

**Planning Act 2008**

**The Infrastructure Planning (Examination Procedure) Rules 2010**

**Application by National Grid Electricity Transmission Plc for an Order granting Development  
Consent for the National Grid Norwich to Tilbury Project**

**Planning Inspectorate Reference Number: EN020027**

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**Deadline 5: Comments submitted on behalf of National Highways Limited on any further  
information or submissions received from the Applicant and received by Deadline 5 and 5a**

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## 1 INTRODUCTION

- 1.1 This document is submitted on behalf of National Highways Limited ("NH") in respect of the application by National Grid Electricity Transmission Plc ("**the Applicant**") for an order granting development consent for the National Grid Norwich to Tilbury Project. The purpose of this document is to comment on further information received by Deadline 5 and 5a, namely the latest draft of the DCO (Final Issue E) [REP05-060] ("**the dDCO**").
- 1.2 This submission also provides an update on traffic and transport matters. At Deadline 5, the Transport Assessment Addendum [REP05-165], was submitted which summarises the information and assessments undertaken since National Grid's application for development consent, which has been requested by National Highways and Local Highway Authorities (LHAs) (Norfolk County Council, Suffolk County Council, Essex County Council and Thurrock Council) through continued engagement with National Grid. NH still have concerns regarding the traffic and transport construction impacts that remain outstanding and these are set out in Section 3 below.
- 1.3 This document also notes NH's current position on the Outline Construction Management Plan [REP05-149].

## 2 DRAFT DCO SUBMITTED AT DEADLINE 5

- 2.1 As noted at Issue Specific Hearing 4, National Highways are concerned that agreement may not be reached on the form of the protective provisions included in Part 5 of Schedule 16 for the benefit of National Highways in its capacity as strategic highway authority. Separate protective provisions are being negotiated by Lower Thames Crossing. Set out below are the outstanding issues that remain with the protective provisions and Requirements currently included in the dDCO.
- 2.2 The dDCO includes a number of provisions which authorise the interference with statutory powers belonging to NH and/or grant the Applicant powers over the SRN which would have significant safety implications if not properly and proportionately controlled through NH's protective provisions and the Requirements.

### Protective Provisions

- 2.3 The form of the Protective Provisions which NH is seeking, against those that currently appear on the face of the dDCO is annexed at Appendix 1 with the changes shown in track changes. The outstanding matters and the changes that NH are seeking are necessary to avoid serious detriment to the carrying on of its undertaking under s127 of the Planning Act 2008, can be summarised as follows:

- (a) **Bond and security requirements:** Paragraph 2 (Interpretation) the Applicant's definition of security is not agreed. The definitions need to include definitions that relate to the provision of an on-demand bond, namely:

"bond" means a bond in the form annexed hereto at Annex 1 (or substantially in such form) duly executed by the undertaker and a reputable UK surety company or other UK financial institution to be previously 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 phase of the specified works (to include all costs plus any commuted sum for such phase), 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;" and

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

This provides that an on-demand bond is required at 200% of the cost of the specified works in, on under or over the Strategic Road Network ("SRN"). Much in the same way as a section 278 highway agreement, bonding is required to protect NH from financial liability in the event that the Applicant defaults on the works which impact the SRN or on its obligations to indemnify or meet the costs of NH.

NH require an on-demand bond or cash deposit to ensure that it has "on-demand" funds are available should it need to step-in and complete works on the SRN or in the event of the Applicant (or an entity benefiting from the transfer of benefit provisions in the dDCO) defaulting on obligations to make payments to NH or to cover the costs of NH as NH do not hold a budget to cover any costs arising from the Project.

NH would draw the Examining Authority's attention to the Gatwick Airport Northern Runway Project DCO which was made last Autumn [TR020005]. The provisions of an uncapped indemnity in favour of NH were considered alongside the provision of the bond by both the ExA and the SoS. The ExA's conclusion on NH's request was:

"21.7.15. Whilst the ExA notes the progress made between both parties, it finds both the bond and uncapped indemnity to be necessary to avoid serious detriment to the carrying on of the undertaking under s127 of the PA2008. In this instance, the ExA agrees that it is not appropriate for a public sector agency to potentially fund a private sector burden. As such, in the rDCO the ExA has included the wording as suggested by NH in respect of paragraph 18 of Schedule 9, Part 3."

The ExA's conclusion was also supported by the Secretary of State.

The on-demand bond provisions are also included in the Yorkshire Green Energy Enablement Project DCO [EN020024] which was also promoted by the Applicant. There is no justification for a departure from the previously accepted position by the Applicant, this Project being greater in scale and potential impact.

NH acknowledges that the specified works will be phased along the route and is content for the bond provisions to be applicable to each phase and a definition of "phase" has been included for this purpose.

