



Your ref:  
EN010109-001894-SADEP- Written Questions4\_v3  
Our ref:  
Sheringham and Dudgeon Extension Projects SADEP

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Date: 11 July 2023

via email: [sadep@planninginspectorate.gov.uk](mailto:sadep@planninginspectorate.gov.uk)

Dear Menaka,

**Sheringham Shoal and Dudgeon Offshore Wind Farm Extension Project  
(EN010109): Written Statement (WQ4)  
Deadline 7 Submission**

**The Examining Authority's second written questions and requests for information**

I refer to your Fourth Written Questions WQ4 issued on Thursday 29 June 2023 regarding the above proposal and your invitation to submit written representations to the Examining Authority's (ExA's) Written Questions as set out in the Rule 6 letter, Annex C [PD-006]. I also refer to Questions 4.8.3.4 of WQ4 directed at the Applicant.

Please see attached our submission with respect to the status of protective provisions for the benefit of National Highways, which to date have not been agreed by the parties and which appear in an unacceptable form at Schedule 14 Part 14 of the draft development consent order.

This submission goes specifically to Question 4.8.3.4 of WQ4 directed at the Applicant. It is intended that this submission assists the examining authority in understanding why National Highways has requested the protective provisions in the form that it has and forms the basis of our request to the Examining Authority that the National Highways Protective Provisions found at Schedule 14 Part 14 of the draft development consent order should be substituted for those found at Appendix 1 of this submission. We kindly request the Examining Authority to recommend this substitution in its recommendation to the Secretary of State.

We apologise for the lateness of this submission and kindly request that the Examining Authority accept receipt of it into the Examination. This document has required substantial input from a number of colleagues within National Highways, several of whom have not been available due to periods of absence.

Should the panel have any questions, we would of course be very happy to assist.

Yours sincerely,

Dr Shamsul Hoque  
Assistant Spatial Planner

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Enc:

**DEADLINE 7 SUBMISSION FROM NATIONAL HIGHWAYS LIMITED**  
**APPLICATION BY EQUINOR NEW ENERGY LIMITED FOR AN ORDER GRANTING**  
**DEVELOPMENT CONSENT FOR THE SHERINGHAM SHOAL AND DUDGEON**  
**OFFSHORE WIND FARM EXTENSION PROJECTS**  
**PLANNING INSPECTORATE REFERENCE NUMBER: EN010109**

## **1 Introduction**

- 1.1 This document provides an update to the Examining Authority about the Protective Provisions for the benefit of National Highways Limited (**National Highways**).
- 1.2 The Protective Provisions requested by National Highways to be included at Schedule 14 Part 14 to the Order are at Appendix 1 of this document (**National Highways Protective Provisions**).
- 1.3 The National Highways Protective Provisions are not agreed by the Applicant and we attach the most recent draft of the National Highways Protective Provisions, as amended by the Applicant, at Appendix 2.
- 1.4 The Applicant has included in Schedule 14 Part 14 to the Order which is before the Examining Authority (as submitted by the Applicant at Deadline 5) a version of the National Highways Protective Provisions which has been heavily sanitised to remove a number of critical protections to the strategic road network and which are required by National Highways in order to ensure compliance with its statutory duties and regulatory responsibilities. For the avoidance of doubt, National Highways does not agree to the inclusion of Schedule 14 Part 14 of the Order as is currently before the Examining Authority and requests that Schedule 14 Part 14 be substituted for the version of the National Highways Protective Provisions found at Appendix 1. We set out the justification for this in the following paragraphs.

## **2 Justification for the National Highways Protective Provisions**

- 2.1 As the strategic highways company appointed by the Secretary of State for Transport pursuant to the Infrastructure Act 2015 and regulated by the Office of Road and Rail, National Highways' primary responsibility is the safety of the travelling public and maintaining the integrity and security of the strategic road network. Much like the operational railway estate, the strategic road network is a critical piece of national infrastructure, connecting all major towns and cities and carrying a third of all traffic and two-thirds of all freight in England. As a key economic asset, it provides businesses with the means to get products and services to customers, gives access to labour markets and suppliers and encourages trade and new investment. As a result of its vital importance to UK economic interests, National Highways is charged with a number of statutory responsibilities with respect to the management of this operational undertaking.
- 2.2 In the exercise of any of its functions as a public body, National Highways must have regard to the safety of all users of the highway.<sup>1</sup> In addition to safety and pursuant to section 6 of the Infrastructure Act 2015, National Highways has a statutory duty to comply with directions issued by the Secretary of State for Transport. These directions are set out in its Licence and include a duty to hold and manage land and property in line with, and as a function of, the Licence holder's legal duties as a highway authority, and solely for the purposes of operating, managing and improving the highway, unless otherwise approved by the Secretary of State for Transport.<sup>2</sup> These statutory obligations place a burden on National Highways to ensure that third party development which may impact on its network is both safe to road users and does not interfere with the legal duty placed on National Highways to operate, manage and improve the strategic road network. This is not to say that National Highways is opposed to development which impacts its network and as part of its existing licence obligations, National Highways is required to have regard to and support sustainable development provided that suitable protections for the strategic road network are agreed with the applicant.

