

SCHEDULE 13
ADDITIONAL WORKS AND SUBSEQUENT SCHEMES

Part 1
Procedure for Additional Works

1. ADDITIONAL WORKS NOTICE

- 1.1 Where the Secretary of State proposes that Additional Works be carried out he shall notify the DBFO Co of such intention by means of a notice (the "**Additional Works Notice**").
- 1.2 The Additional Works Notice shall:
- 1.2.1 include a description and/or specification of the Additional Works (which description and/or specification shall be sufficient to enable the DBFO Co to assess the nature and extent thereof and the likely effect of the Additional Works on the Operations);
 - 1.2.2 specify the time by which the Additional Works are proposed to be completed (which time limit must be reasonable, having regard to the nature of the Additional Works);
 - 1.2.3 specify the Additional Works Services (if any) which the Secretary of State requires the DBFO Co to perform in respect of the Additional Works; and
 - 1.2.4 specify the time by which any comments the DBFO Co has on the contents of the Additional Works Notice must be received (which time limit must be reasonable).

2. DBFO CO COMMENTS

Any comments made by the DBFO Co in accordance with paragraph 1.2.4 above shall be given due consideration by the Secretary of State in deciding whether to proceed with the Additional Works.

3. ADDITIONAL WORKS SERVICES

- 3.1 The DBFO Co shall, within any time limit specified in the Additional Works Notice, perform such of the functions specified below in relation to the Additional Works as are described in the Additional Works Notice (the "**Additional Works Services**"):
- 3.1.1 the preparation of all designs, documents and materials as may be necessary or required by the Secretary of State for the purposes of the Secretary of State inviting and obtaining tenders for the carrying out of the Additional Works (or any part thereof) in accordance with his procedures and obtaining the Secretary of State's approval to all such designs, documentation and materials;

- 3.1.2 the solicitation on behalf of the Secretary of State of tenders for the carrying out of the Additional Works (or any part thereof);
- 3.1.3 the provision of aid and advice to the Secretary of State in the consideration of any tenders obtained and in the selection of a tender or tenders for acceptance;
- 3.1.4 the negotiation on behalf of the Secretary of State of the terms of a contract or contracts for the carrying out of the Additional Works (or any part thereof) (an "**Additional Works Contract**") with each tenderer or other contractor selected by the Secretary of State (an "**Additional Works Contractor**"), the terms of any such contract to be subject to the approval of the Secretary of State;
- 3.1.5 the provision to any Additional Works Contractor of the documentation which it requires free of charge to enable it to proceed with the Additional Works (or any part thereof) in accordance with the terms of the Additional Works Contract;
- 3.1.6 the provision to the Secretary of State of such copies as he may require of all documents relating to any Additional Works Contract;
- 3.1.7 the provision of the services referred to in paragraphs 4 and 5 below; and
- 3.1.8 upon completion of any Additional Works (or any part thereof) the preparation and delivery to the Secretary of State of:
 - 3.1.8.1 "as built" drawings in a form acceptable to the Secretary of State; and
 - 3.1.8.2 any other information which the Secretary of State may require in connection with the Additional Works (or any part thereof).
- 3.2 Subject to Clause 35.1.2, all contracts in respect of the Additional Works (or any part thereof) shall be between the Secretary of State and the Additional Works Contractor.
- 3.3 For the avoidance of doubt, the DBFO Co and its Associated Companies shall not be disqualified from consideration in respect of any tender or contract referred to in paragraph 3.1 merely by virtue of the existence of the contractual relationship reflected in this Agreement, subject to compliance with all United Kingdom and European Community Laws and subject to the existence of such arrangements as the Secretary of State reasonably determines to be necessary to avoid any conflict of interest by the DBFO Co or any such Associated Company.
- 3.4 During the progress of the Additional Works, the DBFO Co shall in the performance of the Additional Works Services:
 - 3.4.1 consult the Secretary of State at all appropriate times and keep him informed of all matters connected with the Additional Works (or any

