

# SCHEDULES

## SCHEDULE 8

### PROTECTIVE PROVISIONS

#### PART 4

#### FOR THE PROTECTION OF THE LOCAL HIGHWAY AUTHORITY REGARDING VEHICULAR HIGHWAYS

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

**30.** In this Part of this Schedule—

“Commuted Sum” means the sum to be paid by the undertaker to the local highway authority for the future maintenance of Non-standard Highway Assets not previously forming part of the local highway which will be transferred to the local highway authority, as calculated in accordance with paragraph 50 of this Part of this Schedule;

“Design Detailing” in relation to any Works, means any detailed design or amended detailed design relating to those Works which is approved by the Secretary of State pursuant to requirement 12(1) or (4);

“Detailed Information” means the following drawings, specifications and other information relating to the local highway, which must be in accordance with the Design Detailing—

- (a) boundary, environmental and mitigation fencing;
- (b) road restraint systems (vehicle and pedestrian);
- (c) drainage and ducting;
- (d) earthworks;
- (e) road pavements;
- (f) kerbs, footways and paved areas;
- (g) traffic signs and road markings;
- (h) road lighting (including columns and brackets);
- (i) electrical work for road lighting and traffic signs;
- (j) highway structures;
- (k) landscaping, planting and any boundary features which will form part of the local highway;
- (l) utility diversions;
- (m) a schedule of timings for the works, including dates and durations for any closures of any part of the local highway;
- (n) traffic management proposals including any diversionary routes;
- (o) a schedule of condition of all local highway within the order limits; and

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- (p) where local highway is occupied under this Order in connection with any Works but is not itself subject to Works, specification of the condition in which the local highway will be returned post occupation;

“Detailed Local Operating Agreement” means an agreement made pursuant to paragraph 32 of this Part of this Schedule;

“local highway” means any public, vehicular highway which vests or is intended at the completion of works to vest in or be otherwise maintainable by the local highway authority;

“local highway authority” means Somerset County Council;

“Non-standard Highway Assets” means highway assets which the local highway authority will become responsible for maintaining and which incur maintenance costs beyond the normal costs of maintaining the public highway having regard to the lists of standard and non-standard assets set out in paragraph 50(2) of this Part of this Schedule;

“Other Detailed Information” relating to any Works, means—

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

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

“Works” means any works authorised by this Order undertaken on, to or under any local highway.

**31.** Before commencing the construction of, or the carrying out of any work authorised by this Order which involves interference with a local highway (including interference with the use by the public of a local highway and temporary or permanent stopping up of any part of a local highway), the undertaker must provide to the local highway authority the Detailed Information relating to the interference, and the Works must not be carried out except in accordance with the Detailed Information submitted to the local highway authority or as otherwise agreed between the undertaker and the local highway authority.

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

- (a) communications and customer care: communication with stakeholders and identification of which party is responsible for each activity;
- (b) operational areas – scheme operational areas: definitions and scheme extents for the works areas, zone of influence and Free Recovery Area;
- (c) asset handover: describing the scheme existing assets and activities to be undertaken to enable commencement and completion of Works, and the party responsible for each;
- (d) asset inspection;
- (e) routine maintenance and repair;

- (f) winter maintenance and severe weather;
- (g) continuity of technology;
- (h) occupancy management;
- (i) incidents;
- (j) traffic management: provides the key activities to be undertaken with regard to the design, installation, maintenance and removal of Traffic Management; and
- (k) claims made by and against the undertaker.

(2) Any agreement completed under sub-paragraph (1) must continue in force until the completion of the Works or the removal of the undertaker from all local highways, whichever is the earlier.

(3) Where agreement cannot be reached under sub-paragraph (1), the terms of the detailed local operating agreement will be resolved by arbitration under article 45 (arbitration).

**33.—**(1) Before commencing the construction of, or the carrying out of any Works the undertaker must provide to the local highway authority the Design Detailing and the Other Detailed Information relating to those Works.

(2) The undertaker must not commence construction of, or the carrying out of the Works in question until approval has been given by the local highway authority to the Other Detailed Information or the Other Detailed Information has otherwise been agreed in writing between the undertaker and the local highway authority.