Paragraph 15(1) needs to provide that: *"No phase of the specified works must not commence until the undertaker procures that the specified works are secured by the bond sum 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 specified works under the provisions of this Part of this Schedule".*

Provisions in paragraph 10(5) are then required to deal with the bond reduction in the usual way.

**"Commuted sum":** the definition needs to refer to the sum to be calculated and used to fund the future cost of maintaining any new National Highways assets, structures or apparatus provided under the Order as that is the purpose of commuted sums. The

reference to payment of the commuted sum in paragraph 10(5) also needs to remove reference to specified works captured by paragraph 67(2)

**"Condition surveys of the SRN:** The condition survey definition in paragraph 2 should not be limited to the Order Limits as there may be other areas of the SRN that are affected as a result of the Project or that are used by construction traffic. The scope of the condition survey is to be agreed pursuant to paragraph 7(1) of the protective provisions and the final condition survey undertaken in accordance with paragraph 12.

Other changes in the definitions at paragraph 2 relate to unnecessary or duplicate wording.

- (b) **The scope of the protective provisions:** the definition of "specified works" in paragraph 2 needs to also apply to land which National Highways has an interest. Whilst the land may not be highway, it could still relate to NH's function.

Paragraph 1(3) which provides that the protective provisions do not apply where the works are regulated by the 1991 Act or the street works articles is wholly inappropriate. As noted the protective provisions need to address all provisions which authorise the interference with statutory powers belonging to NH and/or grant the Applicant powers over the SRN which would have significant safety implications if not properly and proportionately controlled through NH's protective provisions.

- (c) **Prior approvals:** Paragraph 4 and Paragraph 7(1) carve out works that are 5.5m above the highway surface, from the prior approval provisions of NH applied by these paragraphs providing for reduced details to be submitted to NH. In the context of the Project NH need to review all works in, on or over the SRN or its land and need to be able to require any of the details listed where NH considers that the details are relevant. Works at this level could have significant safety implications if not properly and proportionately controlled and it should be for NH to decide on the specific works and circumstances at the time of the approval whether certain details are required to be approved.

In addition, paragraph 7(3) which states that certain articles should not be exercised over the SRN or land which NH has an interest without the express consent, needs to capture all the articles referenced in the NH's template protective provisions which include powers associated with compulsory acquisition. This ensures that NH is aware of the progress of the specified works affecting the SRN, the scope of those operations, the potential impact to road users and to ensure that compulsory acquisition is managed appropriately and proportionately. Prior approval is agreed in relation to Articles 16, 20, 21 and 22 in the protective provisions in the dDCO. This paragraph also needs to reference Articles 11, 12, 14, 16, 17, 18, 19, 20, 27, 28, 29, 30, 38, 39, 40, 41, 44, 45, 47, 49 and 50. The detailed explanation of why the provisions need to be exercised only with NH's approval where the powers are to be exercised over the SRN or land within NH's ownership is set out in length in the table in section 6 of NH's Relevant Representation.

In paragraph 7(5) there is reference to deemed consent. 28 days is not considered a reasonable period of time to consider every application that may come through under this DCO, some may be more involved than others. There should be a further written request for consent, followed by a further period of 28 days before any deemed consent applies.

NH is concerned with deemed consent given the safety implications of works being carried out to or under the SRN that may have bypassed its approval processes. This is a fundamental issue of public safety that should not be compromised to enable a private developer to achieve a quicker build programme. NH has statutory obligations

to behave reasonably and support sustainable development and so it should not be forced to work under the pressure of deemed consent.

**Payments (paragraph 9) :** NH do not hold a budget to cover any costs associated with the Project and paragraph 9(c) needs to be included to enable the recovery by NH of 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 paragraph 9(1)).

**Insurance (paragraph 17)** Insurance is required for all contractors working on the SRN and this should extend to operations carried on over and under the highway due to the potential for damage to infrastructure, highway assets and road users. Again NH do not hold a budget to cover any costs or claims arising from such damage and it is right that such risk is covered by insurance. As per the comments of the ExA on the Gatwick DCO It is not appropriate for a public sector agency to potentially fund a private sector burden. The insurance sum needs to accord with NH's standard insurance terms which require that the undertaker effects public liability insurance with an insurer in the minimum sum of £50 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.

- (d) **Indemnity (paragraph 18):** Due to NH not holding a budget to cover any costs, claims or expenses for the Project NH must be held harmless for the construction, maintenance and operation of the Authorised Development and any resultant impacts. It is common practice for statutory undertakers to be indemnified in such circumstances and the Applicant on any DCO that it is affected would seek similar provisions.
- (e) **Land provisions (paragraph 20):** This paragraph needs to mirror NH's template protective provisions. NH need to be able to call for 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. No part of the strategic road network or land owned by National Highways should be compulsorily acquired, nor existing rights of NH extinguished or apparatus interfered with in respect of any third party property, except with the consent of National Highways
- (f) **Arbitration:** Expert determination is preferred by NH due to the speed of the process and the often technical nature of the points in dispute being more suited to determination by an Engineer or other highway professional.

