RWE

Tween Bridge Solar Farm

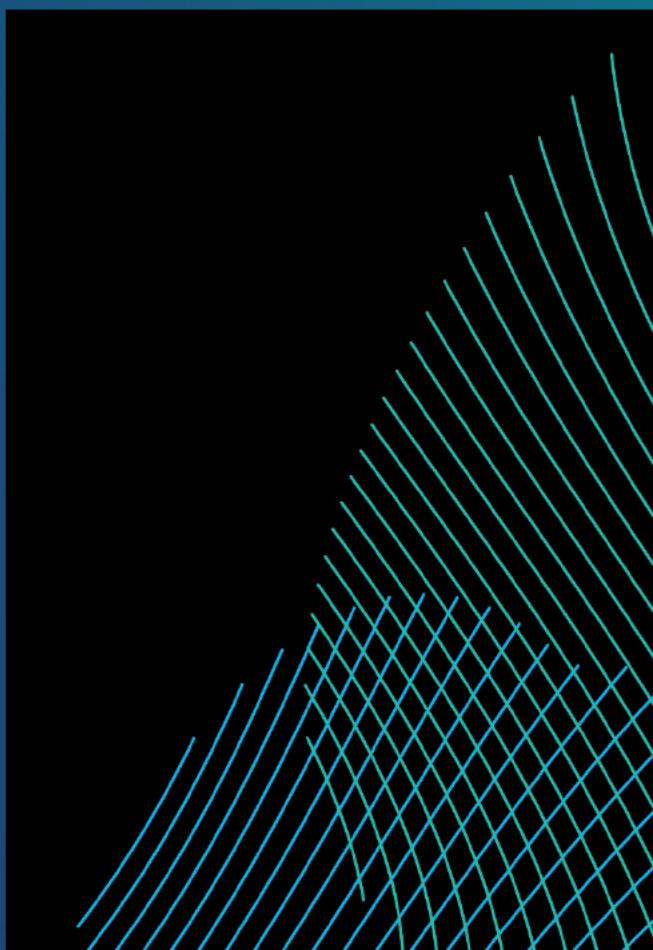
8.23.5 Justification for the Applicant's preferred protective provisions - Annex E Applicant's Without Predjudice Form for Protective Provisions for NH

Planning Act 2008
Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

Document Reference: 8.23.5

Deadline 8 October 2026

Revision 1



PART 7

FOR THE PROTECTION OF NATIONAL HIGHWAYS LIMITED

Key
Agreed text in black
[Applicant's preferred position in red (where not agreed with National Highways)]
[National Highway's preferred position in blue (where not agreed with the Applicant)]

Application etc.,

1. —(1) The provisions of this Part of this Schedule apply for the protection of National Highways and have effect unless otherwise agreed in writing between the undertaker and National Highways.

(2) Except where expressly amended by the Order the operation of the powers and duties of National Highways or the Secretary of State under the 1980 Act, the 1984 Act, the 1991 Act, the Transport Act 2000, or the Town and Country Planning (General Permitted Development) (England) Order 2015 shall continue to apply in respect of the exercise of all National Highways' statutory functions.

Interpretation

2.—(1) Where the terms defined in this Part of this Schedule are inconsistent with the terms defined in article 2 *(interpretation)* of this Order the former prevail.

(2) In this Part of this Schedule—

"as built information" means one electronic copy of the following information where National Highways deems reasonably necessary, so far as it is relevant to the specified works—

(a) as constructed drawings in both PDF and AutoCAD DWG formats for anything designed by the undertaker; in compliance with Interim Advice Note 184 or any successor document and for cable works, showing the location and depth of the cable as installed and any ancillary or protective measures installed within the strategic road network or land that National Highways has an interest in;

(b) list of suppliers and materials used, as well as any relevant test results and CCTV surveys (if required to comply with DMRB standards);

(c) product data sheets and technical specifications for all materials used;

(d) as constructed information for any utilities discovered or moved during the specified works;

(e) method statements for the specified works carried out;

(f) in relation to the road works, any information required by Series 1300 and 1400 of the Specification for Highway Works or any replacement or modification of it;

(g) organisation and methods manuals for all products used;

(h) as constructed programme;

(i) test results and records as required by the detailed design information and during construction phase of the project;

(j) a condition survey;

(k) in relation to road works, a stage 3 road safety audit subject to any exceptions to the road safety audit standard as agreed by the undertaker and National Highways;

(l) the health and safety file; and

(m) such other information, as is reasonably required by National Highways.