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<sup>1</sup> S5(2)(B) Infrastructure Act 2015

<sup>2</sup> Paragraph 5.37 National Highways: Licence April 2015

- 2.3 The Authorised Development (as included at Schedule 1 Part 1 of the proposed Order submitted at Deadline 5) includes the following works which affect land and property owned and occupied by National Highways for the purposes of its undertaking comprised specifically in the A47 and A11:

*Work No. 12A-*

- (a) in the event of scenario 1, a cable circuit and ducts between Work No. 9A and Work No. 15A and onshore construction works;*
- (b) in the event of scenario 2, a cable circuit and ducts between Work No. 9A and Work No. 15A, additional cable ducts for the Dudgeon Extension Project between Work No. 9B and Work No. 15B and onshore construction works; or*
- (c) in the event of scenario 3, a cable circuit and ducts between Work No. 9A and Work No. 15C, onshore construction works and, in the event of sequential construction, may include additional cable ducts for the Dudgeon Extension Project between Work No. 9B and Work No. 15C;*

*Work No. 12B-*

- (a) in the event of scenario 1, a cable circuit and ducts between Work No. 9B and Work No. 15B and onshore construction works; or*
- (b) in the event of scenario 2, a cable circuit and ducts between Work No. 9B and Work No. 15B, additional cable ducts of the Sheringham Shoal Extension Project between Work No. 9A and Work No. 15A and onshore construction works; or*
- (c) in the event of scenario 3, a cable circuit and ducts between Work No. 9B and Work No. 15C, onshore construction works, and, in the event of sequential construction, may include additional cable ducts for the Sheringham Shoal Extension Project between Work No. 9A and Work No. 15C; and*

*Work No 12C – in the event of scenario 4, up to 2 cable circuits and ducts between Work No. 8C and Work No 14C and onshore construction works;*

*Work No. 13A – temporary vehicular access tracks to serve Work Nos. 7A, 8A, 9A, 11A, 12A, 13A and 14A in the event of scenario 1, scenario 2 or scenario 3 or Work Nos. 7C, 8C, 9C, 10A, 11A, 12C and 14A in the event of scenario 4;*

*Work No. 13B – temporary vehicular access tracks to serve Work Nos. 7B, 8B, 9B, 10B, 11B, 12B and 14B in the event of scenario 1, scenario 2 or scenario 3 or Work Nos. 7C, 8C, 9C, 10B, 11B, 12C and 14B in the event of scenario 4.*

*Further Associated Development – and in connection with such Work Nos. 8A-22A, 8B-22B and 8C, 9C, 12C, 15C, 16C and 17C and to the extent that they do not otherwise form part of any such work, further associated development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the work assessed by the environmental statement, including-*

- (a) ramps, means of access and footpaths;*
- (b) bunds embankments, swales, landscaping, fencing and boundary treatments;*
- (c) habitat creation;*

- (d) jointing bays, link boxes, cable ducts, cable protection, joint protection, manholes, marker posts, underground cable markers, tiles and tape, lighting and other works associated with cable laying;*
- (e) works for the provision of apparatus including cabling, water and electricity supply works, foul drainage provision, surface water management systems and culverting;*
- (f) works to alter the position of apparatus, including mains, sewers, drains, cables and pipes;*
- (g) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;*
- (h) landscaping and other works to investigate, ascertain or mitigate any adverse effects of the construction, maintenance or operation of the authorised project;*
- (i) works for the benefit or protection of land affected by the authorised project;*
- (j) working sites in connection with the construction or the authorised project, construction lay down areas and compounds, storage compounds and their restoration.*

2.4 The relevant works which affect the A47 and A11 can be summarised as being horizontal directional drilling of cables underneath the carriageway and the construction of a temporary access track (Work No. 13A/B) which appears on sheet 28 of the Works Plans to cross onto the A47 carriageway itself. The proposed Order gives the Applicant wide ranging powers under “Further Associated Development” to the extent that this work has been assessed by the environmental statement. Whilst it may not be the current intention of the Applicant to carry out any associated development which would impact on the strategic road network, the inclusion of this in the authorised development would give the Applicant all it needed to commence works if a decision to do so was made after the grant of the DCO. Consequently, the protective provisions agreed for the protection of National Highways must be read not just in the context of the specific works that have been detailed as they impact the strategic road network, but also those works of associated development that may be subject to change where there could be a potential risk to road users.

2.5 We understand the Applicant’s position to date is that the National Highways Protective Provisions provides National Highways with a disproportionate amount of protection when assessed in the context of the work the Applicant proposes to carry out in the vicinity of the strategic road network. We understand that this is because no works are proposed to the surface of the carriageway itself. Respectfully, we disagree with the Applicant and consider that the works proposed (however temporary or non-invasive to the carriageway) have the potential to cause significant disruption, damage and injury to the public if not managed in accordance with established protocols. Any sub-surface works (however insubstantial they are expressed to be and using industry established practices) have the potential to cause geological displacement and carriageway settlement to intolerable levels, which is a safety risk to road users. Further, the construction of temporary accesses off the strategic road network involves development that must be managed alongside National Highways to ensure the safety of road users and contractors alike.

2.6 Given the risk of damage to the strategic road network inherent in any proposed works to take place on, over or under it, National Highways requests that the Applicant provide financial security in the form of a bond and cash deposit to guarantee that in the event of default on the works, National Highways can access funds to put the strategic road network back into the condition it was in prior to the commencement of the authorised works. This is not a request that is specific to this project and is a policy requirement of National Highways in respect of all third party development taking place on, under or over the strategic road network. The

Applicant has not agreed to provide the necessary financial protections in the form required by National Highways and the Examining Authority and Secretary of State should note that failure to agree to the financial protections requested by National Highways would leave it open to a substantial risk for which it has no budget in place and for which it is not funded.