(3) The Works must not be constructed except in accordance with the Other Detailed Information as may be approved or agreed in accordance with sub-paragraph (2).

(4) If within 28 days after the Other Detailed Information has been submitted the local highway authority has not approved or disapproved it or it has not been otherwise agreed, the local highway authority is deemed to have approved it as submitted.

**34.—**(1) The undertaker will allow and facilitate an appropriately qualified officer of the local highway authority to participate in the design process for the detailed design of those parts of the authorised development which are local highway, and will have reasonable regard to any views of that officer in finalising the detailed design prior to any element reaching design fix or freeze; provided always that it will be the decision of the undertaker whether it implements such views and for the avoidance of doubt any such view shared by the officer will not be an instruction, requirement or authorisation under this Order.

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

(3) Any participation by the local highway authority (or its appropriately qualified officer) in accordance with this paragraph will be at the cost of the local highway authority.

**35.—**(1) Any officer of the local highway authority duly appointed for the purpose may at all reasonable times, subject to any necessary and reasonable health and safety restrictions imposed by the undertaker, enter upon and inspect any part of the authorised development which—

- (a) is in, over, under or adjacent to any local highway, or
- (b) may affect any local highway or any property of the local highway authority,

during the carrying out of the Works, and the undertaker must give to such officer all reasonable facilities for such inspection.

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(2) The testing of materials used in any Works affecting local highways must be carried out at the expense of the undertaker in accordance with the Manual of Contract Documents for Highway Works Appendix 1/5 (Specification for Highway Works). The local highway authority must receive copies of all test certificates and results which have been requested by it in writing as soon as reasonably practicable. Notwithstanding the foregoing, the local highway authority has full power to test all or any materials used or proposed to be used in any work to the local highway at its own expense and the undertaker must provide such information and materials as is reasonably necessary to facilitate such testing.

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

**36.**—(1) The undertaker must procure that an appropriately qualified safety auditor undertakes road safety audit stages 3 and 4 on the Works including any Works to local highways in accordance with the Design Manual for Roads and Bridges (“DMRB”) Volume 5 Section 2 Part 2 (GG 119) or any replacement or modification of that standard and must provide copies of the reports of such audits to the local highway authority.

(2) The local highway authority must be invited to participate in the stage 2, 3 and 4 road safety audits conducted under sub-paragraph (1).

(3) Where the report of the stage 3 road safety audit identifies any recommended works to the local highway, the undertaker must use reasonable endeavours to agree with the local highway authority which works or alternative proposals require to be implemented, provided that no works may be implemented which would give rise to any new or materially different environmental effects in comparison with those identified in the Environmental Statement.

(4) Where the report of the stage 4 road safety audit identifies any recommended works to the local highway, the undertaker must use reasonable endeavours to agree with the local highway authority which works or alternative proposals require to be implemented.

(5) Any works which the undertaker considers are required to be carried out to the local highway in accordance with the report of the stage 3 or stage 4 road safety audit, which works may not give rise to any new or materially different environmental effects in comparison with those identified in the Environmental Statement, must be undertaken by and at the expense of the undertaker to the reasonable satisfaction of the local highway authority.

(6) The undertaker must use reasonable endeavours to agree with the local highway authority a programme for any works to be carried out under sub-paragraph (5), which programme must include timing of any closures of any part of the highway, traffic management arrangements, signage and diversion routes where required.

(7) The carrying out of works under sub-paragraph (5) are to be taken to be works carried under this Order.

(8) Where, agreement cannot be reached under this paragraph, the terms of the Detailed Local Operating Agreement will be resolved by arbitration under article 45 (arbitration).

**37.** Provision must be made in accordance with the local highway authority’s reasonable requirements at the site of the Works to prevent mud and other materials from being carried on to the adjacent highway by vehicles and plant. The operational highway in the vicinity of the site of the Works is to be swept as required to ensure its safe use as a public highway.

**38.** The undertaker must not, except with the consent of the local highway authority, erect or retain on or over a local highway to which the public continues to have access any scaffolding or other structure which obstructs the local highway.

**39.** Except in an emergency or where necessary to secure the safety of the public, no direction or instruction may be given by the local highway authority to the contractors, servants or agents of the undertaker regarding any highway operations without the prior consent in writing of the undertaker.