"bond" means a bond in a form duly executed by the undertaker and reputable UK surety company or other UK financial institution to be approved in writing by National Highways (such approval not to be unreasonably withheld or delayed);

"the bond sum" means 200% of the cost of carrying out the [road] [specified] works (to include all costs plus any commuted sum), or such other sum agreed between the undertaker and National Highways, to be provided to National Highways in the form of:

a) a bond; or

b) a cash surety; or

c) where agreed by National Highways a combination of a bond and cash surety;

"cable works" means any works under this Order which consist of the installation and maintenance of cables, cable ducts, tunnels for cables and cable ducts and related or associated works to those operations under the strategic road network, and to be installed through the use of trenchless installation techniques where no works are required to or on the operational carriageway;

"cash surety" means a cash deposit to be paid by the undertaker into an account specified by National Highways;

"commuted sum" means such sum calculated as provided for in paragraph 16 of this Part of this Schedule to be used to fund the future cost of maintaining any new National Highways assets, structures or apparatus as part of the road works provided under the Order;

"condition survey" means a survey of the condition of National Highways structures and assets within the Order Limits that in the reasonable opinion of National Highways may be affected by the specified works and further to include a CCTV survey of specified drains that National Highways reasonably considers may be materially and adversely affected by a specified work;

"contractor" means any contractor or subcontractor appointed by the undertaker to carry out the specified works;

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

"detailed design information" means such of the following drawings specifications and calculations as are relevant to –

a) the road works-

i. site clearance details
ii. boundary, environmental and mitigation fencing;
iii. road restraints systems and supporting road restraint risk appraisal process assessment;
iv. drainage and ducting as required by DMRB CD 535 Drainage asset data and risk management and DMRB CS551 Drainage surveys – standards for Highways
v. earthworks including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk and any required strengthened earthworks appraisal form certification;
vi. pavement, pavement foundations, kerbs, footways and paved areas;
vii. traffic signs and road markings;
viii. traffic signal equipment and associated signal phasing and timing detail;
ix. road lighting (including columns and brackets);
x. regime of California Bearing Ratio testing;
xi. electrical work for road lighting, traffic signs and signals;
xii. motorway communications as required by DMRB;
xiii. highway structures and any required structural approval in principle
xiv. landscaping
xv. any proposed departures from DMRB standards
xvi. walking, cycling and horse-riding assessment and review report in accordance with DMRB GG142 Designing for walking, cycling and horse riding or any successor document;
xvii. stage 1 and stage 2 road safety audits and exceptions agreed;
xviii. utilities diversions;
xix. topographical survey;
xx. maintenance and repair strategy in accordance with DMRB GD304 Designing health and safety into maintenance or any replacement or modification of it;
xxi. health and safety information including any asbestos survey required by GG105 or any successor document; and
xxii. other such information that may be reasonably required by National Highways to be used to inform the detailed design of the road works;

(b) the cable works-

i. boundary, environmental and mitigation fencing;
ii. drainage and ducting as required by DMRB CD 535 Drainage asset data and risk management and DMRB CS551 Drainage surveys – standards for Highways
iii. earthworks including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk and any required strengthened earthworks appraisal form certification;
iv. regime of California Bearing Ratio testing;
v. any proposed departures from DMRB standards
vi. utilities diversions;
vii. topographical survey;
viii. maintenance and repair strategy in accordance with DMRB GD304 Designing health and safety into maintenance or any replacement or modification of it;
ix. technical approval of highway structures under CG3000 of DMRB;
x. health and safety information including any asbestos survey required by GG105 or any successor document; and
xi. other such information that may be [reasonably] required by National Highways to be used to inform the detailed design of the cable works

"DBFO contract" means the design build finance operate contract between National Highways and the highway operations and maintenance contractor for the maintenance and operation of parts of the strategic road network which are within the Order Limits or any successor or replacement contract that may be current at the relevant time;

