

DATED

4 SEPTEMBER

2024

SUFFOLK COUNTY COUNCIL

(1)

- and -

NETWORK RAIL INFRASTRUCTURE
LIMITED

(2)

AGREEMENT

made pursuant to Sections 278 of the Highways Act 1980
and any other enabling power relating to
the diversion of Level Crossing at Gipsy Lane, Needham Market, Suffolk

Nigel Inniss
Head of Governance
Suffolk County Council
8 Russell Road Ipswich
Suffolk IP1 2BX

Ref: JL/62750

**SECTION 278 AGREEMENT
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THIS AGREEMENT is made the 4th day of SEPTEMBER 2024
BETWEEN the following parties:

- (1) SUFFOLK COUNTY COUNCIL of Endeavour House 8 Russell Road Ipswich
Suffolk IP1 2BX ("the **County Council**")
- (2) NETWORK RAIL INFRASTRUCTURE LIMITED (Company Number
02904587) whose registered office is at Waterloo General Office, London, SE1
8SW ("the **Developer**")

RECITALS AND DEFINITIONS

- (A) In this Agreement unless the context otherwise requires the following words
shall have the following meanings:

"1980 Act"	Means the Highways Act 1980 (as amended)
"Contractor"	Means the contractor(s) appointed by the Developer to carry out the Highway Works
"Approved Sub-Contractor"	Means any sub-contractor(s) appointed by the Developer and Contractor approved by the County Council for carrying out the Highway Works
"CDM Regulations"	Means the Construction (Design and Management) Regulations 2015 (SI 2015/51)
"Certificate of Final Completion"	Means any of the certificates issued pursuant to paragraph 15.3 of Schedule 1
"Certificate of Substantial Completion"	Means any of the certificates issued pursuant to paragraph 14.2 of Schedule 1
"Commutated Sum"	Means a total of £15,190 made up of the sum of £12,550 towards the maintenance of the footpath and £2,640 towards the maintenance of the guardrail at Stowmarket Road end of footpath route forming part of the Highway Works
"Contract"	Means the contract or contracts in respect of each and all of the Highway Works
"Contractor"	Means the contractor or contractors who have been awarded the Contract to execute the Highway Works. For the avoidance of doubt the aforementioned definition does not include any subcontractor.

"Development"	Means the development to be carried out pursuant to the Order being construction of a pedestrian walkway within the existing Creeping Bridge eastern culvert, the construction of a footpath to the Creeping Bridge eastern culvert walkway from Stowmarket Road, and the construction of a ramped footpath that will connect an existing farm track, leading from the Creeping Bridge eastern culvert to the north, that will connect it to Gipsy Lane's existing public footpath, as well as, alterations/improvements to the existing footway on Stowmarket Road adjacent to the B1113
"Director"	Means the County Council's Executive Director of Growth, Highways and Infrastructure or other officers of the County Council acting under his hand
"Highway Works"	Means the works collectively or individually as the context requires which are set out in Schedule III of this Agreement and shown in the Works Drawings
"Order"	Means the diversion order in respect of Gipsy Lane which was confirmed by the Secretary of State for the Environment, Food and Rural Affairs on 12 November 2019
"Road Safety Audit"	Means the evaluation of the Road Works during design and at the end of construction to identify potential road safety problems that may affect any users of the highway and to suggest measures to eliminate or mitigate those problems in accordance with Department for Transport standards or by the County Council as agreed by the Director
"Road Works"	Means the part of the Highway Works which are the alterations/improvements to the existing footway on Stowmarket Road adjacent to the B1113 only

"Site"	Means land situated at Gipsy Lane, Needham Market, Suffolk shown edged red and hatched black, cross-hatched orange, shaded orange or shaded yellow for identification only on the attached plan no 400399-MLM-ZZ-XX-DR-R-0220 Rev P7
"Specification"	The County Council's "Specification for Estate Roads" dated May 2007 (or later amendment current at the date of this Agreement) so far as this is consistent with the plan and the details (subject to any variations agreed in writing)
"Sub-contractor"	Means the sub-contractor(s) working for the Contractor(s) who have been contracted to execute the Highway Works
"Substantial Completion"	Means complete to the reasonable satisfaction of the Director and so that the Highway Works can be used for the purpose and operate in the manner for which they were designed
"Technical Standards"	Means the standards necessary to ensure complete conformity with all UK and EU primary and secondary legislation (including by-laws) all guidance standards and codes of practice issued by the Department for Transport the County Council statutory undertakers and relevant professional institutes the Road Safety Audit and formal instructions issued by the Director from time to time during the design and implementation of the Highway Works and for the avoidance of doubt this shall include the Traffic Signs Regulations and General Directions 2016 and BS5489 in relation to the design of any street lighting
"Works Drawings"	Means the attached drawings bearing the numbers referred to in Schedule IV or any subsequent revision of them which has been approved or requested by the Director and which relate to the Highway Works

(B) In this Agreement unless the context otherwise requires: -

- (i) Words importing the singular meaning where the context so admits include the plural meaning and vice versa; and