- 2.7 Finally, were the Examining Authority and Secretary of State minded to accept the protective provisions in the form proposed by the Applicant, it should be noted that this would expose National Highways to substantial financial risk across all proposed development consent orders in which there is an interface with the strategic road network – which is the vast majority of them. It would be setting a precedent that Applicants for development consent orders do not need to provide financial security to highway authorities for works that affect their networks, exposing them to substantial costs for which they are not funded. It also inherently increases the risk of injury and fatalities, as if National Highways is not funded to carry out emergency works occasioned by third party development, the work cannot be completed to bring the road back up to a safe standard. It is respectfully submitted that it is not for the public purse to subsidise or insulate the potential impact to the strategic road network occasioned by third party developments. This cost should fall squarely on the Applicant bringing forward the development.
- 2.8 We note that the Order includes powers to carry out sub-surface cabling works beneath the North Norfolk Railway and temporary rights acquisition is proposed underneath operational railway land. The Applicant does not appear to be questioning the proportionality of Network Rail Infrastructure Limited’s protective provisions, which appear to be considerably more onerous than National Highways’ and which already appear on the face of the Order in the form in which they were provided to the Applicant for approval (i.e. not a heavily sanitised version with key provisions removed). Whilst each statutory undertaking must be considered in accordance with its own technical requirements, it simply cannot be the case that the proposed sub-surface works to the operational railway estate create more risk or are more worthy of greater statutory protection than the works proposed underneath the strategic road network.

#### Interpretation (Paragraph 2)

- 2.9 The Applicant has deleted the reference to “bond sum” and “cash surety” and also a substantial part of the definition of “detailed design information”. For the reasons given above, the definition of bond sum and cash surety and the corresponding provisions in the National Highways Protective Provisions should be reinstated in full. The definition of “detailed design information” should also be reinstated in full, as the definition specifically says “*such of the following drawings, specifications and calculations as are relevant to the specified works*”. The Applicant has deleted some of the technical specifications, as it considers those particular aspects to not be relevant to the specified works, however given the openness of the proposed associated development, it cannot be said at this stage that those aspects of the definition are irrelevant. They may become relevant depending on what associated works are carried out. Further, and even if they are not relevant, they place no administrative burden on the Applicant as a result of the italicised and underlined part of the definition above.
- 2.10 The Applicant has deleted the definition of “DBFO contract” and “highway operations and maintenance contractor”. Parts of the strategic road network are routinely managed by design build finance and operate contractors, who have primary responsibility for managing the asset. The purpose of these provisions is to ensure that, where the road subject to the specified works is managed under a DBFO contract, the highway operations and maintenance contractor can take the benefit of the protective provisions. Otherwise, any claim that the highway operations and maintenance contractor had against the Applicant by virtue of its stewardship of the asset would need to be through a claim made by National Highways and sub-recovered by the DBFO contractor. This is unnecessary, inefficient and creates a contractual risk to National Highways, as the DBFO contract does not cater for risks occasioned by third party development. In this

case, the A47 and A11 are not managed under DBFO contract, however this may change and to avoid a situation where National Highways has to attempt to agree a commercial arrangement with the Applicant in the future, the Order should simply include reference to the DBFO contractor now. Again, until such time as the A47/A11 are managed by a DBFO contractor, this places no administrative burden on the Applicant.

#### General (Paragraph 4)

- 2.11 The Applicant has deleted this paragraph, which specifically requires that no works are carried out within 4 metres of the lowest point of any services and/or drainage apparatus under the highway. This is to create a buffer between the “highway apparatus” and the proposed cable works. The Applicant has provided no reason for this deletion. We request that it is reinstated to ensure that the highway infrastructure is suitably protected.

#### Works outside the Order Limits (Paragraph 6)

- 2.12 The Applicant has deleted “strategic road network” and inserted “A47 Order Land”. We request that “strategic road network” is reinstated. The purpose of the provision is to reflect the existing law, in that where works are proposed to highway land which falls outside of the Order Limits, the Applicant will be required to seek the agreement of National Highways pursuant to a section 278 agreement, for example. It does not make sense that this provision should only apply to land within the order limits of the A47 Tuddenham to Easton development consent order.

#### Prior approvals and security (Paragraph 7)

- 2.13 The Applicant has deleted sub-paragraphs (h) and (i) from paragraph 7(1), the effect of which removes an obligation on the Applicant to agree the maintenance regime in respect of the temporary access road. It also has the effect of removing the need for the Applicant to provide collateral warranties from the designer and contractor of the cabling, the temporary access and any other associated development carried out on, over or under the strategic road network. We ask that this provision be reinstated to ensure that maintenance responsibilities are agreed with National Highways and that suitable contractual remedies are made available to National Highways in the event of a defect caused by the designer and/or contractor.
- 2.14 The Applicant has deleted sub-paragraphs (a) and (c) from paragraph 7(4) and included new drafting at paragraph 7(5). The primary effect of these changes is to impose deemed consent provisions on National Highways, such that where a submission for approval has been made by the Applicant and a response is not received from National Highways within a certain period of time, the Applicant is permitted to treat the submission as approved. This could, for example, trigger the commencement of works or relate to a road space booking process which would entitle the Applicant to take access. Given the associated safety concerns, National Highways does not consider this to be a reasonable imposition. National Highways requests that any interference with the strategic road network should be subject to its explicit consent with the ability to attach any necessary conditions. It is appreciated that the Applicant will not want undue delay in the delivery of a nationally significant infrastructure project but it is National Highways’ position that this should not override safety concerns, particularly when those safety concerns relate to putting thousands of road users at risk. National Highways has approval processes in place for instances where third parties are looking to work on, or in the vicinity of, the strategic road network and do not consider it reasonable or necessary that this application should be permitted to bypass those approvals which have been put in place for very necessary safety reasons. National Highways has statutory responsibilities to support economic growth and to act reasonably as a public body. It should not be necessary to impose deemed consent provisions to ensure its engagement and a public body should not be forced to concede on a safety related point that would expose it to significant financial liability and reputational risk. It is imperative that due process is following in respect of signing off submissions for approval and given many of these responsibilities are outsourced to consultants who operate under