## Requirements

- 2.4 The dDCO has not been updated to address NH's concerns raised in its Relevant Representations on Requirements (see **[RR-2657] (paragraph 6)**, Written Representations **[REP1-192]** as further supplemented by its Deadline 2 comments **[REP2-043] paragraph 2.5 and Table T1.2 (page 24 onwards)** and discussion at ISH2 on 28 and 29 April **[REP-343]** save for the amendment to Requirement 4(1) which is welcomed.
- 2.5 By way of summary, there are several Requirements included in Schedule 3 of the dDCO which NH has an interest and would expect to be consulted on namely: 8 (retention and removal of trees, woodland and hedgerow), 9 (Re-instatement planting plan) and 10 (Re-instatement schemes) it is noted that the latest version of the dDCO does not address NH's concerns. In relation to Requirements 8 9 and 10, NH require to be consulted where works affect the SRN or relate to land NH have an interest in. This is not unreasonable. NH must have control over the operations being carried out on its network. This is critical from a safety perspective and to maintain the integrity of the asset.

- 2.6 On Requirement 7 (Construction hours), NH has previously asked that sub-paragraph (1) which provides for variations to the core terms includes consultation with National Highways. National Highways still have major concerns regarding construction traffic and so NH may need construction traffic to be operated outside peak hours depending on ongoing modelling and discussions with the Applicant regarding the Assessment, which National Highways would want to be fed into this Requirement. This is explained further in section 3 below.
- 2.7 On the Discharge of Requirements, paragraph 2, provides that where an application has been made under paragraph 1 the relevant authority may request such reasonable further information from the undertaker as it considers is necessary to enable it to consider the application.

Paragraph 2 (2) provides, "If the relevant authority considers further information is necessary and the requirement does not specify that consultation with a requirement consultee is required, the relevant authority must, within 5 business days of receipt of the application, notify the undertaker in writing specifying the further information required" and paragraph 2 (3) provides "If the requirement specifies that consultation with a requirement consultee is required, the relevant authority must issue the consultation to the requirement consultee within 5 business days of receipt of the application and must notify the undertaker in writing specifying any further information requested by the requirement consultee within 5 business days of receipt of such a request and in any event within 15 business days of receipt of the application."

NH's position is that were it to be required to be consulted, 5 days is not enough time for NH to respond and the time period should be extended.

### **3 TRAFFIC AND TRANSPORT - CONSTRUCTION IMPACTS**

#### ***Proposed Changes to SRN Roads***

- 3.1 Physical changes to the SRN at A12 Holton St. Mary, A120 Bentley Road and the A120 at Coggeshall have been agreed by NH.
- 3.2 However, agreement to the proposed amendments to Copdock Roundabout (A14 J55) are subject to the satisfactory completion of a Road Safety Audit 1 ("RSA1"), which has not yet been undertaken. This is requested to assess the safety impact of the changes. NH expects to receive the draft RSA1 brief imminently from the Applicant.
- 3.3 A Walking, Cycling, and Horse-riding Assessment and Reviews (WCHAR) is needed at any point on the SRN where changes are proposed, in accordance with DMRB. WCHARs, or else an exemption submission, are required for all the locations where physical amendments to the road layout are proposed. These have not yet been received.
- 3.4 The trip distribution/assignment for the construction traffic is yet to be fully understood and agreed, and therefore so is the modelling. As a consequence, there may be required mitigations that are not yet known. These potentially unknown changes to the SRN are to be agreed, as required.

#### ***Assessment Scope***

- 3.5 NH has identified three junctions which it considers may be affected by HGV routes from quarries to the construction sites and which have not been assessed by the Applicant. Although M25 J30 is included in the assessment scope, NH has questioned why M25 J28, M25 J29 and M11 J8 have not been assessed. This has been discussed with the Applicant, and a response is expected shortly.
- 3.6 The trip distribution/ assignment for the construction traffic is yet to be fully understood and agreed, and therefore the scope of the assessment may need to be expanded to fully capture the extents of the impact of the project on the SRN.

### ***Construction Traffic Volumes***

- 3.7 Whilst National Highways is broadly content with the logic behind the methodology which the Applicant has employed to determine the construction trip generation, distribution and assignment, it has not yet had visibility of the detailed calculations that were made and therefore it is still not possible for NH to agree with the forecast traffic flows at SRN junctions, nor whether the proposed mitigation is appropriate.
- 3.8 NH has requested the detailed shapefiles and spreadsheet calculations from the Applicant to enable an understanding of how the forecast traffic volumes have been derived and it is understood that the Applicant has agreed to provide them shortly.

