

## SCHEDULES

### SCHEDULE 8

#### PROTECTIVE PROVISIONS

#### PART 4

#### FOR THE PROTECTION OF NATIONAL HIGHWAYS

##### **Application**

**28.**—(1) The provisions of this Part of this Schedule apply to the NH works and have effect unless otherwise agreed in writing between the Company and National Highways.

(2) National Highways must act reasonably and in good faith when considering any request for approval pursuant to these protective provisions and when negotiating any agreement, strategy or other arrangement referred to in or otherwise contemplated by these provisions or subsequent iteration of such agreement, strategy or arrangement.

##### **Interpretation**

**29.**—(1) Where the terms defined in article 2 (interpretation) of this Order are inconsistent with the terms set out in sub-paragraph (2), the latter will prevail.

(2) In this Part of this Schedule—

“as built information” means one electronic copy of the following information—

- (a) as constructed drawings in both PDF and AutoCAD DWG formats for anything designed by the Company; in compliance with DMRB GG184 Standards for Highways or any successor document;
- (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) method statements for the 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 or any replacement or modification of it;
- (g) organisation and methods manuals for all products used;
- (h) as constructed programme;
- (i) test results and records as required by the detailed design information and during the construction phase of the project;
- (j) a stage 3 road safety audit subject to any exceptions to the road safety audit standard as agreed by the Company and National Highways both acting reasonably;

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- (k) the health and safety file; and
- (l) such other information as is reasonably required by National Highways to be used to update all relevant databases and to ensure compliance with the National Highways Asset Data Management Manual as is in operation at the relevant time.

“the bond sum” means the sum equal to 200% of the cost of the carrying out of the NH works (to include all costs including any commuted sum) or such other sum agreed between the Company and National Highways;

“the cash surety” means the sum agreed between the Company and National Highways once the Level Crossing Order relating to the A21 has been made as a surety for the purposes of paragraph 39 (security) of this Part of this Schedule;

“commuted sum” means such sum calculated as provided for in paragraph 41 of this Part of this Schedule to be used to fund any additional future cost to National Highways of maintaining the trunk road arising as a result of the NH works;

“condition survey” means a survey of the condition of National Highways structures and assets within the Order limits or other structures and assets that in the reasonable opinion of National Highways may be affected by the NH works;

“contractor” means the contractor and any subcontractor appointed by the Company to carry out the NH works;

“defects period” means the period from the date of the provisional certificate to the date of the final certificate which shall be no less than 12 months from the date of the provisional certificate;

“DLOA” means a detailed local operating agreement or other maintenance and repair strategy entered into by National Highways and the Company that will set out the agreed operational and communication protocols for the trunk road and define the obligations of the Company in relation to maintenance during both the construction phase of the NH works and following the issue of the final certificate, and will define those parts of the NH works that are within the railway corridor and/or comprise part of the level crossing and its associated infrastructure or assets that will fall to the Company to maintain following the issue of the final certificate and will include a dispute resolution provision based on paragraph 45 of this Part of this Schedule;

“detailed design information” means only such of the following drawings specifications and calculations as are relevant to the development—

- (a) site clearance details;
- (b) boundary, environmental and mitigation fencing;
- (c) road restraints systems and supporting road restraint risk appraisal process assessment;
- (d) drainage and ducting as required by DMRB CD 535 Drainage asset data and risk management and DMRB CS551 Drainage Surveys – Standards for Highways;
- (e) earthworks including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk and any required strengthened earthworks appraisal form certification;
- (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) regime of California Bearing Ratio testing;
- (k) electrical work for road lighting, traffic signs and signals;

- (l) highway structures and any required structural approval in principle;
- (m) landscaping;
- (n) proposed departures from DMRB standards;
- (o) walking, cycling and horse-riding assessment and review report;
- (p) utilities diversions;
- (q) topographical survey;
- (r) maintenance and repair strategy in accordance with DMRB GD304 Designing health and safety into maintenance or any replacement or modification of it;
- (s) health and safety information including any asbestos survey required by DMRB GG105 Asbestos management or any successor document; and
- (t) other such information that may be reasonably required by National Highways to be used to inform the detailed design of the NH works,

