16.—(1) Article 49 (*arbitration*) does not apply to this part 2 of Schedule 13 except in respect of sub-paragraph (5) below.

(2) Any difference under this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by

the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

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

(4) The expert must—

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

(5) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 49.

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

Annex 1

BY THIS BOND [] [(Company Regn No)] whose registered office is situate at [] ("**the undertaker**") and [] [(Company Regn No)] whose registered office is situate at [] ("**the Surety**") are jointly and severally bound to [] of [] ("**the []**") this [] day of [] 200[] in the sum of [] pounds (£[Surety Sum to the payment of which sum the undertaker and the Surety hereby jointly and severally bind themselves their successors and assigns

WHEREAS under a Development Consent Order known as The Northampton Gateway Rail Freight Interchange Order 201[] ("**the DCO**") the undertaker is empowered to commence execute perform and complete the highway works mentioned therein in such manner and within such time and subject to such conditions and stipulations as are particularly specified and set forth in the DCO and also to pay to Highways England such sums as are therein provided **NOW THE CONDITIONS** of this Bond are such that if the undertaker shall duly observe and perform all the terms provisions covenants conditions and stipulations of Part 2 of Schedule 13 of the DCO on the undertaker's part to be observed and performed according to the true purport intent and meaning thereof or if on default by the undertaker the Surety shall satisfy and discharge the damages sustained by Highways England thereby up to the amount of this Bond then this obligation shall be null and void but otherwise shall be and remain in full force and effect in accordance with the provisions of the DCO (and including any reductions as provided for in the DCO) but no allowance of time by Highways England under the DCO nor any forbearance or forgiveness in or in respect of any matter or thing concerning the DCO on the part of Highways England shall in any way release the Surety from any liability under this Bond

It is hereby agreed that this Bond will be reduced and released in accordance with paragraph 9 of Part 2 of Schedule 13 of the DCO.

[Attestation]