### ***Junction Modelling***

- 3.9 As the demand forecasts (trip generation, distribution and assignment) have not yet been agreed, NH has not undertaken a detailed review of the forecast results of the modelled junctions as these are subject to change. However, a review of the baseline situation has highlighted several sensitive locations on the SRN where additional congestion and queuing caused by construction traffic associated with the project may have unacceptable safety and/or capacity implications.
- 3.10 In previous submissions, NH strongly recommended a microsimulation model is applied to the following locations collectively to ensure that the implications on the SRN are fully understood:
- A120/Long Green/B11018/Cressing Road junction (Galleys Corner)
  - A120/A131/B1256 (Marks Farm) Roundabout
  - B1018/Millennium Way
- 3.11 NH became aware shortly before ISH2 on 1/5/26 that a VISSIM model had been partially developed for NH in this location and NH proposed at the ISH that the Applicant could use this model to achieve outputs more cost-effectively and more quickly.
- 3.12 This approach was subsequently agreed with the Applicant and information is being provided to enable the model to be run. It is expected that the modelling will be able to commence imminently, with results available in early August (subject to the agreement of the trip distribution and assignment).
- 3.13 This is a particularly sensitive location on SRN that already experiences congestion. A particular concern is if eastbound queuing at Galleys Corner is likely to extend to the on-slips of the next junction on the A120 to the west. The VISSIM model will provide clarity on this matter where the local junction modelling cannot.
- 3.14 A12 Junction 25, another sensitive location, was not modelled originally as the Applicant had assumed that the junction would be improved as part of the proposed A12 major scheme. The scheme was cancelled by the Government in Autumn 2025 and the Applicant has therefore agreed to model the junction using Arcady. Results are expected soon. Until the modelling is completed it is not possible to determine the degree of impact in this location and whether mitigation is required.

## **4 CONSTRUCTION MANAGEMENT DOCUMENTS**

- 4.1 An updated Outline Construction Traffic Management Plan ("oCTMP") was submitted at Deadline 5. As noted previously by National Highways, mitigation measures are proposed at a number of SRN locations. As explained above, it is not possible, however, to agree that these are appropriate or adequate until the modelling is agreed with National Highways.

- 4.2 The Applicant has however indicated that the oCTMP will be updated to include a Monitor and Manage strategy, enabling mitigation to be brought forward as required in agreement with the relevant Highway Authority. NH supports the principle of this approach but this detail does not yet appear in the oCTMP. Once the oCTMP is updated NH will be able to confirm its position on this proposal at Deadline 7.

## **APPENDIX 1**

### **Amendments to Protective Provisions in the dDCO**

## PART 5

### FOR THE PROTECTION OF NATIONAL HIGHWAYS LIMITED

#### 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.

(3) ~~This Part of this Schedule does not apply to any works or activities that are regulated by the provisions of Part 3 of the 1991 Act or articles 11(1) (street works), 14(1) (power to alter layout, etc. of streets), 17(1) (access to works) and 49 (traffic regulation) of this Order.~~

#### Interpretation

2.(1) Where the terms used defined in this Part of this Schedule are inconsistent with the terms defined in article 2 (*interpretation*) of this Order ~~are inconsistent with sub paragraph (2) below the latter~~ 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—

- (i) 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;
- (b) list of suppliers and materials used, as well as any relevant test results and CCTV surveys (if required to comply with DMRB standards);
- (c) product data sheets and technical specifications for all materials used;
- (d) as constructed information for any utilities discovered or moved during the works;
- (e) method statements for the works carried out;
- (f) in relation to road lighting, signs, and traffic signals any information required by Series 1300 and 1400 of the specification for highway works or any replacement or modification of it;
- (g) organisation and methods manuals for all products used;
- (h) as constructed programme;
- (i) test results and records as required by the detailed design information and during construction phase of the project;
- (j) a stage 3 road safety audit subject to any exceptions to the road safety audit standard as agreed by the undertaker and National Highways;
- (k) the health and safety file; and
- (l) such other information including CCTV surveys as is required by National Highways to be used to update all relevant databases and to ensure compliance with National Highway's *Asset Data Management Manual* as is in operation at the relevant time or any successor of it including CCTV surveys;.