- (ii) Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner; and
 - (iii) "party" or "parties" means a party or parties to this Agreement; and
 - (iv) references to any party shall include the successors in title and assigns of that party; and in the case of the County Council the successors to its statutory functions;
 - (v) where a party includes more than one person any obligations of that party can be enforced against all of them jointly and severally unless there is an express provision otherwise; and
 - (vi) the headings and contents list in this Agreement shall not form part of or affect its construction; and
 - (vii) references to clauses schedules and paragraphs are references to clauses in and schedules to this Agreement and paragraphs in schedules to this Agreement; and
 - (viii) where a party or any officer or employee is required to give its consent approval or agreement to any specific provision in this Agreement such approval or agreement shall not be unreasonably withheld or delayed; and
 - (ix) any mention herein of any act or of any section regulation or statutory instrument shall be deemed to refer to the same source as at any time amended and where such act section regulation or statutory instrument has been replaced consolidated or re-enacted with or without amendment such mention shall be deemed to refer to the relevant provision of the updating consolidating or re-enacting act or section or regulation or statutory instrument
- (C) The County Council is the Local Highway Authority (except for trunk roads) for the purposes of the 1980 Act for the area within which the Site is situated and the Highway Works will be carried out.
- (D) The Contractor is working on behalf of the Developer (Network Rail) which has the benefit of the Order.

- (E) The works are to establish and make up the necessary footpath and footway on the ground to give effect to the Order.
- (F) In accordance with the Order Network Rail and any successor operator of the railway crossed by the footpath shall maintain the structure of the Creeping Bridge eastern culvert to the extent identified in the Order and there is no intention for the Creeping Bridge eastern culvert to be adopted by the County Council and the works to the Creeping Bridge eastern culvert are included within this Agreement purely for the purposes of licensing the Highway Works upon the footpath which will run within it.

NOW THIS DEED WITNESSES as follows: -

1 LEGAL EFFECT

- 1.1. This Agreement and the covenants that appear hereinafter are made pursuant to Section 278 of the 1980 Act Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers to the intent that the provisions of this Agreement shall bind the Site and the parties hereto and all persons or bodies succeeding them in their statutory role
- 1.2. Not used
- 1.3. No waiver (whether express or implied) by the County Council of any breach or default by the Developer in the performance or observance of any of the covenants, terms or obligations in this Agreement shall constitute a continuing waiver and no such waiver shall prevent the County Council from enforcing any of the covenants, terms or obligations or from acting upon any subsequent breach or default in respect thereof
- 1.4. Any provision of this Agreement which is or may be unlawful void or unenforceable shall to the extent of such unlawfulness invalidity or

unenforceability be deemed severable and shall not affect any other provision of this Agreement

- 1.5. This Agreement is governed by and interpreted in accordance with English law and (save for any reference to or proceedings in the European Court of Justice) shall be determined in the Courts of England and Wales

2 NOTICES

- 2.1. Any notices or other written communication to be served or given by one party upon or to any other party under the terms of this Agreement shall be deemed to have been validly served or given if delivered by hand or sent by recorded delivery post or sent by the DX service to the party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing provided that the notice or other written communication is addressed and delivered by hand or by recorded delivery post or by the DX service to the address of the party concerned as nominated in sub-clause 2.2. below

- 2.2. The address for any notice or other written communication in the case of each party to this Agreement shall be as follows: -

The County Council	Suffolk County Council Endeavour House 8 Russell Road Ipswich IP1 2BX marked for the attention of the Head of Governance (or where the context requires the Director of Growth, Highways and Infrastructure)
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The Developer	marked for the attention of the Network Rail Infrastructure Ltd Legal Team to 1
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Eversholt Street, London NW1 2DN
and by email to
notices@networkrail.co.uk.

- 2.3. Any notice or other written communication to be given by the County Council shall be deemed to be valid and effective if on its face it is signed on behalf of the County Council by a duly authorised officer

3 GENERAL

- 3.1. All works and activities to be carried out under the terms of this Agreement (including for the avoidance of doubt such works as are of a preparatory ancillary or of a maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the Developer and at no cost to the County Council
- 3.2. All consideration given and payments made in accordance with the provisions of this Agreement shall be exclusive of any VAT properly payable in respect thereof and in the event of VAT becoming chargeable at any time in respect of any supply made in accordance with the terms of this Agreement then to the extent that VAT had not previously been charged in respect of that supply the person making the supply shall raise a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly
- 3.3. The County Council and their respectively duly authorised officers and agents may enter upon the land on which the Highway Works are being carried out at any reasonable time to ascertain whether the terms of the Agreement are being or have been complied with
- 3.4. For the avoidance of doubt, any of the obligations of the Developer detailed in this Agreement can be satisfied on the Developer's behalf by the Contractor and/or any Approved Sub-Contractor.