- part thereof) at such times and in such manner as the Secretary of State may direct;
- 3.4.2 provide the Secretary of State with all information or reports in connection with the Additional Works (or any part thereof) as he shall from time to time require;
- 3.4.3 consult all authorities having statutory powers including without limitation the police, highway authorities for adjoining highways, agents of the Secretary of State and any other person or authority having rights which are connected with or affected by the Additional Works (or any part thereof) and such other authorities as the Secretary of State may direct (the "**interested parties**");
- 3.4.4 throughout the duration of the Additional Works, keep the Secretary of State advised as to the requirements of the interested parties;
- 3.4.5 promptly seek the written consent of the Secretary of State where the DBFO Co in accordance with paragraphs 3.4.3 and 3.4.4 above is to meet any requirements of the interested parties and comply with such requirements as are approved by the Secretary of State;
- 3.4.6 ensure that all matters are dealt with which are necessary to achieve the successful, timely, efficient and economic completion of the Additional Works; and
- 3.4.7 comply with the terms of this Schedule and all subsequent reasonable instructions of the Secretary of State issued in connection with the Additional Works (which instructions shall be in writing or, if oral, shall be confirmed in writing within 5 Working Days).

4. **STATUTORY PROCEDURES**

The DBFO Co shall to the extent so specified in the Additional Works Notice provide the Secretary of State with such advice and assistance and shall undertake such duties as may be necessary or as may be required by the Secretary of State (including the attendance at any meeting, consultation, inquiry or tribunal, and the preparation of any documentation) to enable the Secretary of State to gain authority for the provision of the Additional Works (or any part thereof) and for the acquisition of land and rights required for the execution of the Additional Works (or any part thereof).

5. **MANAGEMENT**

The DBFO Co shall, to the extent specified in the Additional Works Notice, manage any Additional Works Contract, and in so doing it shall be subject to such procedures of supervision and review as the Secretary of State may reasonably require.

6. **PROJECT ROAD**

Upon completion, the Additional Works shall become part of the Project Road for all purposes of this Agreement and the definitions of "**Existing Road**", "**New Road**", "**Off-Site Facilities**", "**Project Road**" and "**Project Facilities**" in Clause 1.1 (Definitions) shall be deemed to be amended as appropriate to include references to such Additional Works.

SCHEDULE 13
ADDITIONAL WORKS AND SUBSEQUENT SCHEMES

Part 2
Payment for Additional Works Services

1. The remuneration of the DBFO Co for carrying out the Additional Works Services as referred to in Part 1 of this Schedule 13 shall be on a time basis in respect of each employee of the DBFO Co engaged in the Additional Works Services, as follows:

- 1.1 Hours Rate calculated as:

$$\text{Basic Annual Salary (Note A)} = \frac{\text{Actual Hours Worked (Note B)}}{\text{The On-Cost Multiplier (Note C)}}$$

Plus:

- 1.2 Other Payroll Costs (Note D)

Notes

Note (A) "**Basic Annual Salary**" is the annual salary excluding overtime and bonuses during the period covered by the account. Where the annual salary is changed during the period covered by the account, the total worked should be apportioned and applied to the relevant salary level.

Note (B) "**Actual Hours Worked**" shall include overtime hours.

Note (C) "**The On-Cost Multiplier**" is the factor required to recover the appropriate part of the annual salary and on-costs. The multiplier to be used for this Agreement is 2.5.

Note (D) "**Other Payroll Costs**" means the annual amount of all contributions and payments made by the DBFO Co on behalf of or in respect of a person employed by the DBFO Co for staff pension and life assurance schemes and for National Health Insurance, and any tax, charge, levy, impost or payment of any kind whatsoever which the DBFO Co is obliged by law to make on behalf of or in respect of such person, divided by 1600 (being deemed to be the average annual total of effective working hours) and multiplied by the number of working hours spent by such person performing any of the Additional Works Services in respect of which payment is to be made. For the purposes of this definition the annual amount of all contributions and payments made by the DBFO Co on behalf of or in respect of a person employed by it for a period less than a year shall be calculated pro-rata.