“dilapidation survey” means a survey of the condition of the roads, bridges and retaining walls along the routes approved for construction traffic for the authorised works;

“DMRB” means the Design Management for Roads and Bridges published at <https://www.standardsforhighways.co.uk/dmrb/> or any replacement or modification of it;

“final certificate” means the certificate relating to those aspects of the NH works that have resulted in any alteration to the trunk road to be issued by National Highways pursuant to paragraph 38;

“the health and safety file” means the file or other permanent record containing the relevant health and safety information for the authorised works required by the Construction (Design and Management) Regulations 2015(1) (or such updated or revised regulations as may come into force from time to time);

“NH works” means all the authorised works and associated works relating to the construction, maintenance and operation of a level crossing over the A21 at Robertsbridge, East Sussex and required by an Order made under the Level Crossing Act and any works by or on behalf of the Company that are in, on or under the trunk road or other National Highways land, including, without limitation, works to form or layout means of access to the trunk road and works to the trunk road highway drainage;

“nominated persons” means the Company’s representatives or the contractor’s representatives on site during the carrying out of the NH works as notified to National Highways from time to time;

“programme of works” means a document setting out the sequence and timetabling of the NH works;

“provisional certificate” means the certificate of provisional completion relating to those aspects of the NH works that have resulted in any alteration to the trunk road to be issued by National Highways in accordance with paragraph 35 when it considers the NH works are substantially complete and may be opened for traffic;

“road safety audit” means an audit carried out in accordance with the road safety audit standard;

“road safety audit standard” means DMRB Standard GG119 or any replacement or modification of it;

“RSA actions” means those actions identified in the road safety audit decision log;

“Specification for Highways Works” means the specification for highways works forming part of the manual of contract documents for highway works published by National Highways and

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setting out the requirements and approvals procedures for work, goods or materials used in the construction, improvement or maintenance of the trunk road network;

“trunk road” means the A21 trunk road near Robertsbridge, East Sussex, at the location of the proposed level crossing forming part of the NH works;

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

“walking, cycling and horse-riding assessment and review process” means the process set out in the walking, cycling and horse-riding assessment and review standard; and

“walking, cycling and horse-riding assessment and review standard” means DMRB standard GG142 or any replacement or modification of it.

### **Prior Approvals and Security**

**30.** In the event that National Highways reasonably requires, or the Company reasonably considers that the implementation of the Order requires, the carrying out of works of improvement to the trunk road that are outside of the Order limits, the parties must enter into an agreement to provide for the carrying out of those works and the Company must be responsible for the costs of such works, including the costs of National Highways incurred in connection with the agreement and its implementation.

**31.—**(1) The NH works must not commence until—

- (a) a stage 1 and a stage 2 road safety audit processes have been completed in full in accordance with the road safety audit standard;
- (b) the programme of works has been approved by National Highways;
- (c) the detailed design of the NH works comprising of the following details, insofar as considered relevant by National Highways, has been submitted to and approved by National Highways—
  - (i) the detailed design information, incorporating the RSA actions;
  - (ii) details of the proposed road space bookings;
  - (iii) a scheme of traffic management;
  - (iv) the identity of the contractor and nominated persons;
  - (v) a process for stakeholder liaison, with key stakeholders to be identified and agreed between National Highways and the Company, both acting reasonably; and
  - (vi) the walking, cycling and horse-riding assessment and review process appropriate to the completion of detailed design has been completed;
- (d) in the event that National Highways considers that an amendment to the speed limit in the vicinity of the level crossing or other measures under the 1984 Act are reasonably necessary to secure the safety and efficiency of the A21, that a Road Traffic Regulation Order has been made to give force to those measures;
- (e) a scheme of traffic management has been submitted by the Company and approved by National Highways such scheme to be capable of amendment by agreement between the Company and National Highways from time to time;
- (f) stakeholder liaison has taken place in accordance with the process for such liaison agreed between the Company and National Highways under sub-paragraph (c)(v);
- (g) the Company has agreed the estimate of the commuted sum with National Highways, both acting reasonably;

- (h) the scope of all maintenance operations (routine inspections, incident management, reactive and third party damage) to be carried out by the Company during the construction of the NH works has been agreed in writing by National Highways;
- (i) the Company has procured to National Highways collateral warranties in a form approved by National Highways from the contractor and designer of the NH works in favour of National Highways to include covenants requiring the contractor and designer to exercise all reasonable skill care and diligence in designing and constructing the NH (power to survey and investigate land) works, including in the selection of materials, goods, equipment and plant;
- (j) a condition survey and regime of monitoring of any National Highways assets or structures that National Highways, in its reasonable opinion, considers will be affected by the NH works, has been agreed in writing by National Highways; and
- (k) a DLOA has been entered into, the completion of which must not be unreasonably withheld or delayed by either party.