service level agreements, it is not within the control of National Highways to expedite approvals. Further, the teams responsible for approving these submissions are currently dealing with a large number of live DCO applications and as such it is impossible to give each one the priority that they will all expect to receive. National Highways respectfully requests that the National Highways Protective Provision drafting is reinstated in full.

- 2.15 Paragraph 7(7) had been included to the National Highways Protective Provisions to require the Applicant to agree and complete a co-operation agreement before the specified works can commence. This has been deleted by the Applicant on the basis that it should not be a statutory requirement to agree a co-operation agreement prior to the specified works commencing. The reason for a co-operation agreement is that the Applicant's project is to be delivered alongside a number of National Highways DCO schemes taking place on the A47 (e.g. A47-A11 Thickthorn Junction, A47 Blofield to North Burlingham, A47 Tuddenham to Easton, A47 Wansford to Sutton). The provision is reasonable as it would defeat the purpose of the co-operation agreement if works to the strategic road network were allowed to commence, which may impact the delivery of the A47 schemes, prior to the co-operation agreement being entered into. The inclusion on the DCO itself is a guarantee to National Highways that the delivery of the A47 schemes (which already have consent) will not be prejudiced.

#### Paragraph 8 (Construction of the specified works)

- 2.16 The Applicant has deleted sub-paragraphs 8(10) and 8(11) stating that these provisions are not applicable to the proposed development. National Highways disagrees with this position as we have not had any guarantees from the Applicant that there are no utilities or other apparatus in the relevant parts of the A47 and A11. In any event, this provision places no contractual burden on the Applicant if they are correct – it simply clarifies for all parties that National Highways will not be put to any cost in respect of diversions that are required, which would be reasonable in the circumstances. Further, paragraph 8(11) makes it clear that the Applicant must carry out all maintenance in accordance with the scope of maintenance agreed. For clarification, this is not a requirement on the Applicant to maintain the carriageway or highway apparatus found on the A47 and A11. It is an obligation to maintain those parts of the network which they are interfering with until such time as the works have been signed off by National Highways. It would not be reasonable to expect National Highways to maintain the temporary access road on the Applicant's behalf and in any event, no budget is available to carry out this responsibility.

#### Paragraph 9 (Payments)

- 2.17 The Applicant has heavily amended paragraph 9 of the National Highways Protective Provisions without providing much justification for the amendments and as such it is difficult to respond substantively other than to provide clarity on why the provision is drafted as it is.
- 2.18 The costs which National Highways expect the Applicant to cover under this paragraph are as follows:
- (a) *The checking and approval of the technical information required under paragraph 7(1);*
  - (b) *The supervision of the specified works as they relate to the strategic road network;*
  - (c) *The checking and approval of the information required to determine approvals under the Order;*
  - (d) *Any costs incurred by National Highways 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 specified works;*

*(f) Any value added tax incurred and for which it cannot obtain reinstatement from HM Revenue and Customs.*

- 2.19 National Highways are prepared to accept the other amendments to the paragraph, however we respectfully request that the provisions italicised above are reinstated in full. None of these items are unusual in the context of cost recovery for highway related works and it would be expected that a developer would pay for these costs in relation to works authorised under a section 278 agreement. In particular, it may be necessary for technical consultants to be instructed to review the information required to determine approvals under the Order. The approval of this information should not be at National Highways' cost where, but for the Applicant's scheme, that cost would not have been incurred.

#### Paragraph 13 (Defects Period)

- 2.20 The Applicant has not deleted Paragraph 13 but has added a comment "This is a s278 point" which would suggest that it is not agreed. On this basis, we request that the paragraph is retained and we clarify more particularly why it is necessary. The Applicant in carrying out works on, over or under the strategic road network may cause damage to it which must be rectified by the Applicant in accordance with the defects period. National Highways have emergency powers under the National Highways Protective Provisions to go onto the land to rectify anything that is likely to cause a safety issue and to recovery the cost from the Applicant. Again, it is reasonable to expect that the Applicant will rectify any defects in works it has completed within a reasonable time period.

#### Paragraph 14 (Final Certificate)

- 2.21 Again, the Applicant has not deleted paragraph 14 but has added a comment "This is a s278 point" which would suggest that it is not agreed. On this basis, we request that the paragraph is retained and we clarify more particularly why it is necessary. Typically, this structure is used in section 278/38 agreements for works to the highway. Here, the works are not to the highway itself but in land owned by National Highways which may affect the proper operation of the highway. To ensure the safe operation of the highway, it is necessary that the Applicant applies to National Highways for sign off of the works – particularly to ensure that the surface of the carriageway has not "sunk" to unacceptable tolerances as a result of the HDD works. Any degradation of the carriageway to this affect will need to be rectified by the Applicant. Once the final certificate is issued, National Highways accepts responsibility for the surface of the road save for any liability that may be recoverable under common law.