“bond” means a bond in the form annexed hereto at Annex 1 (or substantially in such form) duly executed by the undertaker and a reputable UK surety company or other UK financial institution to be previously 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 phase of the specified works (to include all costs plus any commuted sum for such phase), 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;

“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 ~~the specified works~~any new National Highways assets, structures or apparatus 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 the specified works—

- (a) site clearance details;
- (b) boundary, environmental and mitigation fencing;
- (c) road restraints systems and supporting road restraint risk appraisal process assessment;
- (d) drainage and ducting as required by DMRB CD 535 Drainage asset data and risk management and DMRB CS551 Drainage surveys – standards for Highways;
- (e) earthworks including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk and any required strengthened earthworks appraisal form certification;
- (f) pavement, pavement foundations, kerbs, footways and paved areas;
- (g) traffic signs and road markings;
- (h) traffic signal equipment and associated signal phasing and timing detail;
- (i) road lighting (including columns and brackets);
- (j) regime of California Bearing Ratio testing;
- (k) electrical work for road lighting, traffic signs and signals;
- (l) motorway communications as required by DMRB;
- (m) highway structures and any required structural approval in principle;
- (n) landscaping;
- (o) proposed departures from DMRB standards;
- (p) walking, cycling and horse riding assessment and review report;
- (q) stage 1 and stage 2 road safety audits and exceptions agreed;
- (r) utilities diversions;
- (s) topographical survey;
- (t) maintenance and repair strategy in accordance with DMRB GD304 Designing health and safety into maintenance or any replacement or modification of it;
- (u) health and safety information including any asbestos survey required by GG105 or any successor document; and
- (v) other such information that may be required by National Highways to be used to inform the detailed design of the specified 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 0;

“the health and safety file” means the file or other permanent record containing the relevant health and safety information for the authorised development 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;

“phase” means that part of the specified works which is to be carried out in separate phases in the areas identified as Work Nos. [ ] on the works plans or such other phasing arrangements agreed between the undertaker and 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”;

~~“security” means, in respect of any phase or element of the specified works, either:~~

~~(w) a letter of credit; or~~

~~(x) such other information that evidences the credit standing of the undertaker;~~

“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 work, including highway works, street works, surveys and signalisation ~~or part thereof~~, authorised by this Order including any maintenance of that work, as is undertaken in on under or over the strategic road network or land in which National Highways ~~is the highway authority~~ 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 highway assets together with all land, apparatus and rights located in, on, over or under the highway ~~for which National Highways is the highway authority~~;

“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 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 16 but for the purposes of any approvals required under this Part of Schedule 16 the undertaker shall liaise directly with National Highways.

4. Notwithstanding the limits of deviation permitted pursuant to article 5 of this Order, no works in carrying out, maintaining or diverting the authorised development may be carried out in ~~on~~ under or over the strategic road network ~~at a distance within 5.5 metres vertically of the lowest point of the ground unless with the express consent unless such works are agreed in writing with National Highways at the absolute discretion of National Highways save in respect of any temporary oversailing equipment which falls below the 5.5m height temporarily during construction, provided that such equipment's installed position is above 5.5m, where such express consent is not required.~~

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 and security

~~7.(1) In respect of any specified works being at least 5.5 metres above the surface of the strategic road network (including any temporary oversailing equipment which falls below the 5.5m height temporarily during construction, provided that such equipment's installed position is above 5.5m), such works must not commence until—~~

### 7.(1) The specified 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 specified works comprising of the following details, insofar as considered relevant by National Highways, has been submitted to and approved by National Highways—
  - (i) the detailed design information, incorporating 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~~
  - ~~(v) information demonstrating that the walking, cycling and horse riding assessment and review process undertaken by the undertaker in relation to the specified works has been adhered to in accordance with DMRB GC142—Designing for walking, cycling and horse riding or any successor document;~~
- ~~(d)(a) —where necessary, a scheme of traffic management has been submitted by the undertaker and approved by National Highways such scheme to be capable of amendment by agreement between the undertaker and National Highways from time to time;~~
- ~~(e) unless otherwise agreed by National Highways.~~

~~(1) In respect of specified works save for those which fall under sub-paragraph (1), such works must not commence until—~~

~~(c) 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;~~

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

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

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

~~(i)(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;

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

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

~~(iv)(v)~~ information demonstrating that the walking, cycling and horse riding assessment and review process undertaken by the undertaker in relation to the specified works has been adhered to in accordance with DMRB GG142 – Designing for walking, cycling and horse riding or any successor document;

~~(v)(d)~~ a scheme of traffic management has been submitted by the undertaker and approved by National Highways such scheme to be capable of amendment by agreement between the undertaker and National Highways from time to time;

~~(v)(e)~~ stakeholder liaison has taken place in accordance with the process for such liaison agreed between the undertaker and National Highways under sub-paragraph (c)(v) above;

~~(v)(f)~~ 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;

~~(v)(g)~~ the undertaker has agreed the estimate of the commuted sum with National Highways;

~~(v)(h)~~ 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 specified works (which must include winter maintenance) has been agreed in writing by National Highways;

~~(v)(i)~~ the undertaker has procured to National Highways collateral warranties in a form approved by National Highways from the contractor and designer of the specified 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 specified works, including in the selection of materials, goods, equipment and plant;

~~(v)(j)~~ any further information that National Highways may reasonably request within 14 days of the submission of the detailed design of a specified works has been supplied to National Highways; and

~~(v)(k)~~ a condition survey and regime of monitoring has been agreed in writing by National Highways.