"DMRB" means the Design Manual for Roads and Bridges or any replacement or modification of it;

"final certificate" means the certificate relating to those aspects of the specified works that have resulted in any alteration to the strategic road network to be issued by National Highways pursuant to paragraph 14;

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

"highway operations and maintenance contractor" means the contractor appointed by National Highways under the DBFO contract;

"nominated persons" means the undertaker's representatives or the contractor's representatives on site during the carrying out of the specified works as notified to National Highways from time to time;

"programme of works" means a document setting out the sequence and timetabling of the specified works;

"provisional certificate" means the certificate of provisional completion relating to those aspects of the specified works that have resulted in any alteration to the strategic road network to be issued by National Highways in accordance with paragraph 10 when it considers the specified works are substantially complete and may be opened for traffic;

"road safety audit" means an audit carried out in accordance with the road safety audit standard and "road safety audits shall be construed accordingly"; "road safety audit standard" means DMRB Standard HD GG119 or any replacement or modification of it;

"road space booking" means road space bookings in accordance with National Highways' Asset Management Operational Requirements (AMOR) including Network Occupancy Management System (NOMS) used to manage road space bookings and network occupancy and "road space bookings shall be construed accordingly";

"road works" means so much of any work including highway works, street works, surveys and signalisation authorised by this Order and including any maintenance of that work, but excluding the cable works, as is undertaken on the strategic road network;

"Specification for Highways Works" means the specification for highways works forming part of the manual of contract documents for highway works published by National Highways and setting out the requirements and approvals procedures for work, goods or materials used in the construction, improvement or maintenance of the strategic road network or any successor of it;

"specified works" means so much of any cable works or road works authorised by this Order including any maintenance of that work, as is undertaken on or under the strategic road network [or land in which National Highways has an interest] and "specified work" shall be construed accordingly;

"strategic road network" means any part of the road network including trunk roads, special roads or streets for which National Highways is the highway authority including structures, drainage infrastructure, street furniture, verges and vegetation and all other highways assets together with all land, apparatus and rights located in, on, over or under the highway;

"utilities" means any pipes wires cables or equipment belonging to any person or body having power or consent to undertake street works under the New Roads and Street Works Act 1991 (or such updated or revised legislation as may come into force from time to time); and

"winter maintenance" means maintenance of the road surface to deal with snow and ice.

General

3.—In respect of any part of the strategic road network that may be affected by works authorised by this Order and is managed under a DBFO contract both National Highways and the highway operations and maintenance contractor shall have the benefit of this Part of Schedule 13 but for the purposes of any approvals required under this Part of Schedule 13 the undertaker shall liaise directly with National Highways.

4.— No works in carrying out, maintaining or diverting the authorised development may be carried out in, on or over the strategic road network or under it at a distance of less than five (5) metres below the lowest point of the carriageway surface, unless such works are agreed in writing with National Highways at the absolute discretion of National Highways.

5.—References to any standards, manuals, contracts, regulations and directives including to specific standards forming part of the DMRB are, for the purposes of this Part of this Schedule, to be construed as a reference to the same as amended, substituted or replaced, and with such modifications as are required in those circumstances.

Works outside the Order limits

6.—If the undertaker proposes to carry out works to the strategic road network that are outside of the Order Limits in connection with the authorised development, the undertaker must enter into an agreement with National Highways in respect of the carrying out of those works prior to the commencement of those works.

Prior approvals

7.—(1) The road works must not commence until—

(a) a stage 1 and stage 2 road safety audit has been carried out and all recommendations raised by them or any exceptions are approved by National Highways;

(b) the programme of works has been approved by National Highways;

(c) the detailed design of the road specified works comprising of the following details, insofar as considered relevant by National Highways, acting reasonably, has been submitted to and approved by National Highways—

(i) the detailed design information, incorporating all recommendations and any exceptions approved by National Highways under sub-paragraph (a);

(ii) details of the proposed road space bookings and at the same time as submitting the relevant details the undertaker shall be entitled to submit its application for road space bookings to National Highways;

(iii) the identity and qualifications of the contractor and nominated persons;