4 ARBITRATION

- 4.1. Any dispute or difference arising between the parties as a result of this Agreement may be referred to the arbitration of a single arbitrator

to be agreed upon between the parties or failing agreement within fourteen days after either of the parties has given to the other a written request requiring the appointment of an arbitrator to a person to be appointed at the request of either of the parties by the President for the time being of The Institution of Civil Engineers

4.2. Any reference to arbitration shall be undertaken in accordance with and subject to the provisions of the Arbitration Act 1996 save as follows: -

- (a) the seat of the arbitration shall be at the County Council's offices in Ipswich Suffolk
- (b) where appropriate the arbitrator may consolidate arbitral proceedings
- (c) with the parties' agreement the arbitrator may appoint experts or legal advisers

4.3. A party wishing to refer any such dispute or difference to arbitration shall notify the other party in writing of such intention without delay

4.4. The arbitrator shall act as a referee and not as an expert except in any case where the parties to a dispute or difference agree on the arbitrator when such parties may also agree that such arbitrator shall act as an expert

4.5. Subject to Sections 67 68 and 69 of the Arbitration Act 1996 the parties agree to be bound by the decision of the arbitrator

5 COVENANTS

5.1. Not used

5.2. The Developer hereby covenants and undertakes with the County Council that from the date of this Agreement it will (unless otherwise agreed by the County Council) carry out and comply with the

obligations set out in Schedule I and the details set out in Schedules III and IV hereto

- 5.3. The County Council without prejudice to its statutory powers and duties hereby appoints the Developer to act as its agent and gives to the Developer, Contractor and Approved Sub-Contractor licence (in so far as is reasonably necessary for the Developer to perform the obligations under the terms of this Agreement) to enter into and upon and remain upon the public highway to carry out the construction of the Highway Works within the timescales referred to in Schedule III hereto or such other period as may be agreed in writing by the Director, provided that this licence shall not extend to the Developer's successors in title or assigns unless otherwise agreed in writing by the Director prior to that successor or assignee commencing work in the public highway
- 5.4. If road space is required to carry out the Highway Works, the Developer covenants with the County Council not to commence the Highway Works set out in Schedule III unless road space has first been booked with the County Council
- 5.5. The Developer covenants with the County Council as Highways Authority to give written notice not less than three calendar months (or such lesser notice as the County Council may agree to) prior to works commencing, in order that the County Council as Highways Authority has sufficient time to ensure that the commencement of works will cause the least disruption possible to road users. The County Council reserves the right to refuse consent and/or to stop works under the terms of this Agreement and relevant legislation where the aforesaid notice period is not complied with
- 5.6. The Developer covenants with the County Council as Highways Authority to comply with the provisions of the New Roads and Street Works Act 1991, the Traffic Management Act 2004 and any amendments thereof
- 5.7. The County Council covenants with the Developer that on the date of issue of the Certificate of Final Completion the Highway Works

(but excluding the structure of the Creeping Bridge eastern culvert which shall remain in the Developer's control and shall be maintained by the Developer) shall be maintainable at the public expense as part of the adopted highway.

6 THIRD PARTY RIGHTS

- 6.1. It is hereby agreed and declared that the provisions of Contracts (Rights of Third Parties) Act 1999 is not intended to apply to this Agreement

7 LAPSE

- 7.1. If the Highway Works have not been commenced within one (1) year from the date of this Agreement, save as this period is otherwise extended in writing by the Director at his discretion, then this Agreement shall lapse and be of no further effect (save to the extent already complied with) and the Developer agrees to pay to the County Council any costs properly incurred by the County Council prior to the lapse of this Agreement (which have not already been paid) including but not limited to those costs set out in paragraph 19 of Schedule 1 to this Agreement
- 7.2. Where, in accordance with clause 7.1 above the Director, at his discretion, agrees in writing to an extension to the period of one (1) year after which this Agreement shall lapse, this Agreement shall lapse at the end of such period as agreed in writing by the Director

In witness whereof this Agreement has been executed and delivered as a Deed on the date first written above

In witness whereof this Agreement has been executed and delivered as a Deed on the date first written above

The COMMON SEAL of)
SUFFOLK COUNTY COUNCIL)
was hereunto affixed)
in the presence of)



[Redacted]
A Duly Authorised Officer



Executed as a deed by **Network Rail Infrastructure Limited** acting by its attorney

Acting as attorney for NETWORK RAIL INFRASTRUCTURE LIMITED

[Redacted]
.....

In exercise of a power of attorney dated ^{28 August}~~13 May~~ 2024 in the presence of:

Signature of Witness [Redacted]

Name: [Redacted]

Address: [Redacted]

I confirm that I was physically present when [Redacted] .. signed this deed [Redacted]