Note (E) The DBFO Co shall submit its accounts for payment in a form and manner acceptable to the Secretary of State.

Note (F) Time spent in travelling for the purposes of the Additional Works Services to be performed under this Schedule shall be chargeable, excluding travel between home and normal work place.

Note (G) Time spent by staff engaged in general accountancy, secretarial or administration duties (unless otherwise agreed) shall not be chargeable.

2. In addition to the fee described in paragraph 1 above, the DBFO Co shall be reimbursed by the Secretary of State all approved costs and expenses properly incurred by it in connection with the Additional Works Services to be performed under this Schedule and certified by the DBFO Co in respect of:
 - 2.1 travel and subsistence expenses in accordance with rates and conditions in force from time to time applicable to Civil Servants of comparable status;
 - 2.2 the cost of printing and reproduction of all documents, drawings, maps and records and the like authorised by the Secretary of State;
 - 2.3 the cost of providing, where required by the Secretary of State, auditors' certificates of costs; and
 - 2.4 the cost of any other expenses authorised by the Secretary of State, excluding normal office overheads such as rent, rates, heating, lighting, telephone and postal charges.
3. For the purposes of this Schedule, "**approved**" means approved in writing by the Secretary of State before the cost, remuneration or expenditure in question is incurred or committed.

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Part 3
Subsequent Schemes

1. SUBSEQUENT SCHEME NOTICE

- 1.1 Where the DBFO Co desires a Subsequent Scheme to be carried out it shall give notice to that effect to the Secretary of State (the "**Subsequent Scheme Notice**"). Where the Subsequent Scheme is to be carried out on or in connection with the New Road, the Subsequent Scheme Notice shall not be given in respect of works to be commenced prior to the issue of the Completion Certificate.
- 1.2 The Subsequent Scheme Notice shall:
- 1.2.1 include a description of the proposed Subsequent Scheme which shall be in sufficient detail to enable the Secretary of State to assess the nature and extent thereof and the likely effect of the Subsequent Scheme on the Project Facilities and on the Operations under this Agreement;
 - 1.2.2 without limitation to paragraph 1.2.1, give details of:
 - 1.2.2.1 the size and scope of the proposed works (including outline plans);
 - 1.2.2.2 estimated costings; and
 - 1.2.2.3 a proposed timetable for the works; and
 - 1.2.3 contain the DBFO Co's suggestions as to the contractual arrangements in respect of the construction of the Subsequent Scheme, including the statutory authority to be relied on, the party who will promote the Subsequent Scheme through any statutory approvals process, the party who will serve as employer in respect of the construction of the Subsequent Scheme, and the party who will serve as contractor.
- 1.3 The Secretary of State may at any time require the DBFO Co to provide within a reasonable period of time such additional information with respect to the Subsequent Scheme as the Secretary of State may reasonably require, and if the DBFO Co shall fail to provide such information within a reasonable period of time the Secretary of State shall have no obligation to give any further consideration to the proposed Subsequent Scheme.

2. CONSIDERATION BY THE SECRETARY OF STATE

- 2.1 Within 21 days after receipt of the Subsequent Scheme Notice, the Secretary of State shall acknowledge receipt of such Notice and shall thereafter proceed with reasonable dispatch to consider the request contained in the Subsequent Scheme Notice.