(2) National Highways must provide the Company with a list, to be agreed between the Company and National Highways, both acting reasonably, of all structures and assets to be subject to a condition survey and regime of monitoring pursuant to paragraph 31(1)(j) before the first condition survey is conducted.

(3) National Highways must prior to the commencement of the NH works inform the Company of the identity of the person who will act as a point of contact on behalf of National Highways for consideration of the information required under sub-paragraph (1).

(4) National Highways must notify the Company of its approval or, as the case may be, of its disapproval of any matter under paragraph 31 and the grounds of disapproval within 56 days of the information required under this paragraph being received by National Highways.

(5) In the event of any disapproval, the Company may re-submit the information required under the relevant sub-paragraph with modifications and National Highways must notify the Company of its approval or disapproval and the grounds of disapproval within 56 days of the revised detailed design being received by National Highways.

(6) Approval under this paragraph may be given subject to such reasonable requirements as National Highways may make for the protection of the A21 in the vicinity of the NH works.

(7) In its approval of the contractor pursuant to sub-paragraph 31(1)(c)(iv), National Highways is entitled to take into consideration the experience and expertise of the proposed contractor, including previous experience of level crossing installation over the public highway. National Highways will not be acting unreasonably if, in National Highways' reasonable opinion, the proposed contractor does not have sufficient experience and expertise, but will not be entitled to refuse to approve a contractor merely on grounds that the contractor is providing services to the Company in a volunteer capacity, or intends to use suitably experienced volunteer workers to carry out all or part of the NH works.

### **Construction traffic and route surveys**

**32.—**(1) The NH works must not commence until a dilapidation survey of the condition of the roads, bridges and retaining walls along the routes approved for construction traffic for the authorised development has been carried out by the Company and has been submitted to and approved in writing by National Highways.

(2) No more than 28 days after the completion of construction of the authorised development, the roads, bridges and retaining walls surveyed under sub-paragraph (1) must be re-surveyed by the Company.

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(3) If the re-survey carried out under sub-paragraph (2) indicates that there has been damage to the roads, bridges or retaining walls that have been surveyed, and that such damage is attributable to the use of those roads, bridges and retaining walls by construction traffic for the authorised development, the Company must submit a scheme of remedial works for those damaged roads, bridges and retaining walls to National Highways for its approval in writing, which must not be unreasonably withheld.

### **Construction of the NH works**

**33.**—(1) The Company must, prior to commencement of the NH works, give to National Highways 28 days' notice in writing of the date on which the NH works will start unless otherwise agreed by National Highways, acting reasonably.

(2) The Company must comply with the National Highways road space booking procedures (in accordance with the National Highways Asset Management Operational Requirements including the Network Occupancy Management System used to manage the road space bookings and network occupancy) prior to and during the carrying out of the NH works and no NH works for which a road space booking is required is to commence without a road space booking having first been secured, National Highways acting reasonably.

(3) The NH works must be carried out to the reasonable satisfaction of National Highways in accordance with—

- (a) the relevant detailed design information and programme of works approved pursuant to paragraph 31(1) of this Part of this Schedule or as subsequently varied by agreement between the Company and National Highways, both acting reasonably;
- (b) the DMRB, the Manual of Contract Documents for Highway Works, including the Specification for Highway Works together with all other relevant standards and guidance as reasonably required by National Highways to include, inter alia; all relevant interim advice notes and the Traffic Signs Manual and save to the extent that exceptions from those standards and guidance apply which have been approved by National Highways;
- (c) the Traffic Signs Regulations and General Directions 2016<sup>(2)</sup> and any amendment to or replacement thereof for the time being in force;
- (d) such approvals or requirements of National Highways that are required by the provisions of paragraph 31 of this Part of this Schedule to be in place prior to commencement of the NH works;
- (e) insofar as relevant to the NH works, all aspects of the Construction (Design and Management) Regulations 2015 or any statutory amendment or variation of the same and in particular the Company, as client, must ensure that all client duties (as defined in those regulations) are undertaken to the reasonable satisfaction of National Highways; and
- (f) the requirements of the DLOA.

