

Written Representation submitted by National Highways Limited
Application by Drax Power Limited for an Order granting Development
Consent for the Drax Bioenergy with Carbon Capture and Storage Project
Planning Inspectorate Reference Number: EN010120

1 Written Representation

- 1.1 This written representation is National Highways Limited's formal written response to the application by Drax Power Limited (**Applicant**) for an order granting development consent for the Drax Bioenergy with Carbon Capture and Storage Project (**DCO**). The Applicant seeks development consent for the authorised development described in Schedule 1 of the DCO (**Authorised Development**). National Highways submitted a section 56 representation on 23 August 2022.
- 1.2 The Authorised Development will comprise minor works to the M62 to remove street furniture and vegetation to allow the transport of abnormal indivisible loads and subsequent restoration of the street furniture. The Applicant is not seeking powers to temporarily possess or acquire land or rights in National Highways operational land for the purposes of the Authorised Development.
- 1.3 The strategic road network affected by the Authorised Development is the M62, which is a key trans-pennine transport link connecting Liverpool and Hull. National Highways is concerned with the management of the works on the strategic highway network. The responsibility for delivery of the works on the strategic highway network has not yet been agreed and is being actively discussed by the Applicant and National Highways. In the absence of agreement and to mitigate the potential safety concerns associated with the Applicant carrying out works to the highway, National Highways requires that protective provisions are secured to manage any potential interface between the Authorised Development and the highway. National Highways does not object to the principle of the development subject to the inclusion of protective provisions and resolution with the Applicant on the delivery of the works.
- 1.4 It is critical to the operation of the strategic road network, the safety of the travelling public and to ensure the proper efficient use of public resources that the Authorised Development proceeds in consultation and agreement with National Highways and with the appropriate protections in place, as set out in this submission.
- 1.5 The Applicant's draft DCO submitted as part of the DCO application includes rights to construct the Authorised Development and to interfere with rights in the highway and to temporarily stop up the highway.
- 1.6 The draft DCO does not include any protective provisions for the benefit of National Highways.
- 1.7 Discussion with the Applicant on the form of protective provisions is ongoing and we anticipate being in a position to agree the draft prior to the close of the Examination. The latest copy of the protective provisions is included at Appendix 1. National Highways has specific requirements where works are proposed to the highway (including street furniture), these include securing:

- 1.7.1 Bonds, cash deposits and commuted sums to ensure that National Highways is not exposed financially as a consequence of the Applicant's works;
 - 1.7.2 Road space booking procedures to ensure that network occupancy requirements are managed effectively for the safety of the public and contractors;
 - 1.7.3 Detailed design information to appropriately consider and approve the specification of works in accordance with technical standards;
 - 1.7.3 Appropriate maintenance obligations and defects liability periods;
 - 1.7.4 Collateral warranties from contractors and designers in respect of works undertaken on behalf of the Applicant;
 - 1.7.5 Restrictions on the commencement of works and the use of powers until detailed design specifications are agreed and safety implications have been satisfactorily addressed;
 - 1.7.6 Handover of maintenance responsibilities;
 - 1.7.7 Payment of all reasonable fees incurred by National Highways in respect of the Authorised Development;
 - 1.7.8 Indemnities for any loss incurred by National Highways in respect of the Authorised Development;
 - 1.7.9 Dispute resolution provisions.
- 1.8 While negotiations with the Applicant on protective provisions are in progress and National Highways is hopeful that agreement can be reached during the course of the Examination, in the absence of an agreement that safeguards its interests, National Highways requests that the Examining Authority (ExA) recommend that the attached protective provisions are included as Part 5 of Schedule 12 to the draft DCO.
- 1.9 Without these protective provisions being secured in the draft DCO, National Highways considers that the Authorised Development will have a serious detrimental impact on the operation of the strategic road network and could prevent National Highways from discharging its statutory licence obligations. Until such provisions are secured, National Highways is unable to withdraw its objection to the DCO.
- 1.10 Should it assist the ExA, National Highways will respond to any written questions that the panel wishes to ask and is willing to attend an appropriate hearing to detail the impacts of the Authorised Development to National Highways.

National Highways Limited

22 February 2023

Appendix 1

National Highways Protective Provisions

PART 5

FOR THE PROTECTION OF NATIONAL HIGHWAYS LIMITED

Application

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) Nothing in this Order affects or prejudices 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 of this Order are inconsistent with subparagraph (2) below the latter prevail.