(2) The undertaker must not exercise—

(a) article [ ] (*maintenance of authorised development*);

(b) article [ ] (*street works*);

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

(d) article [ ] (*permanent stopping up of streets, rights of way and rights of access*);

~~(e)~~ article 16[ ] (*temporary ~~closure~~stopping up of streets ~~and public~~, rights of way ~~and rights of access~~*);

- (f) article [ ] (access to works)
- (g) article [ ] (traffic regulation);
- ~~(b)~~(h) article 20[ ] (discharge of water);
- ~~(e)~~(i) article 21[ ] (protective works to buildings);
- ~~(d)~~(j) article 22[ ] (authority to survey and investigate the land);
- (k) article [ ] (compulsory acquisition of land);
- (l) article [ ] (compulsory acquisition of rights);
- (m) article [ ] (extinguishment and suspension of private rights)
- (n) article [ ] (use of subsoil under or airspace over streets)
- (o) article [ ] (temporary use of land by [NGN])
- (p) article [ ] (temporary use of land for carrying out the authorised development);
- (q) article [ ] (temporary use of land for maintaining the authorised development); or
- (r) article [ ] (felling or lopping trees) 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 (2) 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-paragraphs (1) or (2).~~

(4) Any approval 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 conditions as National Highways considers necessary; ~~and.~~
- (d) ~~will be deemed to be approved if National Highways has not determined the approval within 28 days of the undertaker's request for approval.~~

(5) 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.

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

(7) Any reference to deemed consent in any of the articles of this Order shall not apply to any application for consent, agreement or approval required or contemplated to be given by National Highways

### **Construction of the specified works**

8.(1) The undertaker must give National Highways ~~28 days'~~3 months' notice in writing of the date on which the specified works will start unless otherwise agreed by National Highways.

(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 1 above or as subsequently varied by agreement between the undertaker and National Highways;
- (b) 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, the Traffic Signs Manual and the Traffic Signs Regulations and General Directions 2016 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 ~~acting reasonably~~ 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 ~~reasonable~~ 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 ~~acting reasonably~~ 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 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 agreed 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 pursuant to paragraph 7(1)(b) 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 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]; the checking and approval of the information required to determine approvals under this Order;
- (d) where relevant, all costs in relation to the transfer of any land required for the specified works;
- (e) all legal and administrative costs and disbursements incurred by National Highways in connection with the Order and sub-paragraphs (a)-(d); and
- (f) 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 upon demand and prior to such costs being incurred the total costs that National Highways believe will be properly and necessarily incurred by National Highways in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the authorised development.

(3) National Highways must provide the undertaker with a schedule showing its estimate of the NH costs prior to the commencement of the specified works and the undertaker must pay to National Highways the estimate of the NH costs prior to commencing the specified works and in any event prior to National Highways incurring any cost ~~but the absence of such estimate will not inhibit the commencement of the specified works by the undertaker.~~

(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 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~~final account of the NH costs referred to in sub-paragraph 9 above within 91 days of the issue of the provisional certificate issued pursuant to paragraph 10(4).

(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 phase of the 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; 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 stage 3 road safety audit 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 sub-paragraph (3)(b) have been completed to the satisfaction of National Highways;
- (c) the as built information has been provided to National Highways; and
- (d) ~~in respect of any specified works captured by paragraph 67(2))~~ the undertaker has paid the commuted sum 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 relevant to the phase in writing to 20% of the total bond sum for that phase 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 for any phase (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 any of the specified works.

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

## Opening

~~11.~~<sup>11.4</sup> Unless otherwise agreed in writing by National Highways 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 phase of specified works include any works beneath the strategic road network.

(2) If the re-surveys carried out pursuant to paragraph 12 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 require.

(3) If the undertaker fails to carry out the remedial work in accordance with the approved scheme and programme pursuant to paragraph (2)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 on ~~receipt of a proper invoice~~written 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 give notice in writing that National Highways will remedy any damage identified in the re-surveys and National Highways may recover on ~~receipt of a proper invoice~~written 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.

### Defects Period

13.(1) The undertaker must at its own expense remedy any defects in the strategic road network as are reasonably required by National Highways to be remedied during the defects period for the relevant phase. 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) ~~During the defects period~~Following the issuing of the provisional certificate National Highways ~~retains~~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 for each phase of the specified works ~~or part thereof~~ no sooner than 12 months from the date of the provisional certificate for that phase.

(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 the bond sum for that phase is released 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 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 0.

## Security

15.(1) No phase of the specified works must not commence until the undertaker procures that the specified works are secured by the bond sum 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 specified works under the provisions of this Part of this Schedule.