SEAL NO. 48640

SCHEDULE I

1 THE DESIGN OF THE HIGHWAY WORKS

- 1.1 The design of the Highway Works shall be to the satisfaction of the Director with due consideration of the Technical Standards
- 1.2 No work on the relevant part of the Highway Works shall commence until;
 - 1.2.1 full details of the design of the Highway Works to be commenced in the form of plans, drawings, specifications and other materials have been submitted to the Director together with the name of the principal designer (whom the Developer shall appoint for the full duration of the design and construction of each and all of the Highway Works) in accordance with the CDM Regulations and any codes of practice referred to therein;
 - 1.2.2 the Director has given his written approval to the relevant part of the Highway Works being commenced (not to be unreasonably delayed) and such approval shall not be given for the Road Works if the said plans, drawings, specifications and other documentation have not adequately addressed any issues raised in the pre-construction stages of the Road Safety Audit but this shall not delay or prevent the approval of the remainder of the Highway Works being commenced, and FURTHERMORE any approval given shall lapse if the relevant part of the Highway Works are not commenced within 12 months of the date of the said Director's approval; and
 - 1.2.3 any necessary traffic management measures have been prepared by the Developer and approved in writing by the Director ("the Approved Programme")
- 1.3 If the Director does not propose to give his approval in relation to those matters referred to in paragraph 1.2 of this Schedule he shall in each case as soon as possible in writing inform the Developer and

if the Director requires amendments or additions to the plans drawings specifications and other materials referred to in paragraph 1.2 of this Schedule these amendments shall be undertaken by the Developer at his own expense and a revised set of updated documents shall be re-submitted to the Director for his approval

- 1.4 Without prejudice to paragraph 1.2 of this Schedule, the Director shall not give his approval as referred therein until the Developer has paid the sum referred to in paragraph 19.1.3 towards the cost of checking the design of the Highway Works and inspecting the Highway Works. The Highway Works at all times shall be carried out in accordance with the plans, drawings, specifications and other materials which have received the Director's approval referred to in paragraph 1.2 of this Schedule and the Developer shall in the execution of the Highway Works comply or ensure that the Contractor complies with the Technical Standards.
- 1.5 For the avoidance of doubt, the parties agree that it is only the Road Works that require a Road Safety Audit and the remainder of the Highway Works will be able to proceed in accordance with paragraph 1.2 of this Schedule before the completion of the Road Safety Audit.

2 LETTING OF THE CONTRACT

- 2.1 Not used
- 2.2 The Contract shall be under NEC3 suite of contracts and the Developer shall obtain the agreement of the Contractor to be bound by the agreed drawings in Schedule IV
- 2.3 The Contract shall be awarded by the Developer subject to the Director having first given his written approval to the proposed chartered engineer(s) or other suitably qualified person(s) who shall be independent of the Contractor and will supervise the execution of the Highway Works by the Contractor.
- 2.4 The Contractor and the Approved Sub-Contractor/s must be insured throughout the period of the Contract (such period to include the maintenance period detailed in paragraph 15.1 of this Schedule) for public liability risks in the sum of at least ten million pounds

£10,000,000 in respect of any single claim and the Developer shall ensure that the Contractor remains so insured throughout the period of the Contract and prior to the commencement of each or all of the Highway Works or any maintenance works carried out in accordance with paragraph 15.1 of this Schedule the Developer shall (if requested to do so by the Director) produce to the Director insurance policies fully covering the Contractor's liability in respect of the matters set out in this Agreement

- 2.5 The Developer shall not sub-contract or assign the Contract without the written approval of the Director and any sub-contractor shall be an Approved Sub-Contractor

3 INSPECTION OF THE HIGHWAY WORKS

- 3.1 The Developer shall provide the Director with not less than 24 hours nor more than 72 hours notice (excluding weekends and bank holidays) of any intended execution of the Highway Works specifying the tasks to be carried out in accordance with the Approved Programme referred to in paragraph 2.3 of this Schedule.
- 3.2 Without prejudice to the Approved Programme, the Developer shall notify the Director in writing at least 28 days prior to the commencement of any work connected with statutory undertaker's equipment
- 3.3 Not used
- 3.4 The Developer shall during the progress of each and all of the Highway Works give to or procure for the Director and any person or persons duly authorised by him free access to every part of the Highway Works and the site thereof and permit him or them to inspect the same as they proceed and all materials used or intended to be used therein and shall give effect to any reasonable and proper requirements made or reasonable and proper directions given by the Director to conform to the approved detailed plans Works Drawings and specification referred to in paragraph 1.2 of this Schedule
- 3.5 The Developer shall not cover up or put out of view any works forming part of the Highway Works without the approval of the

Director and shall afford full opportunity for the Director to examine and measure any work which is about to be covered up or put out of view and to examine foundations before permanent work is placed thereon and shall give at least 72 hours' notice to the Director whenever any such work or foundations is or are ready or about to be ready for examination

- 3.6 The Director shall without unreasonable delay, unless she considers it unnecessary and advises the Developer accordingly, attend when required by the Developer for the purpose of examining such works or of examining such foundations
- 3.7 The Director shall for the purposes of paragraphs 3.1 to 3.6 be allowed reasonable access and admission to the Highway Works or the places where materials or plant for the Highway Works may be stored or in the course of preparation manufacture or use (unless such access or admission is refused due to circumstances beyond the control of the Developer)