(2) In this Schedule—

“administration fee” means the fee payable pursuant to the provisions of this Part of this Schedule that represent the general internal costs of National Highways in administering the implementation of the specified work and the requirements of this Part of this Schedule and charged as a flat fee based on the final cost of the specified works;

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

- (a) as constructed drawings in both PDF and Auto CAD DWG formats for anything designed by the undertaker; in compliance with GG184 or any successor document;
- (b) list of suppliers and materials used and test results and (where in the opinion of National Highways a specified work may have a materially adverse effect on any part of the highways drainage system maintained by National Highways) CCTV surveys;
- (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) the health and safety file; and
- (k) other such information as is required by National Highways to be used to update all relevant databases and to ensure compliance with National Highways' *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, assets (including, but not limited to, drainage and cabling) and pavements within the Order limits that in the reasonable opinion of National Highways may be affected by a specified work, and further to include, where the undertaker, following due diligence and assessment, identifies a specified part of the highways drainage system maintained by National Highways that National Highways reasonably considers may be materially and adversely affected by a specified work, a CCTV survey of specified drains;

“contractor” means any contractor or sub-contractor appointed by the undertaker to carry out a specified work;

“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 completion of the specified work;

“detailed design information” means drawings specifications and calculations as appropriate for the following—

- (a) site clearance details;
- (b) boundary, environmental and mitigation fencing;
- (c) road restraint systems and support 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) pavement, pavement foundations, kerbs, footways and paved areas;
- (f) traffic signs and road markings;
- (g) traffic signal equipment and associated signal phasing and timing detail;
- (h) road lighting (including columns and brackets);
- (i) electrical work for road lighting, traffic signs and signals;
- (j) highway structures and any required structural approval in principle;
- (k) motorway communications as required by DMRB;
- (l) landscaping;
- (m) walking, cycling and horse riding assessment and review report;
- (n) stage 1 and stage 2 road safety audits and exceptions agreed;
- (o) regime of California Bearing Ratio testing;
- (p) earthworks including supporting geotechnical assessments required by CD622 (Managing geotechnical risk) of the DMRB or any successor document and any required strengthened earthworks appraisal form certification;
- (q) proposed departures from DMRB standards;
- (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 modification of it
- (u) health and safety information including any asbestos survey required by GG105 (asbestos management) or any successor document; and
- (v) other such information that may be reasonably required by National Highways to inform the detailed design of a specified work;

“DMRB” means the Design Manual for Roads and Bridges or any replacement, revision or modification of it;

“highways structure” means structures or installations within the scope of the DMRB and that are situated under, over or adjacent to the strategic road network;

“initial deposit” means the sum calculated by National Highways (acting reasonably) payable to National Highways to cover all initial stages of work until such time as the cost of the specified work and the NH costs payable under paragraph 6 of this Part can be estimated;

“nominated persons” means the undertaker’s representatives or the contractor’s representatives on site during the carrying out of a specified work as notified to National Highways from time to time;

“programme of works” means a document setting out the sequence and timetabling of a specified work;

“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 work” means so much of any work authorised by this Order, including any maintenance of that work, as is in, on or under the strategic road network for which National Highways is the highway authority;

“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; 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.—(1) The undertaker acknowledges that parts of the works authorised by this Order affect or may affect parts of the strategic road network in respect of which National Highways has been appointed as the strategic highways company by the Secretary of State for Transport.

(2) Notwithstanding the limits of deviation permitted pursuant to article 3 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 the ground.

(3) Notwithstanding the powers granted to the undertaker pursuant to this Order, if the carrying out of any specified work would require any works to be carried out in relation to the strategic road network, excluding the works authorised in relation to the M62 carriageway specified in Schedule 5 of this Order the undertaker must enter into an agreement with National Highways prior to the commencement of any such work.

Prior Approvals

4.—(1) No specified work may 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 following details relating to the specified work have been submitted to and approved by National Highways (as relevant having regard to the nature of the specified works) :-
 - (i) the detailed design information, incorporating all recommendations and any exceptions approved by National Highways under sub-paragraph (a);

- (ii) details of any proposed road space bookings with National Highways;
 - (iii) a process for stakeholder liaison, with key stakeholders to be identified and agreed between National Highways and the undertaker;
 - (iv) (if details have been supplied pursuant to paragraph 4(b)(ii) above) a scheme of traffic management; and
 - (v) the identity and suitability of the contractor and nominated persons.
- (d) the undertaker has paid to National Highways the estimate of the NH costs notified to it pursuant to paragraph 6(4) of this Part of this Schedule;
- (e) (if the carrying out of a specified work requires the booking of any road space with National Highways and a scheme of traffic management) a process for stakeholder liaison 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.
- (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 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;
- (i) any stakeholder liaison that may be required has taken place in accordance with the process for such liaison agreed between the undertaker and National Highways under sub-paragraph 4(1)(c) above
- (j) 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;
- (k) any further information that National Highways may reasonably request within 14 days of the date on which the submission of the detailed design of a specified work has been supplied to National Highways; and
- (l) the condition survey and a reasonable regime of monitoring of the structures, assets and pavements that are the subject of the condition survey has been submitted to and approved by National Highways.