(4) The Company must permit and must require the contractor to permit at all reasonable times persons authorised by National Highways (whose identity must have been previously notified to the Company by National Highways) to gain access to the NH works for the purposes of inspection and supervision of the NH works.

(5) The Company must permit and must require the contractor to act upon any reasonable request made by National Highways in relation to the construction of the NH works as soon as reasonably practicable provided such a request is not inconsistent with and does not fall outside the contractor's obligations under its contract with the Company or the Company's powers or obligations under the Order.

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(2) [S.I. 2016/362](#).

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(6) If any part of the NH works is constructed otherwise than in accordance with the requirements of this Part of this Schedule, National Highways may by notice in writing require the Company, at the Company's own expense, to comply with the requirements of this Part of this Schedule.

(7) If within 28 days on which a notice under sub-paragraph (6) is served on the Company (or in the event of there being (in the reasonable opinion of National Highways) a danger to road users, within such lesser period as National Highways may stipulate), the Company has failed to take the steps required by that notice, National Highways may carry out—

- (a) the NH works; or
- (b) such works to reinstate the highway and other land and premises of National Highways as may be reasonably necessary to eliminate the significant danger to road users,

and National Highways may in either case recover from the Company any expenditure reasonably incurred by it in so doing.

(8) If during the carrying out of the authorised works the Company causes damage to the strategic road network then National Highways may by notice in writing require the Company, at the Company's own expense, to remedy the damage.

(9) If within 28 days of the date on which a notice under sub-paragraph (8) is served on the Company, the Company has failed to take steps to comply with the notice, National Highways may carry out the steps required of the Company and may recover from the Company any expenditure reasonably incurred by National Highways in so doing, such sum to be payable within 28 days of demand.

(10) Nothing in this Part of this Schedule prevents National Highways from carrying out any work or taking any such action as it reasonably believes to be necessary as a result or in connection with of the carrying out or maintenance of the authorised works without prior notice to the Company in the event of an emergency or to prevent the occurrence of danger to road users and National Highways may recover from the Company any reasonable expenditure incurred by National Highways in so doing.

(11) In constructing the NH works, the Company must at its own expense divert or protect all utilities and all agreed alterations and reinstatement of the highway over existing utilities must be constructed to the reasonable satisfaction of National Highways.

## **Payments**

**34.**—(1) The Company must fund the whole of the cost of the NH works and all costs incidental to the NH works and must also pay to National Highways in respect of the NH works a sum equal to the whole of any costs and expenses which National Highways reasonably incurs (including reasonable costs and expenses for using internal or external staff) in relation to the NH works including—

- (a) the checking and approval of the information required under paragraph 31(1);
- (b) the supervision of the NH works;
- (c) all costs in relation to the transfer of any land required for the NH works;
- (d) all legal and administrative costs in relation to paragraphs (a), (b) and (c); and
- (e) any value added tax which is payable by National Highways in respect of such costs and expenses and for which it cannot obtain reinstatement from HM Revenue and Customs,

together comprising “the NH costs”.

(2) The Company must pay to National Highways upon demand and prior to such costs being incurred the total costs that National Highways believe will be properly and necessarily incurred by National Highways 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 NH works.

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(3) National Highways must, within 28 days of receipt of a written request from the Company to do so, provide the Company with a schedule showing its estimate of the NH costs prior to the commencement of the NH works and the Company must pay to National Highways the estimate of the NH costs prior to commencing the NH works and in any event prior to National Highways incurring any cost.

(4) If at any time after the payment referred to in sub-paragraph (3) has become payable, National Highways reasonably believes that the NH costs will exceed the estimated NH costs it may give notice to the Company of the amount that it believes the NH costs will exceed the estimate of the NH costs (excess) and the Company must pay to National Highways within 28 days of the date of the notice a sum equal to the excess.