4 TESTING OF MATERIALS

- 4.1 The Developer shall reimburse the County Council for all reasonable costs and expenses whatsoever arising from the operation of paragraphs 4.2 to 4.5, if they are deemed necessary to carry out the Highway Works.
- 4.2 If necessary, the Director shall require the testing of materials plant and workmanship used or proposed to be used in the Highway Works and in his reasonable discretion have the power to reject any materials plant or workmanship so tested which he may reasonably and properly find to be not in accordance with the approved detailed plans Works Drawings and specification referred to in paragraph 1.2 of this Schedule
- 4.3 The Developer shall as soon as reasonably practicable replace or repair any materials plant or workmanship which have been found to be not in accordance with the approved detailed plans Works Drawings and specification referred to in paragraph 1.2 of this Schedule

- 4.4 The Director shall for the purposes of paragraphs 4.1 to 4.5 be allowed reasonable access and admission to the Highway Works or the places where materials or plant for the Highway Works may be stored or in the course of preparation manufacture or use (unless such access or admission is refused due to circumstances beyond the control of the Developer)
- 4.5 The Developer shall as soon as reasonably practicable remove such materials and plant as are rejected by the Director pursuant to paragraph 4.2. of this Schedule which are not capable of repair or remedy from the site of the Highway Works and if the Developer shall wish to continue to store such rejected materials and plant on the site of each and all of the Highway Works they shall be stored separately from those materials and plant which have not been so rejected or which the Developer shall wish in future to use in execution of the Highway Works

5 OPENING OF THE HIGHWAY WORKS

- 5.1 During the construction of each and all of the Highway Works and prior to the issue of the Certificate of Completion:
- 5.1.1 the Director may issue instructions to the Developer to open or expose any of the Highway Works which has been covered up without previously being inspected by the Director
- 5.1.2 should the Developer fail to comply with any such instructions the County Council may so take up or expose the relevant part of the Highway Works causing as little damage or inconvenience as is possible in respect of any other part or parts of the Highway Works the reasonable and proper cost of such taking up or exposure and reinstatement to be met by the Developer

PROVIDED THAT if the Highway Works or any part or parts thereof are covered up by the Developer after giving the notice referred to in paragraph 3.4 of this Schedule and the Director shall have failed to inspect in the period therein referred to and the Director shall

subsequently require the Highway Works or any part of them to be uncovered for the purposes of inspection:-

- 5.1.3 if inspection reveals the relevant part or parts of the Highway Works to have been completed in accordance with the approved detailed plans drawings and specification referred to in paragraph 1.2 of this Schedule all costs in respect of such uncovering and inspection and of reinstating the part or parts of the Highway Works uncovered shall be borne by the County Council; or
- 5.1.4 if inspection reveals the relevant part or parts of the Highway Works not to have been completed in accordance with the approved detailed plans drawings and specifications referred to in paragraph 1.2 of this Schedule all reasonable and proper costs in respect of uncovering and inspection and of reinstating the part or parts of the Highway Works uncovered shall be borne by the Developer

6 UNDERTAKERS

- 6.1 Insofar as the County Council as Highway Authority is required by any legislation regulation direction or code of practice (including in particular but without prejudice to the generality of the foregoing the New Roads and Street Works Act 1991) to serve a notice or notices in respect of the Highway Works on undertakers or other persons the Developer shall comply with such requirement on behalf of the County Council before the Highway Works commence and shall thereafter assume on behalf of the County Council such responsibilities as follow on therefrom in particular during the construction of the Highway Works and prior to the issue of the Certificate of Substantial Completion the Developer shall also:-

- 6.1.1 carry out or procure the carrying out of such works and activities in regard to the plant and equipment of undertakers as are required by undertakers in accordance with their statutory powers under the New Roads and Street Works Act 1991 as a result of the

construction or intended construction of each and all of the Highway Works

- 6.1.2 cause all public sewers, highway drains gas and water mains electric cables and telecommunications ducts or other apparatus which are to be laid by the Developer under the Highway Works together with all necessary connections from them to the boundary of the Highway Works to be laid so far as is practicable under the Highway Works before the foundation of the Highway Works are laid and shall also in so far as is practicable cause the connections from electric cables to any street lamp to be laid before the paving of the footways comprised in the Highway Works is carried out
- 6.1.3 cause all trench works within the highway to be backfilled and reinstated in accordance with the Specification for the Reinstatement of Openings in the Highway as determined from time to time under the New Roads and Street Works Act 1991
- 6.1.4 not at any time give consent to the erection by any telecommunications operator of telegraph poles or telephone poles or to the erection by any statutory undertaker or public or private company firm or individual of any over ground or underground equipment without the consent in writing of the Director

7 PROTECTION OF THE PUBLIC

- 7.1 The Developer shall give due consideration to adjoining owners and occupiers at all times and shall organise activities relating to the Highway Works in such a manner as to cause the least practicable disruption
- 7.2 Prominent notices shall be displayed and maintained around the perimeter of the site of each and all of the Highway Works to warn the public of the dangers of entering the site of the Highway Works

7.3 The Developer shall nominate a member of the site management team as the contact point for the Director in the event of an emergency and shall advise a daytime and twenty-four-hour contact number to the Director for the same purpose