**40.** In exercising the powers conferred by the Order in relation to any local highway the undertaker must have regard to the potential disruption of traffic which may be caused, seek to minimise such disruption so far as is reasonably practicable and must at no time prevent or unreasonably impede access by emergency service vehicles to any property.

**41.** The undertaker must, if reasonably required by the local highway authority, provide and maintain during such time as the undertaker may occupy any part of a local highway for the purpose of the construction of any part of the authorised development, temporary ramps for vehicular or pedestrian traffic, or both, and any other traffic measures required to protect the safety of road traffic.

**42.—**(1) If reasonably requested by the local highway authority, the undertaker must execute and complete a transfer to the local highway authority of any land and rights within the local highway compulsorily acquired by the undertaker pursuant to articles 23 (compulsory acquisition of land) and 26 (compulsory acquisition of rights) for the construction, operation and maintenance of the local highway or to facilitate it, or as is incidental to it, at nil consideration provided that the undertaker has completed all necessary works within the local highway for which that land and rights were compulsorily acquired.

(2) Sub-paragraph (1) above does not apply in relation to any land within the local highway compulsorily acquired by the undertaker that has been or is proposed to be permanently stopped up and rights extinguished pursuant to article 16 (permanent stopping up and restriction of use of highways, streets and private means of access).

**43.—**(1) Where the undertaker carries out any Works to any local highway it must make good any defects in those Works notified to it by the local highway authority within the period of 52 weeks after the date of the completion of the Works to that area of local highway to the reasonable satisfaction of the local highway authority.

(2) The carrying out of any remedial works required under sub-paragraph (1) are to be regarded as works carried out under this Order.

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

**44.—**(1) The Works must all be completed on such date or dates that will be notified by the undertaker to the local highway authority in writing. The completion of Works for the purposes of paragraph 43 of this Schedule will be such date notified under this paragraph.

(2) Prior to the completion of the Works, the undertaker must invite the local highway authority to participate in inspection of the Works to identify any defects or incomplete works. Any defects must be rectified and any incomplete works carried out prior to any notice of completion being issued under sub-paragraph (1).

**45.** The undertaker will hold the local highway authority harmless and indemnified from and against any liability, loss, cost or claim arising out of or incidental to the carrying out of the Works (other than those arising out of or in consequence of any negligent act, default or omission of the local highway authority) provided that no claim can be settled or liability accepted by the local highway authority without first obtaining the written approval of the undertaker, such approval not to be unreasonably withheld or delayed.

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**46.**—(1) When the undertaker considers that the Works have reached completion it must notify the local highway authority and must allow the local highway authority the opportunity to inspect the Works and the undertaker must give proper consideration to any representations that are made by the local highway authority.

(2) The undertaker may not notify the local highway authority under sub-paragraph (1) until either—

- (a) a stage 3 safety audit has been carried out in respect of the Works in question in accordance with GG19 of DMRB and in the opinion of the undertaker any recommended works identified in the audit have been completed; or
- (b) if the Works in question were not subject to a safety audit, the local highway authority has been provided an opportunity to inspect the works and the undertaker has in its opinion completed any further works required to address any safety deficiencies or defects identified as a result of the inspection.

**47.** The local highway authority must, if requested to do so by the undertaker, issue to the undertaker a provisional certificate in relation to any part of the Works, after completion of that part of the Works if the local highway authority is satisfied that the Works have been completed in accordance with this Part of this Schedule.

**48.** No earlier than 52 weeks from the date of issue of the Provisional Certificate, the local highway authority must issue a Final Certificate, certifying that all outstanding defects relating to the part of the Works in question and which required remediation have been so remedied, provided that—

- (a) all identified defects requiring remediation have been so remedied such that the local highway authority consider the Final Certificate may be issued;
- (b) a stage 4 safety audit has been carried out (if a stage 4 safety audit is required in accordance with GG19 of DMRB in connection with the Works), and following proper consideration of the representations of the local highway authority, any additional works, alterations or amendments to the Works as a result of the stage 4 safety audit have been completed to the reasonable satisfaction of the local highway authority;
- (c) the undertaker has given the local highway authority an opportunity to inspect the Works and has given proper consideration to any representations made by the local highway authority;
- (d) the undertaker has paid to the local highway authority any Commuted Sum due in relation to the part of the local highway to which the Provisional Certificate relates;
- (e) the undertaker has provided the local highway authority with such detailed information as the local highway authority may reasonably require in relation to the Works as built; and
- (f) all costs charges, expenses payable to the local highway authority pursuant to this Part have been paid.