- 2.2 The Secretary of State shall, as soon as reasonably practicable in the circumstances, taking into consideration, inter alia, the complexity of the proposed Subsequent Scheme, give a notice to the DBFO Co indicating whether or not the Secretary of State considers that it is worthwhile taking consideration of the proposed Subsequent Scheme further.
- 2.3 The Secretary of State shall consider the proposal contained in the Subsequent Scheme Notice on its merits, in accordance with and in view of his statutory duties. Without in any way limiting the discretion of the Secretary of State in responding to any such request, the Secretary of State shall, in reaching a decision on whether it is worthwhile to proceed to further discussions with the DBFO Co in regard to such Subsequent Scheme, give consideration, inter alia, to the matters set out in Clause 26.4 (Relevant Considerations) and whether the Subsequent Scheme would be of benefit to the public.
- 2.4 If the Secretary of State gives notice to the DBFO Co that he is willing to consider further the proposed Subsequent Scheme, then, subject to the DBFO Co confirming to the Secretary of State in form and substance reasonably acceptable to the Secretary of State that the DBFO Co will bear any abortive costs of the Secretary of State in considering the proposed Subsequent Scheme, the Parties shall enter into negotiations with a view to reaching agreement on the terms and conditions on which the Subsequent Scheme may be taken forward.
- 2.5 The terms and conditions referred to in paragraph 2.4 to be agreed between the Parties shall include, inter alia, the following:
- 2.5.1 the statutory authority under which the Subsequent Scheme will be promoted and any procedural or structural arrangements to satisfy the requirements of such statutory authority;
 - 2.5.2 the responsibilities of each of the Parties in respect of the statutory approvals process in respect of the Subsequent;
 - 2.5.3 the standards and specifications to apply to the construction of the Subsequent Scheme and to its subsequent operation and maintenance;
 - 2.5.4 the procedure for the design and certification of the Subsequent Scheme;
 - 2.5.5 the programme for the works in connection with the Subsequent Scheme;
 - 2.5.6 any amendments required to this Agreement as a consequence of the Subsequent Scheme, including without limitation any amendment referred to in paragraph 7 below and any adjustments to the DBFO Payment to reflect:
 - 2.5.6.1 any changes in traffic as a consequence of the Subsequent Scheme; and
 - 2.5.6.2 any changes in the DBFO Co's costs in respect of the Project Road; and

- 2.5.7 the manner in which any land required in connection with the Subsequent Scheme will be acquired, provided that the freehold of any land acquired by the DBFO Co shall be conveyed to the Secretary of State free of charge and without any Encumbrances.

2.6 For the avoidance of doubt:

- 2.6.1 the Secretary of State shall be entitled to require changes in the proposed Subsequent Scheme as a condition to his agreement;
- 2.6.2 either Party may in its absolute discretion by notice to the other terminate the discussions in respect of the Subsequent Scheme and, subject to paragraphs 2.7 and 4 below, in such event neither Party shall have any liability to the other in respect of such Subsequent Scheme; and
- 2.6.3 any agreement reached in accordance with paragraph 2.4 shall be conditional upon the making by the Secretary of State, in accordance with his statutory duties, of any statutory order required to give effect to the agreement in respect of the Subsequent Scheme and on the Secretary of State deciding, in the exercise of his statutory duties, to implement any such statutory order.

- 2.7 If either Party at any time gives notice terminating the negotiations in respect of the Subsequent Scheme, the DBFO Co shall reimburse the Secretary of State for all costs incurred by him in connection with the Subsequent Scheme (including without limitation an appropriate sum in respect of general staff costs and overheads).

3. STATUTORY PROCEDURES

- 3.1 If the Parties reach agreement in respect of a Subsequent Scheme in accordance with paragraph 2.4 above, then they shall cooperate in any statutory procedures necessary in respect of the Subsequent Scheme. Subject to the terms of any agreement reached pursuant to paragraph 2.5.2 above, the DBFO Co shall provide the Secretary of State with such advice and assistance and shall undertake such duties as may be necessary and as may be required by the Secretary of State (including the attendance at any meeting, consultation, inquiry or tribunal, the provision of any witnesses required for any public inquiry, and the preparation of any documentation) in respect of any such statutory procedures.
- 3.2 For the avoidance of doubt, no action taken in connection with any such statutory procedures shall fetter in any way the discretion of the Secretary of State to decide any issue in accordance with his statutory duties. If the Secretary of State fails or refuses to make any order or take any other action required in connection with the Subsequent Scheme, such decision shall not be subject to review under the Disputes Resolution Procedure and the DBFO Co shall not be entitled to any compensation in respect thereof.