7.4 The Developer shall take or procure the taking of all necessary steps to avoid creating a nuisance from noise and in particular:

7.4.1 the Developer shall afford all reasonable facilities to enable the Director to carry out such site investigations as she may deem necessary in order to determine noise emission levels

7.4.2 all vehicles and plant including compressors shall be fitted with effective silencers and acoustic covers as appropriate and maintained in good working order and all static plant shall be located to minimise nuisance to persons living or working in the vicinity

7.4.3 all portable traffic signals and pumps shall be operated from mains electricity unless otherwise agreed with the Director

7.4.4 noisy activities shall not be permitted on Sundays and Bank Holidays and except as agreed in writing by the Director shall not be permitted outside the hours of 9.30 a.m. to 4.30 p.m. Monday to Friday and 9.30 a.m. to 1 p.m. on Saturdays

PROVIDED THAT if in the reasonable opinion of the Director the Developer is not dealing adequately with the control of noise the Developer shall carry out or procure the carrying out of such additional measures as the Director considers necessary at the Developer's expense

7.5 Compliance with the provisions of paragraph 7.4 shall not relieve the Developer of any of his obligations and liabilities under this Agreement the Control of Pollution Act 1974 or the Environmental Protection Act 1990

- 7.6 The Developer shall take or procure the taking of all necessary steps to avoid creating a nuisance from dust and as far as practicable works are to be carried out in such a way that dust is kept to a minimum PROVIDED THAT if in the reasonable opinion of the Director the Developer is not dealing adequately with the control of dust the Developer shall carry out or procure the carrying out of such additional measures as the Director considers necessary at the Developer's expense
- 7.7 The Developer shall arrange the regular removal of refuse likely to encourage vermin and arrange for suitable secure storage containers to be provided for collection
- 7.8 The Developer shall keep a log book on site to record all complaints received from the public and the action taken in response and the log book shall be available for inspection by the Director

8 PREVENTION OF MUD BEING CARRIED ON THE PUBLIC HIGHWAY

- 8.1 Provision shall be made at the site of each and all of the Highway Works to limit in so far as is practicable the amount of mud dust and other materials carried on to adjacent public highways by vehicles and plant leaving such site
- 8.2 The Developer shall keep or procure the keeping of all roads footpaths rights of way and other means of passage leading to or from or crossing the site of each and all of the Highway Works free from mud slurry or other hazardous substances that are deposited through the construction of the Highway Works and any such substance so deposited on any such road footpath right of way or other means of passage shall be promptly removed by or at the direction of the Developer
- 8.3 The Director may close any associated crossings entrances and exits if such substances deposited are not promptly removed by the Developer and any losses or expenses incurred as a result shall be borne by the Developer and on removal of such substances the Director shall reopen such crossings entrances and exits and the Developer shall bear the costs incurred

9 TRAFFIC CONTROL

During the periods when the Highway Works are being executed the Developer shall institute at his own expense any measures previously approved in writing by the Director as necessary to maintain the safe flow of traffic on the highways in the vicinity of the site of the Highway Works

10 TIMING

No Highway Works or temporary diversions affecting the existing carriageway or footway which could interfere with the traffic flow on carriageway during the morning and evening peak periods i.e. 7.30 - 9.30 a.m. and 4.30 - 6.30 p.m. Monday to Friday (**Peak Times**) will be permitted during the Peak Times, except as agreed in writing by the Director

11 SAFETY

During the periods when the Highway Works are being carried out the Developer shall provide all watching and lighting as reasonably required by the Director and shall maintain any lights, guards, fencing, warning signs and, where necessary, undertake such further measures as may be reasonably required by the Director

12 ACCOMMODATION WORKS

The Developer shall carry out or ensure that there shall be carried out all related accommodation works associated with the Highway Works

13 CONSTRUCTION (DESIGN AND MANAGEMENT) REGULATIONS 2015

13.1 The Developer shall be the only client for the purpose of the CDM Regulations and the Developer agrees to undertake the obligations of a client under the CDM Regulations and to use all reasonable endeavours to ensure that the Highway Works are carried out in accordance with the CDM Regulations

13.2 The Highway Works shall not commence until the Developer as the only client has provided to the Director:

13.2.1 an estimate of the number of working days and/or person days of construction work and the number of workers

working on site simultaneously at any one point in the project which the Contract will entail