**49.** The undertaker must pay to the local highway authority in respect of the highway works a sum equal to the whole of any costs and expenses which the local highway authority reasonably incur—

- (a) in the examination or approval of the Other Detailed Information under this Part;
- (b) in inspecting the construction of the Works including any works required by the local highway authority under this Part;
- (c) in carrying out any surveys which are reasonably required in connection with the construction of the Works; and
- (d) in the transfer pursuant to paragraph 42 to the local highway authority of the land and rights acquired by the undertaker.

**50.**—(1) The undertaker must, within 3 months of the date of approval of plans showing the limits of responsibility for the operational maintenance of the Works under requirement 13, prepare a list of assets not previously forming part of the local highway for which the local highway authority will be responsible for maintenance following completion of the Works.

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

(a) standard highway assets include—

- (i) carriageways surfaced in concrete asphaltic materials (non-pigmented binder and non-coloured aggregates);
- (ii) carriageways in shared surface roads, courtyards and housing squares surfaced in 200mm x 100mm x 80mm rectangular concrete block paving (optional);
- (iii) footway surfaced in concrete asphaltic materials (non-pigmented binder or coloured aggregates);
- (iv) footways adjacent to block paved carriageways also surfaced in 200mm x 100mm x 65mm thick concrete block paving (optional);
- (v) cycleways surfaced in concrete asphaltic materials (red pigmented binders and/or aggregates);
- (vi) pre-cast concrete kerbing;
- (vii) gully drainage, connection pipes and gravity draining highway carrier drains;
- (viii) galvanised pedestrian guard railing;
- (ix) standard highway lighting layouts, columns and lanterns;
- (x) standard illuminated and non-illuminated highway signs;
- (xi) passively safe sign posts where required for road safety;
- (xii) bollards and markers posts manufactured from plastic derivatives or recycled plastic/rubber;
- (xiii) road markings;
- (xiv) grass verges;

(b) Non-Standard Highway Assets include—

- (i) any culvert, bridge, retaining wall or other structure
- (ii) special features such as noise fencing, vehicle restraint barriers, pedestrian guard railing, knee rails and fences, gates
- (iii) landscaping features such as planting, trees, hedging
- (iv) sustainable drainage systems (“SuDS”) or non-standard highway drainage features such as—
  - (aa) flow control devices and attenuation storage;
  - (bb) SuDS including maintenance of any landscaping;
  - (cc) oil or petrol interceptors including the disposal of contaminated waste;
  - (dd) pumping stations and their energy charges;
  - (ee) watercourses and swales.

(3) Where the schedule prepared under paragraph (2) cannot be agreed, the determination of the schedule will be referred to arbitration under article 45 (arbitration).

(4) Following agreement of the schedule under sub-paragraph (2) or determination under sub-paragraph (3), the local highway authority must prepare a calculation of the Commuted Sum based

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on the maintenance the local highway authority considers to be required for the schedule of Non-Standard Highway Assets agreed under sub-paragraph (2) or determined under sub-paragraph (3) and must use reasonable endeavours to agree it with the undertaker.

(5) The undertaker must be provided with a complete breakdown of the calculation of the Commuted Sum by the local highway authority under sub-paragraph (4) including any assumptions used.

(6) Where the calculation prepared under sub-paragraph (4) cannot be agreed, the determination of the Commuted Sum will be referred to arbitration under article 45 (arbitration)

(7) The undertaker must pay the Commuted Sum to the local highway authority in one instalment within 10 working days of the later of—

- (a) the date of completion of the authorised development; or
- (b) the date of agreement of the value of the Commuted Sum under sub-paragraph (4) or determination under sub-paragraph (6).

**51.** Nothing in this Part of this Schedule prevents the local highway authority from carrying out any work or taking such action as deemed appropriate forthwith without prior notice to the undertaker in the event of an emergency or danger to the public.

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