(5) National Highways must give the Company a final account of the costs referred to in sub paragraph (1) within 91 days of the issue of the provisional certificate pursuant to paragraph 35.

(6) Within 28 days of the issue of the final account—

- (a) if the account shows a further sum is due to National Highways the Company must pay to National Highways the sum shown due to it in that final account; and
- (b) if the account shows that the payment or payments previously made by the Company have exceeded the costs incurred by National Highways, National Highways must refund the difference to the Company.

(7) If any payment due under any of the provisions of this Part of this Schedule is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the other party interest at 2% above the Bank of England base lending rate from time to time being in force 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.

## **Completion**

**35.**—(1) Following any closure or partial closure of the trunk road for the purposes of carrying out the NH works, the Company must give National Highways the opportunity to carry out a site inspection in order for National Highways to satisfy itself that the trunk road is, in its reasonable opinion, safe for traffic and the Company must comply with any reasonable requirements of National Highways prior to opening the trunk road.

(2) As soon as the Company considers that the provisional certificate may be properly issued it must apply to National Highways for the provisional certificate.

(3) Following an application for a provisional certificate, National Highways must as soon as reasonably practicable—

- (a) inspect the NH works; and
- (b) provide the Company with a written list of works that NH, acting reasonably, considers are required for the provisional certificate to be issued or confirmation that no further works are required for this purpose.

(4) When—

- (a) a stage 3 road safety audit process for the NH works has been completed in full accordance with the road safety audit standard;
- (b) the NH works incorporating the RSA actions have been completed to the reasonable satisfaction of National Highways;
- (c) any further works notified to the Company by National Highways pursuant to sub-paragraph 7(3)(b) have been completed to the reasonable satisfaction of National Highways;
- (d) the as built information has been provided to National Highways; and



(e) the Company has paid the commuted sum to National Highways, National Highways must issue the provisional certificate.

(5) The Company must at its own expense remedy any defects in the NH Works as are reasonably required by National Highways to be remedied during the defects period and must continue to comply with the requirements of the DLOA. All identified defects must 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 National Highways);
- (b) in respect of matters which National Highways considers, acting reasonably, to be serious defects or faults, within 14 days of receiving notification of the same; and
- (c) in respect of all other defects notified to the Company, within 4 weeks of receiving notification of the same.

(6) Following the issue of the provisional certificate National Highways has responsibility for routine maintenance of the highway save for any soft landscaping works which must be established and which must thereafter be maintained for a period of 3 years by and at the expense of the Company.

(7) The Company must submit stage 4 road safety audits as required by and in line with the timescales stipulated in the road safety audit standard. The Company must comply with the findings of the stage 4 road safety audits and must pay all costs of and incidental to such audits and provide updated as-built information to National Highways.

### **Final condition survey**

**36.**—(1) The Company must, as soon as reasonably practicable after making its application for a provisional certificate pursuant to paragraph 35(2), arrange for the highways structures and assets that were the subject of the condition survey to be re-surveyed and must submit the re-survey to National Highways for its approval, such approval not to be unreasonably withheld or delayed.

(2) If the re-survey carried out pursuant to sub-paragraph (1) indicates that any damage has been caused to a structure or asset, the Company must submit a scheme for remedial works in writing to National Highways for its approval in writing, such approval not to be unreasonably withheld or delayed, and the Company must carry out the remedial works at its own cost and in accordance with the scheme submitted.

(3) If the Company fails to carry out the remedial work in accordance with the approved scheme, National Highways may carry out the steps required of the Company and may recover any expenditure it reasonably incurs in so doing.

(4) National Highways may, at its discretion, at the same time as giving its approval to the re-survey pursuant to sub-paragraph (1) give notice in writing that National Highways will remedy any damage identified in the re-survey and National Highways may recover any expenditure it reasonably incurs in so doing.

(5) The Company must make available to National Highways upon reasonable request copies of any survey or inspection reports produced pursuant to any inspection or survey of any specified work following its completion that the Company may from time to time carry out.

### **Opening**

**37.**—(1) The Company must notify National Highways of the intended date of opening to the public of the railway authorised by the Order not less than 56 days in advance of the intended date and the Company must notify National Highways of the actual date the NH works will be brought into operation within 14 days of that date.