~~(1) The specified works must not commence until the undertaker provides the security.~~ If at any time the undertaker is in breach of these provisions of this Part of this Schedule or becomes insolvent without prejudice to any other remedy National Highways is entitled upon giving notice to the undertaker to ~~complete that phase or element of the specified works that has been commenced by the undertaker and maintain the same and call upon the undertaker to reimburse it for the cost expended in respect of the same provided that:~~

~~unless there is a danger to users of the highway, National Highways shall first give 28 days prior written notice (or lesser period as may in the circumstances be reasonable) of its intention to commence work under this sub-paragraph (2);~~

~~any notice served under this sub-paragraph (2) shall specify the period of the notice ("the notice period"), the extent of the work which National Highways proposes to carry out, and full details of all matters in respect of which the National Highways considers that the specified works have not been carried out in accordance with this Part of this Schedule; and~~

~~if before the expiry of the notice period, the undertaker serves written notice upon the National Highways that it intends diligently to execute the works specified in the notice in accordance with this Part of this Schedule, and specifies a time to complete that the National Highways considers reasonable in the circumstances the National Highways shall not be entitled to execute the relevant part or parts of the specified works specified in the notice served under this paragraph unless the undertaker then fails to execute those works within the agreed timescale;~~

use such parts of the bond sum as National Highways considers necessary. For the avoidance of doubt should National Highways have to carry out works pursuant to this Part of this Schedule it may, at its sole discretion, use the bond sum to forward fund such works.

## Commuted sums

16. (1) National Highways must provide to the undertaker an estimate of the commuted sum, calculated in accordance with FS Guidance S278 Commuted Lump Sum Calculation Method dated 18 January 2010 or any successor guidance, prior to the commencement of the specified works.

(2) The undertaker must pay to National Highways the commuted sum in respect of each phase prior to the issue of the provisional certificate for that phase.

## 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 ~~£10,000,000.00 (ten)~~ £50,000,000.00 (50) 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 fully indemnifies National Highways from and against all costs, claims, expenses, damages, losses and liabilities suffered by National Highways arising from or in connection to the

construction, maintenance or use of the specified works or exercise of or failure to exercise any power under this Order and any such costs shall be paid to National Highways within ~~30~~14 days of demand ~~provided that the undertaker's indemnity will not extend to any claims submitted to the relevant highway authority arising out of the negligence of the relevant highway authority's employees or arising after the issue of the final certificate pursuant to paragraph 14(4) save for any loss arising out of or in consequence of any negligent act or default of National Highways.~~

(2) The undertaker's duty to indemnify National Highways pursuant to paragraph 18(1) above shall apply in full and further the undertaker's duty to indemnify shall continue in full force and effect until all such claims have been determined, settled and discharged and National Highways reimbursed in full notwithstanding the issue of the final certificate for any phase or the final phase of specified works.

1. The relevant highway authority shall:

1. notify the undertaker immediately upon receipt of any claims, charges, costs, expenses, liability or losses referred to in sub-paragraph (1);
2. at all times after that date keep the undertaker fully informed;
3. permit and assist the undertaker to make such investigations and/or tests as the undertaker may reasonably deem necessary to verify such claims, charges, costs, expenses, liability or losses;
4. not accept or compromise any claims, charges, costs, expenses, liability or losses to which this indemnity relates without the prior approval of the undertaker as to its validity and as to the amount of the settlement; and
5. at the request of the undertaker instruct such reputable firm of solicitors as the undertaker may reasonably specify in respect of the conduct of negotiations and/or proceedings in respect of any claims, charges, costs, expenses, liability or losses to which this indemnity relates.

2. The indemnity in sub-paragraph (1) above includes:

1. all fees incurred by claimants which the relevant highway authority is obliged to pay, and those of the relevant highway authority or its agent or contractor, in negotiating any claims (together with VAT payable on the claimants' professional advisors' fees);
2. statutory interest payments to claimants and their professional advisors; and
3. the relevant highway authority's reasonable and proper legal costs in making the compensation, fees and interest payments.

### **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 ~~(save for in the event of an emergency situation).~~

(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 7 days<sup>2</sup> in advance of the planned commencement date of the maintenance works.

(4) The provisions of paragraph 0 shall apply to the opening of any part of the strategic road network following occupation of any road space under this paragraph.

## Land

20.(1)Following the issue of the ~~final~~ certificate pursuant to paragraph 14(4) 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 20 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 under the powers of this Order:

(a) to acquire or use land forming part of;

(b) acquire new or existing rights over; or

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

any part of the strategic road network or land owned by National Highways ~~used for its undertaking, 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](mailto: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 24[ ] (*compulsory acquisition of land*) and article 25[ ] (*compulsory acquisition of rights and imposition of restrictive covenants*) as applied by articles 36[ ] (*application of the 1981 Act*) and article [ ] (*modification of the 2017 Regulations*) of this Order to directly vest in National Highways any such land or interest.