#### Paragraph 15 (Security)

- 2.22 The Applicant has deleted paragraph 15 of the National Highways Protective Provisions on the basis that it does not accept that these provisions ought to have statutory effect. The Applicant has suggested it would be willing to enter into a side agreement with National Highways, however no such side agreement has been negotiated by the parties. To protect National Highways' position and for the reasons given, we respectfully request that the financial provisions in the form of the bond and the cash deposit are reinstated. These provisions are of vital importance to protecting the integrity of the strategic road network and the safety of road users.

#### Paragraph 17 (Insurance)

- 2.23 The Applicant has deleted paragraph 17 on the basis that "it is a financial protection point". No further explanation has been given as to why this provision is unacceptable. From National Highways' perspective, the Applicant is proposing a major interface with the strategic road network and consequently, it should have in place a policy of insurance to cover public liability that arises from the execution of the specified works. This provision is typical on protective

provisions generally and there is no reason why this should not apply to interfaces with the strategic road network. We request that this provision is reinstated.

### **3 Conclusion**

- 3.1 National Highways requests that the National Highways Protective Provisions are included in the Order.
- 3.2 Should the Examining Authority have any further questions regarding these submissions, National Highways will be happy to answer them.

## **Appendix 1**

### **National Highways Protective Provisions**

**PART 14**  
**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 Town and Country Planning (General Permitted Development) (England) Order 2015 which shall continue to apply in respect of the exercise of all National Highways' statutory functions.

**Interpretation**

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

(2) In this Part of this Schedule—

“A47 Order” means the A47 North Tuddenham to Easton Development Consent Order 2022;

“A47 Tuddenham Order Land” means the Order land as defined in the A47 Order;

“as built information” means one electronic copy of the following information—

- (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;
- (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 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.

“the bond sum” means the sum equal to 200% of the cost of the carrying out the specified works (to include all costs plus any commuted sum) or such other sum agreed between the undertaker and National Highways;

“the cash surety” means the sum agreed between the undertaker and National Highways;

“commuted sum” means such sum calculated as provided for in paragraph 9 of this Part of this Schedule to be used to fund the future cost of maintaining the specified works;

“condition survey” means a survey of the condition of National Highways structures and assets within the Order limits that may be affected by the specified works;

“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 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 9;

“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;

“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 7 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;

“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;

“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;

“specified works” means so much of any work, including highway works and signalisation, authorised by this Order including any maintenance of that work, as is undertaken:

- (a) on, in, under or over the strategic road network for which National Highways is the highway authority; and
- (b) on, in, under or over the A47 Tuddenham Order Land;

“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 drainage infrastructure, street furniture, verges and vegetation and all other 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; and

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

(3) 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.

## **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 14 of Schedule 14 but for the purposes of any approvals required under this Part of Schedule 14 the undertaker shall liaise directly with National Highways.

**4.**Notwithstanding any limits of deviation permitted pursuant to the Order, no works in carrying out, maintaining or diverting the authorised development may be carried out under the strategic road network at a distance within 4 metres of the lowest point of the ground.

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) 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;
  - (iii) the identity and qualification 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;
  - (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; and
- (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;
- (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;
- (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;
- (g) the undertaker has agreed the estimate of the commuted sum with National Highways;
- (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;
- (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; and
- (j) a condition survey and regime of monitoring of any National Highways assets or structures that National Highways considers will be affected by the specified works, has been agreed in writing by National Highways.



(2) The undertaker must not exercise—

- (a) article 4 (*maintenance of authorised development*);
- (b) article 8 (*street works*);
- (c) article 10 (*temporary stopping up of streets*);
- (d) article 11 (*temporary stopping up of public rights of way*);
- (e) article 14 (*discharge of water*);
- (f) article 15 (*protective works to buildings*);
- (g) article 16 (*authority to survey and investigate the land*);
- (h) article 18 (*compulsory acquisition of land*);
- (i) article 20 (*compulsory acquisition of rights*);
- (j) article 25 (*rights under or over streets*);
- (k) article 26 (*temporary use of land for carrying out the authorised project*);
- (l) article 27 (*temporary use of land for maintaining the authorised project*); or
- (m) article 34 (*felling or lopping trees or removal of hedgerows*) of this Order,

over any part of the strategic road network or in respect of the A47 Tuddenham Order Land 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 as required 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-paragraph (1) or (2).

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

- (a) must not be unreasonably withheld;
- (b) must be given in writing;
- (c) shall be deemed to have been refused if neither given nor refused within 2 months of the receipt of the information for approval or, where further particulars are requested by National Highways within 2 months of receipt of the information to which the request for further particulars relates; and
- (d) may be subject to any conditions as National Highways considers necessary.

(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 7(1) of this Part.

(7) The undertaker and National Highways must have agreed and completed a co-operation agreement before the specified works can commence.

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

**8.—**(1) The undertaker must give National Highways 28 days' 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 prior to and during the carrying out 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) 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.

(4) 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 for the purposes of inspection and supervision of the specified works.

(5) 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.