(iv) a process for stakeholder liaison, with key stakeholders to be identified and agreed between National Highways and the undertaker; and

(e) National Highways has approved the audit brief and CVs for all road safety audits and exceptions to items raised in accordance with the road safety audit standard;

(f) the undertaker has agreed the estimate of the commuted sum with National Highways;

(f) the scope of all maintenance operations (routine inspections, incident management, reactive and third party damage) to be carried out by the undertaker during the construction of the road works (which must include winter maintenance) has been agreed in writing by National Highways;

(g) the undertaker has procured to National Highways collateral warranties in a form approved by National Highways from the contractor and designer of the road works in favour of National Highways to include covenants requiring the contractor and designer to exercise all reasonable skill care and diligence in designing and constructing the road works, including in the selection of materials, goods, equipment and plant;

(h) any further information that National Highways may reasonably request within 14 days of the submission of the detailed design of a road work has been supplied to National Highways; and

(i) a condition survey and regime of monitoring of any National Highways assets or structures that National Highways reasonably considers will be affected by the road works has been agreed in writing by National Highways.

(2) The cable works must not commence until:

(a) a programme of works has been approved by National Highways;

(b) the detailed design of the cable works comprising the following details insofar as is considered relevant by National Highways, [acting reasonably], has been submitted to and approved by National Highways;

(i) the detailed design information;

(ii) details of the proposed road space bookings and the undertaker is entitled to submit its application for road space bookings at the same time as the relevant details are submitted under sub-paragraph (i) to National Highways;

(iii) a method statement including details of the cable works, equipment and locations;

(c) a survey to determine the appropriate minimum depth for the cable works has been carried out and the minimum cable depth has been approved by National Highways;

[(d) the detailed design of the cable works including supporting geotechnical assessments required by DMRB CD622 Managing Geotechnical Risk and any required strengthened earthworks appraisal form certification has been submitted to and approved by National Highways;]

(e) a condition survey and regime of monitoring has been agreed in writing by National Highways;

(f) the CASS01 has been approved by National Highways;

(g) the undertaker has paid to National Highways the estimate of the NH costs notified to it pursuant to paragraph 9(3) of this Part of this Schedule; and

(h) any further information that National Highways may reasonably request within 14 days of the submission to National Highways of the detailed design of any cable works.

[(3) The undertaker must not exercise—

(a) article 5 *(power to maintain the authorised development)*;

(b) article 11 *(street works)*

(c) article 13 *(power to alter layout, etc. of streets);*

(d) article 15 *(temporary closure or restriction of streets and public rights of way);*

(e) article 16 *(access to works)*

(f) article 19 *(traffic regulation measures)*;

(g) article 20 *(discharge of water)*;

(h) article 21 *(protective works to buildings)*;

(i) article 22 *(authority to survey and investigate the land)*;

(j) article 23 *(compulsory acquisition of land);*

(k) article 26 *(compulsory acquisition of rights and imposition of restrictive covenants);*

(l) article 27 *(Private Rights)*

(m) article 32 *(rights under or over streets)*;

(n) article 33 *(temporary use of land for constructing the authorised development)*;

(o) article 34 *temporary use of land for maintaining the authorised development)*; or

(p) article 41 *(felling or lopping of trees and removal of hedgerows)* of this Order,

over any part of the strategic road network or land in which National Highways has an interest without the consent of National Highways, and National Highways may in connection with any such exercise require the undertaker to provide details of any proposed road space bookings and submit a scheme of traffic management for National Highways' approval.]

(3) National Highways must prior to the commencement of the specified works [or the exercise of any power referenced in sub-paragraph (3)] inform the undertaker of the identity of the person who will act as a point of contact on behalf of National Highways for consideration of the information required under sub-paragraph[s] (1), (2) [or (3)].

(4) Any approval or consent of National Highways required under this paragraph-

(a) must not be unreasonably withheld or delayed;

(b) must be given in writing; and

(c) may be subject to any reasonable conditions as National Highways considers necessary.

(5) Any refusal by National Highways under this paragraph must be accompanied by a statement of the reasons for refusal.