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(2) The level crossing must not be opened for traffic until all such works as are set out in any agreement entered into pursuant to paragraph 30 are completed in accordance with the terms of the agreement and any traffic regulation measures pursuant to paragraph 31(1)(d) are in force.

### **Final Certificate**

**38.**—(1) The Company must apply to National Highways for the final certificate no sooner than 12 months from the date of the provisional certificate.

(2) Following receipt of the application for the final certificate, National Highways must as soon as reasonably practicable—

- (a) inspect the NH works; and
- (b) provide the company with a written list of any further works required to remedy or make good any defect or damage in the NH works or confirmation that no such works are required for this purpose.

(3) The Company must carry out such works notified to it pursuant to sub-paragraph (2).

(4) When National Highways is satisfied, acting reasonably, that any defects or damage arising from defects during the defects period and any defects notified to the Company pursuant to sub-paragraph (2) and any remedial works required as a result of the stage 4 RSA safety audit have been made good to the reasonable satisfaction of National Highways, National Highways must issue the final certificate.

(5) The Company must pay to National Highways within 28 days of demand the costs reasonably incurred by National Highways in identifying the defects and supervising and inspecting the Company's work to remedy the defects that it is required to remedy pursuant to these provisions.

### **Security**

**39.**—(1) The NH works must not commence until—

- (a) the NH works are secured by a bond from a bondsman first approved by National Highways substantially as detailed in the draft bond in Form 1 in paragraph 46 or such other form that may be agreed between the Company and National Highways to indemnify National Highways against all losses, damages, costs or expenses arising from any breach of any one or more of the obligations of the Company in respect of the NH works under the provisions of this Part of this Schedule provided that the maximum liability of the bond must not exceed the bond sum; and
- (b) prior to the commencement of the NH works the Company must provide the cash surety which may be utilised by National Highways in the event of the Company failing to meet its obligations to make payments under paragraph 34 or to carry out works the need for which arises from a breach of one or more of the obligations of the Company under the provisions of this Part of this Schedule (which must for the avoidance of doubt be a single cash surety for the entire value of the NH works).

(2) The bond sum and the cash surety must be progressively reduced as follows—

- (a) within 20 working days of the issue of the provisional certificate pursuant to paragraph 35(1) National Highways must release the bond provider from its obligations in respect of 80% of the 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 National Highways will retain a sufficient sum to meet all necessary costs to settle the claim or claims; and
- (b) within 20 working days of the issue of the final certificate pursuant to paragraph 37 National Highways must in writing release the bond provider from its obligations in respect of all remaining liability and release the remainder of the cash security to the

Company 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 National Highways will retain a sufficient sum to meet all necessary costs to settle the claim or claims.

(3) Any sums payable to National Highways pursuant to these protective provisions shall be reduced by an amount equivalent to such sums as are payable by the Company to National Highways or the Secretary of State pursuant to the indemnity and any other arrangements for the reimbursement of the costs of National Highways and/or the Secretary of State for Transport that are required for compliance with the discharge of planning conditions relevant to the authorised works pursuant to Rother District Council's grant of planning permission reference RR/2014/1608/P, so that there shall be no double recovery by National Highways or the Secretary of State.

### **Commuted sums**

**40.** National Highways must provide to the Company an estimate of the commuted lump sum prior to the commencement of the NH works.

**41.** The Company must pay to National Highways the Commuted Sum calculated in accordance with FS Guidance S278 Commuted Lump Sum Calculation Method dated 18 January 2010 prior to the issue of the provisional certificate pursuant to paragraph 35(1).

### **Insurance**

**42.** The Company must prior to commencement of the NH works effect sufficient public liability insurance with an insurer to indemnify National Highways in the minimum sum of £10,000,000.00 (ten million pounds) in respect of any legal liability for damage, loss or injury to any property or any person as a direct result of the execution of the NH works or the use of the NH works by the Company and must provide evidence of such insurance having been taken out prior to commencement of the NH works.

### **Indemnity**

**43.—(1)** The Company must indemnify National Highways from and against all costs, expenses, damages, losses and liabilities suffered by National Highways arising from or in connection with any claim, demand, action or proceedings (including but not limited to statutory claims) resulting from:

- (a) the construction and maintenance of the NH works; and
- (b) the use of the NH works,

PROVIDED THAT—

- (c) National Highways notifies the Company upon receipt of any claim; and
- (d) National Highways following the acceptance of any claim notifies the quantum of the claim to the Company in writing.