(6) 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.

(7) If within 28 days on which a notice under sub-paragraph (5) or sub-paragraph (6) 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 30 days of demand.

(8) 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.

(9) 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.

(10) During the construction of the specified works 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.

(11) 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 whole of any costs and expenses which National Highways reasonably 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) the checking and approval of the information required to determine approvals under this Order;
- (d) all costs in relation to the transfer of any land required for the specified works; and
- (e) all legal and administrative costs and disbursements incurred by National Highways in connection with the specified works and sub-paragraphs (a)-(d); and
- (f) any value added tax which is payable by National Highways only 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) National Highways must within 14 days of receipt of the information pursuant to sub-paragraph 5(1) provide the undertaker with a schedule showing its estimate of the NH costs.

(3) The undertaker must within 30 days of receipt of the notice pursuant to sub-paragraph (2) pay to National Highways the estimate of the NH costs.

(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 notified pursuant to sub-paragraph (2) it may give notice to the undertaker of the amount that it believes the NH costs will exceed the estimate (the excess).

(5) The undertaker must within 30 days of receipt of the notification pursuant to sub-paragraph (4) pay to National Highways an amount equal to the excess.

(6) National Highways must give the undertaker a final account of the NH costs referred to in sub-paragraph (1) above as a fully itemised invoice within 30 days of the issue of the provisional certificate issued pursuant to paragraph 10(4).

(7) Within 30 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; and
- (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.

(8) The undertaker must pay to National Highways within 30 days of receipt 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 specified works.

## **Provisional Certificate**

**10.**—(1) Following any closure or partial closure of any of the strategic road network for the purposes of carrying out the specified works, National Highways 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 prior to reopening the strategic road network.

(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 10(3)(b) have been completed to the satisfaction of National Highways;

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

(d) the undertaker has paid the commuted sum to National Highways,

National Highways must issue the provisional certificate.

(5) On the issue of the provisional certificate the bond sum shall be reduced to 20% of the total bond sum save insofar as any claim or claims have been made against the bond before that date in which case National Highways will retain a sufficient sum to ensure it does not have to meet any costs for or arising from the specified works.

(6) The undertaker must submit a stage 4 road safety audits 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.** 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.

## **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 12(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.

(3) If the undertaker fails to carry out the remedial work in accordance with the approved scheme, National Highways may carry out the steps required of the undertaker and may recover any expenditure 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 any expenditure 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. 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 expiry of the defects period 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 the provisional certificate.

(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 after which the bond shall be released in full.

(5) The undertaker must pay to National Highways within 28 days of demand the costs reasonably 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 these provisions.

### **Security**

**15.**—(1) The specified works must not commence until—

- (a) the undertaker procures that the specified works are secured by a bond from a bondsman first approved by National Highways in the agreed form between the undertaker and

National Highways 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 provided that the maximum liability of the bond must not exceed the bond sum; and

- (b) the undertaker has provided the cash surety which may be utilised by National Highways in the event of the undertaker failing to meet its obligations to make payments under paragraph 9 or to carry out works the need for which arises from a breach of one or more of the obligations of the undertaker under the provisions of this Part of this Schedule.

### **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 prior to the issue of the provisional certificate.

### **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 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 the construction, maintenance or use of the specified works or exercise of or failure to exercise any power under this Order within 30 days of demand save for any loss arising out of or in consequence of any negligent act or default of National Highways.

### **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) 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' in advance of the planned commencement date of the maintenance works.

(4) The provisions of paragraph 11 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) The undertaker must not under the powers of this Order:

- (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 of the strategic road network, or extinguish any existing rights of National Highways in respect of any third party property, except with the consent of National Highways by written request to [legalservicesteam@nationalhighways.co.uk](mailto:legalservicesteam@nationalhighways.co.uk).

### **Expert Determination**

**21.**—(1) Article 43 (*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 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 43 (*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.

## **Appendix 2**

### **National Highways Protective Provisions (Applicant's Amendments)**



PART [ ]  
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 Town and Country Planning (General Permitted Development) (England) Order 2015 which shall continue to apply in respect of the exercise of all National Highways' statutory functions.

**Interpretation**

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

(2) In this Part of this Schedule—

“A47 Order” means the A47 North Tuddenham to Easton Development Consent Order 2022

“A47 Tuddenham Order land” means the Order land as defined in ~~the A47 Order~~ A47 North Tuddenham to Easton Development Consent Order 2022;

“as built information” means one electronic copy of the following information—

- (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;
- (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 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

all of which relate to the specified works ~~and any works carried out by the undertaker on land owned, controlled or temporarily acquired by National Highways within the Order Limits.~~

~~“the bond sum” means the sum equal to 200% of the cost of the carrying out the specified works (to include all costs plus any commuted sum) or such other sum agreed between the undertaker and National Highways;~~

~~“the cash surety” means the sum agreed between the undertaker and 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;

“condition survey” means a survey of the condition of National Highways structures and assets within the Order limits that may be affected by the specified works;

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

“co-operation agreement” means an agreement between the undertaker and National Highways concerning the co-ordination of work where the undertaker’s permitted works under this DCO may affect or conflict with and scheme of works National Highways may have;

“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 ~~development~~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)~~(r) topographical survey;
- ~~(t)~~(s) maintenance and repair strategy in accordance with DMRB GD304 Designing health and safety into maintenance or any replacement or modification of it;
- ~~(u)~~(t) health and safety information including any asbestos survey required by GG105 or any successor document; and
- ~~(v)~~(u) other such information that may be reasonably required by National Highways to be used to inform the detailed design of the specified works;