(2) National Highways must provide the undertaker with a list, which is to be agreed between the parties acting reasonably, of all the structures, assets and pavements to be subject to both a condition survey and reasonable regime of monitoring pursuant to paragraphs 4(1) and 7(1) of this Part of this Schedule before the first condition survey is conducted.

(3) National Highways must prior to the commencement of a specified work inform the undertaker of the identity of the person who will act as a point of contact on behalf of National Highways to consider the information required under sub-paragraph (1) and of the identity of the person or persons who are authorised to give consent or approval on behalf of National Highways for any matter requiring approval or consent in these provisions.

(4) Any approval of National Highways required by this paragraph:

- (a) must not be unreasonably withheld or delayed;
- (b) in the case of a refusal must be accompanied by a statement of grounds for refusal;
- (c) is deemed to have been refused if it is neither given or refused within 56 days of the submission of the relevant information (if further information is requested by National Highways any such request must be submitted to the undertaker within 28 days of submission of the relevant information under this sub-paragraph (c) and the provision of such further information by the undertaker will not be deemed to constitute a new application for approval pursuant to this paragraph); and
- (d) may be given subject to any reasonable conditions as National Highways considers necessary.

(5) The undertaker must not exercise—

- (a) article 4 (maintenance of authorised development);
- (b) article 9 (street works);
- (c) article 10 (power to alter layout, etc., of streets);
- (d) article 11 (construction and maintenance of altered streets);
- (e) article 12 (temporary stopping up of public rights of way);
- (f) article 13 (access to works);
- (g) article 15 (discharge of water);
- (h) article 16 (authority to survey and investigate the land);
- (i) article 18 (power to override easements and other rights);
- (j) article 20 (compulsory acquisition of rights);
- (k) article 23 (acquisition of subsoil only);
- (l) article 25 (rights under or over streets);
- (m) article 26 (temporary use of land for constructing the authorised development);
- (n) article 27 (temporary use of land for maintaining the authorised development);
- (o) article 32 (felling or lopping of trees and removal of hedgerows); or
- (p) article 33 (protective works to buildings); of this Order,

over any part of the strategic road network 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/or submit a scheme of traffic management for National Highways' approval.

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

(7) Any change to the detailed design information must be approved by National Highways in accordance with paragraph 4(1) of this Part

Construction of the specified work

5.—(1) The undertaker must, prior to commencement of a specified work, give to National Highways 28 days' notice in writing of the date on which the specified work will start unless otherwise agreed by National Highways.

(2) If the carrying out of any part of the authorised development requires the booking of road space with National Highways, the undertaker must comply with National Highways' usual road space booking procedures prior to and during the carrying out of the specified work and no specified work for which a road space booking with National Highways is required will commence without a road space booking having first been secured from National Highways.

(3) Any specified work must be carried out to the reasonable satisfaction of National Highways (acting reasonably) in accordance with—

- (a) the relevant detailed design information and programme of works approved pursuant to paragraph 4(1) above or as subsequently varied by agreement between the undertaker and National Highways;
- (b) where relevant, the DMRB, the Specification for Highway Works (contained within the Manual of Contract Documents for Highway Works) together with all other relevant standards as required by National Highways to include, inter alia, all relevant interim advice notes and any amendment to or replacement thereof for the time being in force and the Traffic Signs Regulations and General Direction 2016 save to the extent that any departures or exceptions from those standards apply which have been approved by National Highways;
- (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 said regulations) are undertaken to the satisfaction of National Highways;
- (d) any reasonable conditions of National Highways notified by National Highways to the undertaker.

- (4) The undertaker must ensure that (where possible) without entering the highway:
- (a) the highway is kept free from mud, soil and litter as a result of the carrying out of a specified work; and
 - (b) the specified work is carried out without disturbance to the highway and so that the highway remains open for traffic at all times unless otherwise agreed with National Highways.

(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 a specified work for the purposes of inspection and supervision of a specified work or method of construction of such work.

(6) If any specified work 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, any 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 with the requirements of this Part of this Schedule or put right any damage notified to the undertaker under this Part of this Schedule.