(6) Any change to the identity of the contractor and/or designer of the specified works will be notified to National Highways immediately and details of their suitability to deliver the specified works will be provided on request along with collateral warranties in a form agreed by National Highways.

(7) Any change to the detailed design of the specified works must be approved by National Highways in accordance with paragraph 7(1) of this Part.

(8) Article 50 (*requirements, appeals, etc.*) does not apply to any application for consent, agreement or approval required or contemplated by any of the provisions to this Part of the Schedule

Construction of the specified works

8.—(1) Unless otherwise agreed by National Highways, the undertaker must give National Highways 28 days' notice in writing of the date on which the specified works will start.

(2) The undertaker must comply with National Highways' road space booking procedures when booking road space on the strategic road network prior to and during the carrying out of the specified works and no specified works for which a road space booking is required shall commence without a road space booking having first been secured from National Highways.

(3) The specified works must be carried out by the undertaker to the satisfaction of National Highways in accordance with—

(a) the relevant detailed design information and programme of works approved pursuant to paragraph 7(1) above or as subsequently varied by agreement between the undertaker and National Highways;

(b) in so far as may be applicable the DMRB, the Manual of Contract Documents for Highway Works, including the Specification for Highway Works, together with all other relevant standards as required by National Highways to include, inter alia; all relevant interim advice notes save to the extent that exceptions from those standards apply which have been approved by National Highways; and

(c) all aspects of the Construction (Design and Management) Regulations 2015 or any statutory amendment or variation of the same and in particular the undertaker, as client, must ensure that all client duties (as defined in the said regulations) are undertaken to the satisfaction of National Highways. For the avoidance of doubt no approval or consent issued by National Highways shall be taken to be a consent or approval pursuant to the Construction (Design and Management) Regulations 2015.

(4) The undertaker must ensure that (where possible) without entering the highway the highway is kept free from mud, soil and litter as a result of carrying out a specified work.

(5) The undertaker must permit and must require the contractor to permit at all reasonable times persons authorised by National Highways (whose identity must have been previously notified to the undertaker by National Highways) to gain access to the specified works pursuant to the Order including all land in which National Highways has an interest for the purposes of inspection and supervision of the specified works.

(6) If any part of the specified works is constructed-

(a) other than in accordance with the requirements of this Part of this Schedule; or

(b) in a way that causes damage to the highway, highway structure or asset or any other land of National Highways,

National Highways may by notice in writing require the undertaker, at the undertaker's own expense, to comply promptly with the requirements of this
Part of this Schedule or remedy any damage notified to the undertaker under this Part of this Schedule, to the satisfaction of National Highways.

(7) If during the carrying out of the authorised development the undertaker or its appointed contractors or agents causes damage to the strategic road network then National Highways may by notice in writing require the undertaker, at its own expense, to remedy the damage.

(8) If within 28 days on which a notice under sub-paragraph (6) or sub-paragraph (7) is served on the undertaker (or in the event of there being, in the opinion of National Highways, a danger to road users, within such lesser period as National Highways may stipulate), the undertaker has failed to take the steps required by that notice, National Highways may carry out the steps required of the undertaker and may recover any expenditure reasonably incurred by National Highways in so doing, such sum to be payable within 28 days of demand.

(9) Nothing in this Part of this Schedule prevents National Highways from carrying out any work or taking any such action as it reasonably believes to be necessary as a result of or in connection with the carrying out or maintenance of the authorised development without prior notice to the undertaker in the event of an emergency or to prevent the occurrence of danger to the public and National Highways may recover any expenditure it reasonably incurs in so doing.

(10) In constructing the specified works, the undertaker must at its own expense divert or protect all utilities and all alterations and reinstatement of highway over existing utilities must be constructed to the satisfaction of National Highways.

(11) Until such time that National Highways issues the provisional certificate the undertaker must carry out all maintenance (including winter maintenance) in accordance with the scope of maintenance operations agreed by National Highways pursuant to paragraph 7(1)(h) and the undertaker must carry out such maintenance at its own cost.

(12) The undertaker must notify National Highways if it fails to complete the specified works in accordance with the agreed programme of works pursuant to paragraph 7(1)(a) of this Part or suspends the carrying out of any specified work beyond a reasonable period of time and National Highways reserves the right to withdraw any road space booking granted to the undertaker to ensure compliance with its network occupancy requirements.