~~“DBFO contract” means the 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 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;

“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 7 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;

“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;

~~“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;~~

“specified works” means so much of any work, including highway works ~~and signalisation~~, authorised by this Order including any maintenance of that work, as is undertaken—

(a) on, in, under or over the strategic road network for which National Highways is the highway authority; or

~~(a)~~(b) on, in, under or over the A47 Tuddenham Order land

“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 drainage infrastructure, street furniture, verges and vegetation and all other 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; 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 [ ] but for the purposes of any approvals required under this Part of Schedule [ ] the undertaker shall liaise directly with National Highways.~~

~~4. Notwithstanding the limits of deviation permitted pursuant to article [ ] of this Order, no works in carrying out, maintaining or diverting the authorised development may be carried out under the strategic road network at a distance within 4 metres of the lowest point of any services and/or drainage under the highway.~~

~~5.3.~~ 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

~~6.4.~~—If the undertaker proposes to carry out works to the strategic road network [A47 Order Land](#) 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

~~7.5.~~—(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 ~~and of any works to be undertaken on any land owned, controlled or temporarily acquired by National Highways~~ 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;
  - (iii) the identity and ~~suitability~~ [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;
  - (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; and
- (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;
- (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)(iv) above;
- (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;
- (g) the undertaker has agreed the estimate of the commuted sum with National Highways;
- ~~(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;~~
- ~~(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; and

~~(j)(h)~~ a condition survey and regime of monitoring of any National Highways assets or structures that National Highways considers will be affected by the specified works, has been agreed in writing by National Highways.

(2) The undertaker must not exercise—

- ~~(a)~~ article ~~[—]4~~ (*maintenance of authorised development*);
  - ~~(b)~~ article ~~[—]10~~ (*temporary stopping up of streets*~~street works~~);
  - ~~(c)~~ article ~~[—]~~ (*permanent stopping up of streets, rights of way and rights of access*);
  - ~~(d)~~~~(c)~~ article ~~[—]11~~ (*temporary stopping up of public rights of way*~~temporary stopping up of streets, rights of way and rights of access~~);
  - ~~(e)~~ article ~~[—]~~ (*traffic regulation*);
  - ~~(f)~~~~(d)~~ article ~~[—]14~~ (*discharge of water*);
  - ~~(g)~~~~(e)~~ article ~~[—]15~~ (*protective works to buildings*);
  - ~~(h)~~~~(f)~~ article ~~[—]16~~ (*authority to survey and investigate the land*);
  - ~~(i)~~~~(g)~~ article ~~[—]18~~ (*compulsory acquisition of land*);
  - ~~(j)~~~~(h)~~ article ~~[—]20~~ (*compulsory acquisition of rights*);
  - ~~(k)~~~~(i)~~ article ~~[—]26~~ (*temporary use of land for carrying out the authorised development*~~project~~);
  - ~~(l)~~~~(j)~~ article ~~[—]27~~ (*temporary use of land for maintaining the authorised development*~~project~~);
- or
- ~~(m)~~~~(k)~~ article ~~[—]34~~ (*felling or lopping trees or removal of hedgerows*) of this Order,

over any part of the strategic road network or any land owned, controlled or temporarily acquired by National Highways ~~under the A47 Tuddenham Order Land~~ without the consent of National Highways, such consent not to be unreasonably withheld or delayed, and National Highways may in connection with any such exercise require the undertaker to provide details of any proposed road space bookings and/or submit a scheme of traffic management as required 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-paragraph (1) or (2).

(4) Any approval of National Highways required under this paragraph—

- ~~(a)~~ ~~must not be unreasonably withheld~~;
- ~~(b)~~~~(a)~~ must be given in writing; and
- ~~(c)~~ ~~shall be deemed to have been refused if neither given nor refused within 2 months of the receipt of the information for approval or, where further particulars are requested by National Highways within 2 months of receipt of the information to which the request for further particulars relates; and~~
- ~~(b)~~ may be subject to any conditions as National Highways considers reasonably necessary.

(5) The approval of National Highways under sub-paragraph (4) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to National Highways no disapproval has been intimated nor the grounds of such disapproval the undertaker may serve upon National Highways written notice requiring National Highways to intimate approval or disapproval within a further period of 28 days beginning with the date upon which National Highways receives written notice from the undertaker. If by the expiry

of the further 28 days National Highways has not intimated approval or disapproval, National Highways shall be deemed to have approved the plans as submitted.

(6) Any change to the identity of the contractor and/or designer of the specified works will be notified to National Highways ~~immediately~~ within 7 days 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~~ qualifications.

(7) Any change to the detailed design of the specified works must be approved by National Highways in accordance with paragraph 7(~~4~~) of this Part.

~~(8) The undertaker and National Highways must have agreed and completed a co-operation agreement before the specified works can commence.~~

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

**8.6.**—(1) The undertaker must give National Highways ~~30~~ 28 days' 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 prior to and during the carrying out 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 reasonable 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) where relevant, 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 any departures or 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 reasonable satisfaction of National Highways.

(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 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 the A47 Tuddenham Order Land ~~any other land owned, controlled or temporarily acquired by 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 reasonable satisfaction of National Highways.