4. COSTS

Subject to express agreement to the contrary in accordance with paragraph 2.4, the DBFO Co will bear and will indemnify the Secretary of State against:

- 4.1 the DBFO Co's costs in respect of the Subsequent Scheme, including any costs of design or the provision of any information and any costs incurred in connection with any negotiations between the DBFO Co and the Secretary of State or any statutory procedures in respect of the Subsequent Scheme;
- 4.2 the costs of any statutory procedures in respect of the Subsequent Scheme, including any costs of objectors who participate in such procedures to the extent such costs are required to be borne by the Secretary of State;
- 4.3 any costs incurred by the Secretary of State in connection with the Subsequent Scheme, including without limitation any costs incurred in connection with any negotiations or statutory procedures referred to in paragraphs 2 and 3 above; and
- 4.4 any Loss or Claim of any person (including without limitation the Secretary of State) arising from or in connection with the Subsequent Scheme.

5. OTHER CONSENTS

For the avoidance of doubt, nothing in this Part 3 of Schedule 13 shall affect the requirement for the DBFO Co to obtain at its own cost all necessary consents in respect of the Subsequent Scheme, including without limitation any planning consent.

6. PROCUREMENT

If necessary in order to satisfy any United Kingdom or European Community Law in respect of procurement, the Secretary of State shall procure the works necessary in connection with the Subsequent Scheme and the provisions of paragraph 3 of Part 1 of this Schedule 13 shall apply as though the Subsequent Scheme constituted Additional Works, provided, however, that the DBFO Co shall not be entitled to any payment in accordance with Part 2 of this Schedule 13 in respect of such procurement and the DBFO Co will bear and will indemnify the Secretary of State against any cost or expense in connection with such procurement.

7. PROJECT ROAD

Upon completion, any Subsequent Scheme shall become part of the Project Road for all purposes of this Agreement, and the definitions of "**Existing Road**", "**New Road**", "**Off-Site Facilities**", "**Project Road**" and "**Project Facilities**" in Clause 1.1 (Definitions) shall be deemed to be amended as appropriate to include references to such Subsequent Scheme.

SCHEDULE 13
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Part 4
Improvements

1. Prior to the issue of the Completion Certificate, any proposal by the DBFO Co for an Improvement to any part of the Project Facilities forming part of the Scheme shall be submitted to the Department's Agent in accordance with the procedures for a DBFO Co's Change, but subject to the provisions of paragraph 3 below.
2. Any proposal by the DBFO Co for an Improvement:
 - 2.1 made at any time in respect of any Project Facilities not forming part of the Scheme, or
 - 2.2 made after issue of the Completion Certificate in respect of any Project Facilities forming part of the Scheme,shall be submitted to the Department's Representative in accordance with the Review Procedure. The DBFO Co shall not commence the Improvement unless there has been no objection to such Improvement in accordance with the Review Procedure, save that for the purposes of an Improvement the period within which the Department's Representative shall respond shall be as soon as practicable and in any event within 90 days and not 28 days and subject to the provisions of paragraph 3 below.
3. The Secretary of State shall be entitled to object to any proposed Improvement on the grounds set out in paragraph 3.12 of Part 3 of Schedule 7.
4. Any Improvement shall be deemed to be part of the Project Road for all purposes of this Agreement (including without limitation for purposes of determining the standards and specifications to apply to such Improvement) and the definitions of "**Existing Road**", "**New Road**", "**Off-Site Facilities**", "**Project Road**" and "**Project Facilities**" shall be deemed to be amended as appropriate to include references to such Improvement.
5. For the avoidance of doubt, no approval of a proposed Improvement by the Secretary of State shall absolve the DBFO Co from any obligation to obtain any other consent or take any other action required by Law in respect of such Improvement (including where applicable the preparation of an environmental statement).

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