(2) Within 14 days of the receipt of the notification referred to in sub-paragraph (1)(c) the Company must pay to National Highways the amount specified as the quantum of such claim.

(3) Sub-paragraphs (1) and (2) do not apply if the costs, expenses, liabilities and damages were caused by or arose out of the neglect or default of National Highways or its officers, servants, agents or contractors or any person or body for whom it is responsible.

(4) National Highways must not settle any claim without first consulting the Company and having all proper regards to the Company's response to such consultation.

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### **Maintenance of the NH works**

44.—(1) Following the issue of the Final Certificate, the Company must maintain those parts of the NH works that it is required to maintain under the DLOA, in accordance with the DLOA.

(2) If the Company fails to maintain any part of the NH works which it is required to maintain pursuant to the DLOA and National Highways reasonably considers that such failure to maintain is causing or may cause a danger to road users or damage to the strategic road network or a National Highways asset or structure, or excessive delays to road users, National Highways may by notice in writing require the Company, at the Company's own expense, to comply with the requirements of this Part of this Schedule.

(3) If within 28 days on which a notice under sub-paragraph (2) is served on the Company (or in the event of there being in the reasonable opinion of National Highways a danger to or delay to road users within such lesser period as National Highways may stipulate), the Company has failed to take the steps required by that notice, National Highways may carry out such works as it reasonably considers necessary and may recover from the Company any expenditure reasonably incurred by it in so doing.

(4) The Company must, prior to the commencement of any works of maintenance to the HE works for which it is responsible pursuant to the DLOA, give National Highways 28 days' notice in writing of the date on which such maintenance works will start unless otherwise agreed by National Highways, acting reasonably; and where carrying out maintenance works following a notice served on it by National Highways pursuant to paragraph 44(2), the Company must give as much notice as is reasonably practicable.

(5) Nothing in this Part of this Schedule prevents National Highways from carrying out any work or taking any such action as it reasonably believes to be necessary in respect of any part of the NH works that the Company are required to maintain pursuant to the DLOA without prior notice to the Company in the event of emergency or to prevent the occurrence of danger or significant delay to road users and National Highways may recover from the Company any reasonable expenditure incurred by National Highways in so doing.

(6) If, for the purposes of maintaining the works pursuant to this paragraph 44, the Company needs to occupy any road space, the Company must comply with the National Highways road space booking requirements and no maintenance works for which a road space booking is required is to commence without a road space booking having first been secured.

(7) The Company must comply with any reasonable requirements that National Highways may notify to the Company, such requirements to be notified to the Company not less than 7 days in advance of the planned commencement date of the maintenance works.

(8) The provisions of paragraph 35(1) apply to the opening of any part of the trunk road following occupation of any road space under paragraph 43(1).

### **Expert Determination**

45.—(1) Article 40 (arbitration) of the Order does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule may 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.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- (4) The expert must—
- (a) invite the parties to make submissions 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 40.
- (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.

## **Bond Form**

46. Form 1 as referred to in paragraph 39(1)(a)—

### **Form 1**

#### **Bond – National Highways**

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

WHEREAS under an Order under the Transport and Works Act 1992 known as the Rother Valley Railway (Bodiam to Robertsbridge Junction Order 2023 (“the Order”) the Company is empowered to commence execute perform and complete the highway works to the A21 Trunk Road 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 Order and also to pay to National Highways such sums as are therein provided NOW THE CONDITIONS of this Bond are such that if the Company shall duly observe and perform all the terms provisions covenants conditions and stipulations of Part 4 of Schedule 8 to the Order on the Company’s part to be observed and performed according to the true purport intent and meaning thereof or if on default by the Company the Surety shall satisfy and discharge the damages sustained by National Highways 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 Order (and including any reductions as provided for in the Order) but no allowance of time by National Highways under the Order nor any forbearance or forgiveness in or in respect of any matter or thing concerning the Order on the part of National Highways 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 39(2) of Part 4 of Schedule 8 to the Order.

**[Attestation]**