(7) If during the carrying out of the ~~authorised development~~ specified works the undertaker or its appointed contractors or agents causes damage to the strategic road network or to any land owned,

controlled or temporarily acquired by National Highways pursuant to the A47 Order Land, 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 30 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 specified works 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, including any highways which are not a strategic road but are owned, controlled or temporarily acquired by National Highways, or the A47 Tuddenham Order Land over existing utilities must be constructed to the satisfaction of National Highways.~~

~~(11) During the construction of the specified works 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

~~9.7.~~—(1) The undertaker must pay to National Highways a sum equal to the whole of any costs and expenses which National Highways reasonably 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) the checking and approval of the information required to determine approvals under this Order;~~
- ~~(d) all costs in relation to the transfer of any land required for the specified works; and~~
- ~~(e)~~(c) all legal and administrative costs and disbursements incurred by National Highways in connection with the Order specified works and sub-paragraphs (a)-(d); and
- ~~(f)~~(d) any value added tax which is payable by National Highways only 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) National Highways must within 14 days of receipt of the information pursuant to sub-paragraph 5(1) provide the undertaker with a schedule showing its estimate of the NH costs.

(3) The undertaker must within 30 days of receipt of the notice pursuant to sub-paragraph (2) pay to National Highways the estimate of the NH costs.

(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 notified pursuant to sub-paragraph (2) it may give notice to the undertaker of the amount that it believes the NH costs will exceed the estimate (the “excess”).

(5) The undertaker must within 30 days of receipt of the notification pursuant to sub-paragraph (4) pay to National Highways an amount equal to the excess.

(6) National Highways must give the undertaker a final account of the NH costs referred to in sub-paragraph (1) above as a fully itemised invoice within 30 days of [the issue of the provisional certificate issued pursuant to paragraph 10(4)].

(7) Within 30 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; and
- (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.

(8) The undertaker must pay to National Highways within 30 days of receipt 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 specified works.

### **Provisional Certificate**

~~10.8.~~—(1) Following any closure or partial closure of any of the strategic road network for the purposes of carrying out the specified works, National Highways 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 prior to reopening the strategic road network.

(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 10(3)(b) have been completed to the satisfaction of National Highways;

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

(d) the undertaker has paid the commuted sum to National Highways,

National Highways must issue the provisional certificate.

(5) On the issue of the provisional certificate the bond sum shall be reduced to 20% of the total bond sum save insofar as any claim or claims have been made against the bond before that date in which case National Highways will retain a sufficient sum to ensure it does not have to meet any costs for or arising from the specified works.

(6) The undertaker must submit a stage 4 road safety audits 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

~~11.9.~~ **11.9.** 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.

### Final condition survey

~~12.10.~~ **12.10.**—(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 12(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, which must not be unreasonably withheld or delayed, and the undertaker must carry out the remedial works at its own cost and in accordance with the scheme submitted.

(3) If the undertaker fails to carry out the remedial work in accordance with the approved scheme, National Highways may carry out the steps required of the undertaker and may recover any expenditure 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 any expenditure 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

~~13.11.~~ **13.11.**—(1) The undertaker must at its own expense remedy any defects in the strategic road network and on any land owned, controlled or temporarily acquired by National Highways 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 expiry of the defects period 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 5 years by and at the expense of the undertaker.

### Final Certificate

~~14.12.~~—(1) The undertaker must apply to National Highways for the final certificate no sooner than 12 months from the date of the provisional certificate.

(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 any land owned, controlled or temporarily acquired by National Highways; 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 after which the bond shall be released in full.

(5) The undertaker must pay to National Highways within 28 days of demand the costs reasonably 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 these provisions.

## Security

~~15.~~—(1) The specified works must not commence until—

- ~~(a) the undertaker procures that the specified works are secured by a bond from a bondsman first approved by National Highways in the agreed form between the undertaker and National Highways 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 provided that the maximum liability of the bond must not exceed the bond sum; and~~
- ~~(b) the undertaker has provided the cash surety which may be utilised by National Highways in the event of the undertaker failing to meet its obligations to make payments under paragraph 9 or to carry out works the need for which arises from a breach of one or more of the obligations of the undertaker under the provisions of this Part of this Schedule.~~

## Commuted sums

~~16.13.~~—(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 prior to the issue of the provisional certificate.

## 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 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**

~~18.14.~~—(1) The undertaker fully 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 within 30 days of demand save for any loss arising out of or in consequence of any negligent act or default of National Highways or its officers servants agents or contractors or any person or body for which it is responsible.

### **Maintenance of the specified works**

~~19.15.~~—(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) The undertaker must comply with any reasonable requirements that National Highways may notify to the undertaker, such requirements to be notified to the undertaker not less than 7 days' in advance of the planned commencement date of the maintenance works.

(4) The provisions of paragraph 11 shall apply to the opening of any part of the strategic road network following occupation of any road space under this paragraph.

### **Land**

~~20.16.~~— The undertaker must not under the powers of this Order:

- (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 of the strategic road network, or extinguish any existing rights of National Highways in respect of any third party property, except with the consent of National Highways by written request to [legalserviceteam@nationalhighways.co.uk](mailto:legalserviceteam@nationalhighways.co.uk) such consent not to be unreasonably withheld or delayed.

### ~~(4) Where~~ **Expert Determination**

~~21.17.~~—(1) Subject to the provisions of this paragraph, ~~Article [—]43~~ (*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 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 ~~43~~<sup>43</sup> (*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.