Payments

9.—(1) The undertaker must pay to National Highways a sum equal to the costs and expenses which National Highways reasonably and properly incurs (including costs and expenses for using internal or external staff and costs relating to any work which becomes abortive) in relation to the specified works and in relation to any approvals sought under this Order, or otherwise incurred under this Part, including—

(a) the checking and approval of the information required under paragraph 7(1);

(b) the supervision of the specified works;

(c) contractual costs properly payable to the highway operations and maintenance contractor as a consequence of any specified works, including costs incurred by the highway operations and maintenance contractor in carrying out the tasks referred to in sub-paragraphs (a) and (b) of this paragraph, in which case National Highways will be responsible for the payment of any sums received from the undertaker under this paragraph to the highway operations and maintenance contractor;

(d) the checking and approval of the information required to determine approvals under this Order;

(e) all costs in relation to the transfer of any land required for the specified works;

(f) all legal and administrative costs and disbursements reasonably incurred by National Highways in connection with the Order and sub-paragraphs (a)-(d); and

(g) any value added tax which is payable by National Highways in respect of such costs and expenses arising under this paragraph and for which it cannot obtain reinstatement from HM Revenue and Customs,

together comprising "the NH costs".

(2) The undertaker must pay to National Highways within 28 days of demand and prior to such costs being incurred the total costs that National Highways believe will be properly and necessarily incurred by National Highways in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the authorised development.

(3) National Highways must provide the undertaker with a schedule showing its reasonable estimate of the NH costs prior to the commencement of the specified works and the undertaker must pay to National Highways the reasonable estimate of the NH costs prior to commencing the specified works and in any event prior to National Highways incurring any cost.

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

(5) National Highways must give the undertaker a final account of the NH costs referred to in sub-paragraph (1) above within 91 days of completion of the specified works as set out in the programme of works.

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

(a) if the final account shows a further sum as due to National Highways the undertaker must pay to National Highways the sum shown due to it;

(b) if the account shows that the payment or payments previously made by the undertaker have exceeded the costs incurred by National Highways, National Highways must refund the difference to the undertaker.

(7) If any payment due under any of the provisions of this Part of this Schedule is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the other party interest at 3% above the Bank of England base lending rate from time to time being in force for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

Provisional Certificate

10.—(1) Following the completion of any specified works or prior to reopening any part of the strategic road network following any closure or partial closure, whichever shall be sooner, the undertaker shall notify National Highways who will carry out a site inspection to satisfy itself that the strategic road network is, in its opinion, safe for traffic and the undertaker must comply with any requirements of National Highways following the site inspection.

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

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

(a) inspect the specified works within the strategic road network or in land in which National Highways retains an interest; and

(b) provide the undertaker with a written list of works that are required for the provisional certificate to be issued or confirmation that no further works are required for this purpose.

(4) When—

(a) a condition survey for the specified works has been carried out and all recommendations raised including remedial works have (subject to any exceptions agreed) been approved by National Highways;

(b) the specified works incorporating the approved remedial works under sub-paragraph (4)(a) and any further works notified to the undertaker pursuant to subparagraph (3)(b) have been completed to the satisfaction of National Highways;

(c) the as built information has been provided to National Highways;

National Highways must issue the provisional certificate.

(5) Following the issue of the provisional certificate, National Highways shall reduce the bond sum in writing to 20% provided that in the event any claim or claims have been made against the undertaker or liability on its part has arisen under the bond sum (which here shall also include any claim or claims to which National Highways are joined howsoever they arise) before that date National Highways will be at liberty to retain a sufficient sum in addition to the 20% to ensure it does not have to meet any costs for and/or arising from and/or in connection with the [road] [specified] works.

Opening

11. Unless otherwise agreed in writing by National Highways, [in the case of road works requiring closure of any part of the strategic road network], the undertaker must notify National Highways not less than 56 days in advance of the intended date of opening to the public of the strategic road network and the undertaker must notify National Highways of the actual date the strategic road network will be opened to the public within 14 days of that date and must not open the strategic road network to the public prior to the expiration of the requisite notice period.