- 13.2.2 written details of the principal designer and the principal contractor appointed for the project and also provide copies of the Construction Phase Plan and Health & Safety File
- 13.2.3 a copy of the Notification of Project (form HSE F10) to the HSE pursuant to Regulation 6 of the CDM Regulations
- 13.3 Throughout the Highway Works the Developer shall provide to the Director copies of the updates and revisions to the construction phase plan and Health and Safety File pursuant to Regulation 12
- 13.4 Within 28 days of issue of the Certificate of Substantial Completion for any or all of the Highway Works the Developer shall provide to the Director:
 - 13.4.1 a plan showing the land over which those Highways Works have been constructed; and
 - 13.4.2 a Health and Safety file conforming in all respects with the CDM Regulations and which shall accord with the current format used by the County Council
- 13.5 The Director shall be at liberty to delay issue of the Certificate of Final Completion in respect of any of the Highway Works if the Developer fails to provide the Director with the documents referred to in 13.4.1 and 13.4.2 above within 28 days of issue of any Certificate of Substantial Completion for any of the Highway Works
- 13.6 In respect of the Highway Works generally the Developer shall provide to the Director the final information in both paper and electronic format and shall at least comprise:
 - 13.6.1 1:500 scale (or alternative scale as may be specified by the Director) "as built" drawings

- 13.6.2 records of the earthworks showing sources of material used in areas of fill description of fill materials descriptions of sub-grades in cut areas copies of results of tests of material carried out as part of the supervision of the construction of the earthworks
- 13.6.3 records of the sources of supply of all deliveries of highway construction materials with details of the location of the Highway Works at which each load is placed
- 13.6.4 records of the sources of supply of all other manufactured materials (e.g. drainage goods, fencing materials, traffic signs, electrical components and cables etc).
- 13.7 Not used
- 13.8 The Developer shall indemnify and keep the County Council indemnified against any breach of the Developer's obligations under this paragraph

14 SITE CLEARANCE AND CERTIFICATE(S) OF SUBSTANTIAL COMPLETION

- 14.1 On Substantial Completion of the Highway Works the Developer shall clear away and remove from the site of the Highway Works all constructional plant and temporary works of every kind and leave the Site in a neat and tidy condition to the satisfaction of the Director and, unless determined to be unnecessary by the Director and thereafter confirmed to be unnecessary by the Director in writing, in relation to the Road Works carry out stage 3 of the Road Safety Audit process and comply to the satisfaction of the Director with recommendations arising thereunder prior to the opening of the Road Works to the public
- 14.2 Upon Substantial Completion of the Highway Works including any additional work resulting from any stage 3 of the Road Safety Audit process to the satisfaction in all respects of the Director, acting reasonably, he shall issue a Certificate of Substantial Completion within 10 Working Days of notification by the Developer of Substantial Completion in respect of those Highway Works to the

Developer, provided that all costs and expenses owing to the County Council have been paid in respect of those Highway Works

14.3 Not used

14.4 Not used

14.5 Not used

15 DEFECTS CORRECTION PERIOD AND CERTIFICATE OF FINAL COMPLETION

15.1 The Developer shall maintain each and all of the Highway Works for a period of twelve (12) months (unless the Director agrees in writing a lesser period) from the issue of the related Certificate of Substantial Completion and prior to the expiration of this period the Developer shall reinstate and make good any damage or defect to the Highway Works which may have arisen from any cause whatsoever or be discovered during the said period of twelve months (including any defect in or damage to the surface water drainage system) so as to place the highway and the Highway Works in a condition satisfactory to the Director

15.2 Not used

15.3 After the expiration of the period of twelve (12) months referred to in paragraph 15.1 (or such lesser period as agreed in writing by the Director under paragraph 15.1) and after any defects have been made good as therein provided including, in relation to the Road Works, any improvements arising under stage 4 of the Road Safety Audit (if determined to be necessary by the Director acting reasonably and thereafter requested by the Director in writing) to the satisfaction of the Director and after the provisions of paragraph 13.4 of this Schedule have been fulfilled, the Director shall issue forthwith to the Developer the Certificate of Final Completion in respect of the Highway Works

16 INDEMNITY

- 16.1 The Developer shall from the date of this Agreement indemnify the County Council against all claims liability or loss whatsoever arising out of and incidental to any or all of the Highway Works including but not limited to those arising out of any legally sustainable claims for payments under Section 10 of the Compulsory Purchase Act 1965 and Part I of the Land Compensation Act 1973 (as amended) in connection with those Highway Works provided that the Developer's indemnity will not extend to any claims submitted to the County Council arising out of the negligence of the County Council's employees or arising out of any works of alteration carried out to any of the Highway Works by the County Council after the issue of the related Certificate of Final Completion
- 16.2 The County Council shall notify the Developer forthwith upon receipt of any such claim or liability
- 16.3 The County Council shall not accept or settle any claim without first having given the Developer the opportunity to provide the County Council with representations as to the validity of such claim
- 16.4 The indemnification referred to in paragraph 16.1 includes:
- 16.4.1 all fees incurred by claimants which the County Council is obliged to pay, and those of the County Council or its agent or contractor, in negotiating any claims (together with VAT payable on the claimants' professional advisors' fees);
 - 16.4.2 statutory interest payments to claimants and their professional advisors;
 - 16.4.3 the County Council's reasonable and proper legal costs in making the compensation, fees and interest payments; and
 - 16.4.4 if the Developer fails to carry out or complete the Highway Works to the standard required by this Agreement in accordance with this Agreement, the costs incurred by the County Council in completing the Highway Works in accordance with this Agreement.