## Arbitration

### Expert Determination

~~21. Any dispute under—~~ (1) Article [ ] (arbitration) of the Order does not apply to this Part of this Schedule ~~shall be settled by arbitration in accordance with article 62 (arbitration).~~

(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 best 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 [ ] (arbitration).

~~(2)(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.

## **APPENDIX 2**

### **Amendments to the Requirements in the dDCO**

| Requirement                                               | Amendments to Drafting (in red)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Comments                                                                                                                                                                                                                                                                                                   |
|-----------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 7. Construction Hours                                     | <p>(1) Subject to sub-paragraphs (2) to (5) work may only take place between the hours of 07.00 and 19.00 Monday to Friday and 07.00 and 17.00 on Saturdays, Sundays, bank holidays and other public holidays (the core working hours), unless otherwise approved by the relevant planning authority (in consultation with NH where any work affects the Strategic Road Network or land NH have an interest in).</p> <p>(2) No percussive piling works may take place outside of the hours of 0700 to 1900 Monday to Friday and 0700 to 1700 on Saturdays, unless otherwise approved by the relevant planning authority (in consultation with NH where any work affects the Strategic Road Network or land NH have an interest in).</p>                                                                                                                                                                                                                                                                            | See above                                                                                                                                                                                                                                                                                                  |
| 8. Retention and removal of trees, woodland and hedgerows | <p>(1) Unless otherwise agreed with the relevant planning authority, no stage of the authorised development may commence until, for that stage, a plan showing the trees, groups of trees, woodlands and hedgerows to be retained and/or removed during that stage has been submitted to and approved by the relevant planning authority (in consultation with NH where any trees, groups of trees, woodlands and hedgerows affects the Strategic Road Network or land NH have an interest in)</p> <p>(4) All trees, groups of trees, woodlands and hedgerows shown on the relevant plan for that stage of the authorised development must be retained and/or removed in accordance with the relevant plan as approved under sub-paragraph (1) for that stage of the authorised development, unless otherwise agreed by the relevant planning authority (in consultation with NH where any trees, groups of trees, woodlands and hedgerows affects the Strategic Road Network or land NH have an interest in).</p> | As per NH's comments on Article 50, if works undertaken to trees, woodlands or hedgerows affect any NH BNG commitments a replacement trees or hedgerows would need to be provided to satisfy that existing commitment at a location to be agreed. NH would therefore want to be consulted on the proposals |

| Requirement                          | Amendments to Drafting (in red)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Comments                                                                                                                                                                                                                                                                                                                           |
|--------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 9.<br>Reinstatement<br>planting plan | <p>(1) Unless otherwise agreed with the relevant planning authority, no stage of the authorised development may be brought into operational use until, for that stage, a reinstatement planting plan for trees, groups of trees, woodlands and hedgerows to be reinstated during that stage has been submitted to and approved by the relevant planning authority (in consultation with NH where the reinstatement planting affects the Strategic Road Network or land NH have an interest in).....</p> <p>(5) All reinstatement planting works approved under sub-paragraph (1) must be carried out in accordance with the approved reinstatement planting plan for that stage of the authorised development, unless otherwise approved by the relevant planning authority (in consultation with NH where any reinstatement planting works affect the Strategic Road Network or land NH have an interest in).</p> <p>(7) Any trees or hedgerows planted as part of an approved reinstatement planting plan that, within a period of five years after planting (or such other period as is specified in the landscape and ecological management plan approved pursuant to requirement 4), are removed, die or become in the opinion of the relevant planning authority seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless otherwise approved by the relevant planning authority (in consultation with NH where any reinstatement planting works affect the Strategic Road Network or land NH have an interest in).</p> | As per NH's comments on Article 50, if works undertaken to trees, woodlands or hedgerows affect any NH BNG commitments a replacement trees or hedgerows would need to be provided to satisfy that existing commitment at a location to be agreed. NH would therefore want to be consulted on the reinstatement planting proposals. |
| 10.<br>Reinstatement<br>schemes      | <p>(1) Subject to sub-paragraphs (2) and (3), any land within the Order limits which is used temporarily for construction is to be reinstated to a condition suitable for its former use, or such condition as the relevant planning authority may approve, within <del>21 months</del> 6 months of completion of the construction of the stage of authorised development for which it was required, or such further time as may be approved by the relevant planning authority (in consultation with NH where any work affects the Strategic Road Network or land NH have an interest in).</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | NH seek the reinstatement of the A120 verge within 6 months following the use of the access ceasing. This is in the interest of maintaining the safe and efficient operation of the SRN. 21 months is an unreasonably long period. Inclusion of the drafting in red would address NH's concern.                                    |