Final condition survey

12 .—(1) The undertaker must, as soon as reasonably practicable after making its application for a provisional certificate pursuant to paragraph 10(2), arrange for the highways structures and assets that were the subject of the condition survey to be re-surveyed and must submit the re-survey to National Highways for its approval. The re-survey will include a renewed geotechnical assessment required by DMRB CD622 if the specified works include any works beneath the strategic road network.

(2) If the re-surveys carried out pursuant to paragraph 10 (1) indicates that any damage has been caused to a structure or asset, the undertaker must submit a scheme for remedial works in writing to National Highways for its approval in writing and the undertaker must carry out the remedial works at its own cost and in accordance with the scheme submitted and such programme as National Highways may reasonably require.

(3) If the undertaker fails to carry out the remedial work in accordance with the approved scheme and programme pursuant to paragraph 12(2) or fails to submit a scheme for remedial works to National Highways, National Highways may carry out the steps required of the undertaker and may recover within 28 days of demand any expenditure from the undertaker it reasonably incurs in so doing.

(4) National Highways may, at its discretion, at the same time as giving its approval to the re-surveys pursuant to paragraph 12(1) give notice in writing that National Highways will remedy any damage identified in the re-surveys and National Highways may recover within 28 days of demand any expenditure from the undertaker it reasonably incurs in so doing.

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

(6) Within 30 days of completion of the specified works, the as built information must be provided by the undertaker to National Highways.

Defects Period

13. —(1) The undertaker must at its own expense remedy any defects in the strategic road network resulting from the carrying out of the road works as are reasonably required by National Highways to be remedied during the defects period. All identified defects must be remedied in accordance with the following timescales—

(a) in respect of matters of urgency, within 24 hours of receiving notification for the same (urgency to be determined at the absolute discretion of National Highways);

(b) in respect of matters which National Highways considers to be serious defects or faults, within 14 days of receiving notification of the same; and

(c) in respect of all other defects notified to the undertaker, within 4 weeks of receiving notification of the same.

(2) Following the issuing of the provisional certificate National Highways has responsibility for routine maintenance of the strategic road network save for any soft landscaping works which must be established and which must thereafter be maintained for a period of 3 years by and at the expense of the undertaker.

Final Certificate

14. —(1) The undertaker must apply to National Highways for the final certificate no sooner than 12 months from the date of a provisional certificate for the road works or the cable works.

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

(a) inspect the strategic road network; and

(b) provide the undertaker with a written list of any further works required to remedy or make good any defect or damage in the strategic road network or confirmation that no such works are required for this purpose.

(3) The undertaker must carry out such works notified to it pursuant to sub-paragraph 14(2).

(4) When National Highways is satisfied that:

(a) any defects or damage arising from defects during the defects period and any defects notified to the undertaker pursuant to sub-paragraph 14(2) and any remedial works required as a result of the stage 4 road safety audit have been made good to the satisfaction of National Highways; and

(b) the NH costs have been paid to National Highways in full;

National Highways must issue the final certificate and upon the issue of the final certificate reduce the bond sum in full provided that in the event any claim or claims have been made against the undertaker or liability on its part has arisen under the bond sum (which here shall also include any claim or claims to which National Highways are joined howsoever they arise) National Highways will be at liberty to retain a sufficient sum to ensure it does not have to meet any costs for and/or arising from and/or in connection with the [road] [specified] works.

(5) The undertaker must pay to National Highways within 28 days of demand the costs incurred by National Highways in identifying the defects and supervising and inspecting the undertaker's work to remedy the defects that it is required to remedy pursuant to this paragraph 14.

Security

15. (1) The [road] [specified] works must not commence until the undertaker procures that the [road] [specified] works are secured by the bond to indemnify National Highways against all losses, damages, costs or expenses arising from any breach of any one or more of the obligations of the undertaker in respect of the exercise of the powers under this Order and the [road] [specified] works under the provisions of this Part of this Schedule provided that the maximum liability of the bond must not exceed the bond sum.

(2) If at any time the undertaker is in breach of any of the provisions of this Part of this Schedule or becomes insolvent, National Highways shall be entitled upon giving notice to the undertaker to use such parts of the bond sum as National Highways considers necessary and without prejudice to any other remedy which may be available to National Highways.