17 NOT USED

18 NOT USED

19 LEGAL AND ADMINISTRATIVE COSTS

19.1 The Developer shall pay to the County Council:-

19.1.1 the whole of the costs of the County Council's Legal Services Department in connection with the preparation and completion of this Agreement and these costs shall be payable prior to sealing of this Agreement;

19.1.2 interest at four per cent above the Bank of England Base Rate from time to time on any sum due to the County Council under this Agreement which is outstanding for more than 28 days from the date on which it was demanded or in the event that a dispute or difference regarding such payment is referred to arbitration pursuant to clause 3.1 of this Agreement the said 28 day period shall run from the date of the decision of the arbitrator (such interest to be charged on the amount outstanding each day from the date of issue of a written demand for any sum due or in the event that a dispute or difference regarding such payment is referred to arbitration pursuant to clause 3.1 of this Agreement such interest to be charged on the amount outstanding each day from the date of issue of the decision of the arbitrator)

19.1.3 £5,348.14 (Five thousand three hundred and forty-eight pounds and fourteen pence) towards the costs and expenses of the County Council of checking the design of each and all of the Highway Works and inspecting each and all of the Highway Works such sum shall be payable prior to sealing of this Agreement (£5000 of such sum having been paid previously leaving only £348.14 to be paid)

19.1.4 the reasonable cost to the County Council of undertaking safety audits and also the cost of the safety checks of

details submitted which sum shall be payable prior to the safety audit commencing

19.1.5 the cost of any temporary and permanent traffic regulation orders which sum shall be payable prior to any work on the making of such Order being commenced

19.1.6 the full cost of any other road traffic orders required to facilitate the Highway Works which sum shall be payable prior to any work on the making of such Order being commenced

19.1.7 not used

19.1.8 the Commuted Sum prior to completion of this Agreement

20 PARTS I AND II OF THE LAND COMPENSATION ACT 1973

Part I and II Claims

Compensation Bond

20.1 Not used

20.2 Not used

Part I Claims - Depreciation Caused By Public Works

20.3 Not used

20.4 Not used

Part II Claims

20.5 The Developer covenants with the County Council to comply with the requirements of the Noise Insulation Regulations 1975 (SI 1975/1763) as amended and to provide to the County Council such evidence as is required by the Director to demonstrate compliance with the Noise Insulation Regulations 1975 prior to the issuing by the

County Council of the Certificate of Final Completion in accordance
with paragraph 15.3 of this Schedule

SCHEDULE II.A

Not used

SCHEDULE II.B

Not used

SCHEDULE III

The Highways Works comprising the following works:

Means the development to be carried out pursuant to the Order being construction of a pedestrian walkway within the existing Creeting Bridge eastern culvert, the construction of a footpath to the Creeting Bridge eastern culvert walkway from Stowmarket Road, and the construction of a ramped footpath that will connect an existing farm track, leading from the Creeting Bridge eastern culvert to the north, that will connect it to Gipsy Lane's existing public footpath, as well as, alterations/improvements to the existing footway on Stowmarket Road adjacent to the B1113

SCHEDULE IV

Works Drawings
Approved List of drawings

	Title	Drawing number	
1.	Section 278 Site Clearance Sheet 1	400399-MLM-ZZ-XX-DR-R-0110 C02 3	JL
2.	Section 278 Site Clearance Sheet 2	400399-MLM-ZZ-XX-DR-R-0111 C02 3	JL
3.	Section 278 Site Clearance Sheet 3	400399-MLM-ZZ-XX-DR-R-0112 C02 3	JL
4.	Section 278 General Arrangement Sheet 1	400399-MLM-ZZ-XX-DR-R-0120 C02 3	JL
5.	Section 278 General Arrangement Sheet 2	400399-MLM-ZZ-XX-DR-R-0121 C02 3	JL
6.	Section 278 General Arrangement Sheet 3	400399-MLM-ZZ-XX-DR-R-0122 C02 3	JL
7.	Section 278 Surface Finishes Sheet 1	400399-MLM-ZZ-XX-DR-R-0130 C02 3	JL
8.	Section 278 Surface Finishes Sheet 2	400399-MLM-ZZ-XX-DR-R-0131 C02 3	JL
9.	Section 278 Surface Finishes Sheet 3	400399-MLM-ZZ-XX-DR-R-0132 C02 3	JL
10.	Section 278 Signs & Lines Sheet 1	400399-MLM-ZZ-XX-DR-R-0140 C02 3	JL
11.	Section 278 Signs & Lines Sheet 2	400399-MLM-ZZ-XX-DR-R-0141 C02 3	JL
12.	Section 278 Setting Out Plan Sheet 1	400399-MLM-ZZ-XX-DR-R-0150 C04 S	JL
13.	Section 278 Setting Out Plan Sheet 2	400399-MLM-ZZ-XX-DR-R-0151 C04 S	JL
14.	Section 278 Construction Details	400399-MLM-ZZ-XX-DR-R-0160 C05	
15.	Plan Showing Adopted Areas	400399-MLM-ZZ-XX-DR-C-0220- P7-	