(7) If within 28 days of the date on which a notice under sub-paragraph (6) is served on the undertaker, the undertaker has failed to take steps to comply with the notice, National Highways may carry out the steps required of the undertaker and may recover from the undertaker any expenditure reasonably incurred by National Highways in so doing, such sum to be payable within 30 days of demand. Where the steps required to be taken pursuant to any notice require the submission of any information for the prior approval of National Highways under paragraph 4 of this Part of this Schedule, the submission of that information will evidence that the undertaker has taken steps to comply with the notice served by National Highways under sub-paragraph (6).

(8) National Highways may, at its discretion, in its notice in writing to the undertaker given pursuant to sub-paragraph (6) state that National Highways intend to put right the damage notified to the undertaker, and if it intends to do so it will give the undertaker not less than 28 days' notice of its intention to do so and National Highways may recover from the undertaker any reasonable expenditure incurred by National Highways in so doing.

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

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

(11) 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 4(1)(j) 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 4(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

6.—(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—

- (a) the checking and approval of the information required under paragraph 4(1);

- (b) the supervision of a specified work;
- (c) contractual costs properly payable to a highway operations and maintenance contractor as a consequence of any specified work, including costs incurred by the highway operations and maintenance contractor in carrying out the tasks referred to in sub-paragraphs (a) and (b) of this paragraph, in which case National Highways will be responsible for the payment of any sums received from the undertaker under this paragraph to the highway operations and maintenance contractor;
- (d) the administration fee;
- (e) any administrative costs not included in the administration fee;
- (f) legal costs;
- (g) any value added tax which is payable by National Highways only in respect of such costs and expenses arising under this paragraph 6(1) and for which it cannot obtain reinstatement from HM Revenue and Customs; and
- (h) any costs which may 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 implement any specified work or that are incurred in connection with a specified work,

together comprising “the NH costs”.

(2) National Highways must provide to the undertaker notification of the amount required as the initial deposit as soon as reasonably practicable and the undertaker must pay an amount equal to the sum within 28 days of receipt of the notification.

(3) National Highways must provide the undertaker with a fully itemised schedule showing its estimate of the NH costs (less any initial deposit already paid), including its estimate of the administration fee, prior to the commencement of the specified works and the undertaker must pay to National Highways an amount equal to the estimated sum within 28 days of receipt of the notification and in any event prior to National Highways incurring any cost and prior to commencing the specified works.

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

(5) National Highways must give the undertaker a final account of the NH costs, as a fully itemised invoice within 30 days of the undertaker notifying to National Highways that a specified work has been completed.

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

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

Completion of a specified work

7.—(1) Within 28 days of the completion of a specified work, the undertaker must arrange for the structures, assets and pavements that were the subject of the condition survey carried out in respect of the specified work to be re-surveyed and must submit the re-survey to National Highways for its approval.

(2) If the re-survey carried out pursuant to sub-paragraph 7(1) indicates that any damage has been caused to any highways structure or pavement, 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 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 from the undertaker any expenditure reasonably incurred by National Highways in so doing, such sum to be payable within 30 days of demand.

(4) National Highways may, at its discretion, at the same time as giving its approval to the condition survey, give notice in writing to the undertaker stating that National Highways will remedy the damage identified by the condition survey and National Highways may recover from the undertaker any expenditure reasonably incurred by National Highways in so doing.

(5) Within 28 days of the completion of a specified work, the undertaker must submit to National Highways the as built information, both in hard copy and electronic form.

(6) The undertaker must make available to National Highways promptly upon reasonable 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.

Security

8.—(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 6 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.

Defects Period

9.—(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.

Maintenance of the specified works

10.—(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.

Final Certificate

11.—(1) The undertaker must apply to National Highways for the final certificate no sooner than 12 months from the completion of the specified works.

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

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

(3) The undertaker must carry out such works notified to it pursuant to sub-paragraph 11(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 11(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;
- (c) the commuted sum has 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.

(6) On the issue of the final certificate, responsibility for maintenance of the new street furniture passes to National Highways.

Commuted sums

12.—(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

13. 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

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 14 days of demand save for any loss arising out of or in consequence of any negligent act or default of National Highways.

Expert Determination

15.—(1) Article 41 (*arbitration*) 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 parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use reasonable endeavours to do so within 14 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(4) 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 14 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 14 days of receipt of the submission;
- (c) issue a decision within 28 days of receipt of the submissions under paragraph (b); and
- (d) give reasons for the decision.

(5) 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 41.

(6) 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.