Commuted Sums

16. (1) National Highways must provide to the undertaker an estimate of the commuted sum, calculated in accordance with Commuted Lump Sum A Guide for Promoters of Major Third Party Projects dated 28 November 2023 or any successor guidance, prior to the commencement of the road works.

(2) The undertaker must pay to National Highways the commuted sum prior to the issue of the provision certificate for the road works.

Insurance

17. Prior to the commencement of the specified works the undertaker must effect public liability insurance with an insurer in the minimum sum of £[25,000,000] [50,000,000.00] ([twenty five] [fifty] million pounds) in respect of any one claim against any legal liability for damage loss or injury to any property or any person as a direct result of the execution of specified works or use of the strategic road network by the undertaker.

Indemnity

18.—(1) The undertaker indemnifies National Highways from and against all costs, claims, expenses, damages, losses, and liabilities suffered by National Highways arising from the construction, maintenance or use of the specified works or exercise of, or failure to exercise, any power under this Order (but always excluding any consequential loss or indirect loss suffered by National Highways) within 28 days of an itemised demand subject to sub-paragraphs (2) to (4).

(2) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of any damage to the extent that it is attributable to the neglect or default of National Highways, its officers, servants, contractors or agents.

(3) National Highways must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(4) National Highways must use its reasonable endeavours to mitigate and to minimise any costs, claims, expenses, damages, losses and to which the indemnity under this paragraph applies where it is within National Highways' reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties outside of National Highways' control.

Maintenance of the specified works

19.—(1) The undertaker must, prior to the commencement of any works of maintenance to the specified works, give National Highways 28 days' notice in writing of the date on which those works will start unless otherwise agreed by National Highways, acting reasonably.

(2) If, for the purposes of maintaining the specified works, the undertaker needs to occupy any road space, the undertaker must comply with National Highways' road space booking requirements and no maintenance of the specified works for which a road space booking is required shall commence without a road space booking having first been secured.

(3) During any maintenance works, the undertaker must comply with any requirements that National Highways may notify to the undertaker, such requirements to be notified to the undertaker not less than 14 days' in advance of the planned commencement date of the maintenance works.

Land

20.—(1) Following completion of the specified works National Highways may serve notice on the undertaker that it wishes to take a freehold transfer of land within the extent of strategic road network boundary which is not in the ownership of National Highways but has been acquired by the undertaker for the purposes of carrying out the specified works.

(2) If the undertaker receives notice under sub-paragraph (1) then the undertaker must effect a freehold transfer of the land which is the subject of the notice and complete such transfer as soon as reasonably practicable at no cost to National Highways.

(3) [The undertaker must not exercise the powers of this Order to:

(a) acquire or use land forming part of;

(b) acquire new or existing rights over; or

(c) seek to impose or extinguish any restrictive covenants over;

any part of the strategic road network or land owned by National Highways, or extinguish any existing rights of or interfere with apparatus of National Highways in respect of any third party property, except with the consent of National Highways by written request to legalservicesinbox@nationalhighways.co.uk

(4) Where any land or interest is proposed to be acquired pursuant to this Order for the benefit of National Highways, the undertaker must, unless otherwise agreed by National Highways, exercise article 23 *(compulsory acquisition of land)* and article 26 *(compulsory acquisition of rights and imposition of restrictive covenants)* as applied by articles 12 *(application of the 1981 Act)* and article 9 *(application and modification of statutory provisions)* of this Order to directly vest in National Highways any such land or interest.]

Expert Determination

21.—(1) Article 44 *(arbitration)* of the Order does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule may be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) On notification by either party of a dispute, the parties must jointly instruct an expert within 14 days of notification of the dispute.

(4) All parties involved in settling any difference must use all reasonable and commercially prudent endeavours to do so within 21 days from the date that an expert is appointed.

(5) The expert must—

(a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 7 days of the expert's appointment;

(b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;

(c) issue a decision within 7 days of receipt of the submissions under sub-paragraph (b); and

(d) give reasons for the decision.

(6) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 44 *(arbitration)*.

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