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Yorkshire Green Energy Enablement (GREEN) Project

Volume 8

Document 8.30.2 Proposed Protective Provisions to benefit National Highways

**Final Issue A
July 2023**

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Version History

Document	Version	Status	Description / Changes
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28/07/2023	A	Final	First Issue
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1. About this document

1.1 Introduction

- 1.1.1 As Action Point 13 arising from Compulsory Acquisition Hearing 2, The Examining Authority (ExA) requested that National Grid Electricity Transmission (National Grid) (the Applicant) provide precise drafting differences between its proposed protective provision drafting and the preferred wording of relevant statutory undertakers.
- 1.1.2 The Applicant has included bespoke protective provisions for the benefit of National Highways (NH) in its **draft DCO (Document 3.1(D)) [REP5-004]**, but NH have requested that their own bespoke provisions are to be used. Following the points raised by NH during Compulsory Acquisition Hearing 2 and Issue Specific Hearing 4, the Applicant has made substantive updates to the protective provisions contained within Part 6 of Schedule 15 to the **draft DCO (Document 3.1(E))** so that they more closely align with the NH template. The specific updates made to the NH protective provisions between Deadline 5 and 6 can be seen within the **Schedule of Changes to the draft DCO (Document 8.1(D))** submitted at Deadline 6. To the extent that points of difference remain between the parties at Deadline 6, this has been set out in Table 2.1.
- 1.1.3 Table 2.1 sets out the following columns:
- Column 1 establishes the relevant paragraph number and title;
 - Column 2 shows an extract of the clean protective provisions which have been included on the face of the **draft DCO (Document 3.1(E))** at Deadline 6 and reflect National Grid's position;
 - Column 3 sets out an explanation of the justification for National Grid's approach;
 - Column 4 shows the change in drafting desired by NH in red track changes in the instances required; and
 - Column 5 sets out the NH justification for their proposed updated drafting.

1.2 National Grid overview of position

- 1.2.1 As a promoter of a nationally significant infrastructure project (NSIP), National Grid appreciates its obligation to ensure that statutory undertakers are protected through the provision of protective provisions appropriate to each statutory undertaker's undertaking. However, as a statutory undertaker in their own right, with a regulated obligation to act in the best interests of the electricity consumer, National Grid needs to ensure that the provisions entered into within Schedule 15 of the draft DCO (**Document 3.1(E)**) are fully justifiable, will not unduly inhibit delivery of this critical infrastructure and do not apply an unreasonable cost burden which will be ultimately borne by the consumer.
- 1.2.2 National Grid has, therefore, sought to take a pragmatic approach which sufficiently protects each respective statutory undertaker from serious detriment, whilst ensuring the Project is delivered in the public best interest. This is the basis upon which the more specific drafting justifications set out below are justified.

- 1.2.3 Within the protective provisions included at Part 6 of Schedule 15 to the **draft DCO (Document 3.1(E))**, National Grid proposes two tiers of protection for National Highways:
- A more streamlined approvals process without the need for a bond for scaffolding and reconductoring works (works outside of the 5.5m envelope) which are planned as part of the Project (established through paragraph 7(1)); and
 - A full set of protection which closely align with the NH template protective provisions for any works which would be made directly to or fall within 5.5m vertically of the strategic road network (established through paragraph 7(2)). This wider protection is aimed at ensuring that NH's undertaking is adequately protected in the event that unforeseen works are undertaken in line with the powers of associated development contained within Schedule 1.
- 1.2.4 The approach proposed by National Grid aims to ensure that NH is afforded appropriate protections but not at the expense of following burdensome and unnecessary processes for the standard scaffold and reconductoring works proposed as part of the Project.
- 1.2.5 National Grid have been engaged with National Highways in finding drafting solutions to meet both parties' needs and engagement will continue in this respect beyond Deadline 6.

2. Proposed Protective Provisions to benefit National Highways

Table 22.1 – Summary of proposed changes to the Protective Provisions in favour of National Highways

Paragraph number	Clean extract from Part 7 of Schedule 15 to the draft DCO (Document 3.1(E)) at Deadline 6	National Grid's Justification for drafting of provision	Statutory Undertaker proposed changes shown in tracks	Statutory Undertaker's justification for proposed change
1. Application	<p>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.</p> <p>(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 shall continue to apply in respect of the exercise of all National Highways' statutory functions.</p>	Provision is agreed.	No proposed changes.	Provision is agreed.
2. Interpretation	<p>2. —(1) Where the terms defined in article 2 (interpretation) of this Order are inconsistent with subparagraph (2) the latter prevail.</p> <p>(2) In this Part of this Schedule— “as built information” means one electronic copy of the following information—</p>	<p><u>Detailed design information:</u></p> <p>Two different levels of information for 'reconductoring detailed design information' and 'highway detailed design</p>	<p>2. —(1) Where the terms defined in article 2 (interpretation) of this Order are inconsistent with subparagraph (2) the latter prevail.</p>	National Highways agrees with the amendments made to paragraph 2 of its protective provisions subject to the following exceptions:

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	<p>(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;</p> <p>(b) list of suppliers and materials used, as well as any relevant test results and CCTV surveys (if required to comply with DMRB standards);</p> <p>(c) product data sheets and technical specifications for all materials used;</p> <p>(d) as constructed information for any utilities discovered or moved during the works;</p> <p>(e) method statements for the works carried out;</p> <p>(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;</p> <p>(g) organisation and methods manuals for all products used;</p> <p>(h) as constructed programme;</p> <p>(i) test results and records as required by the highway detailed design information and during construction phase of the project;</p> <p>(j) a stage 3 road safety audit subject to any exceptions to the road safety audit</p>	<p>information' have been established to distinguish between the different types of information required for works within the 5.5m envelope (highway) and those above 5.5m (reconductoring).</p>	<p>(2) In this Part of this Schedule— “as built information” means one electronic copy of the following information—</p> <p>(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;</p> <p>(b) list of suppliers and materials used, as well as any relevant test results and CCTV surveys (if required to comply with DMRB standards);</p> <p>(c) product data sheets and technical specifications for all materials used;</p> <p>(d) as constructed information for any utilities discovered or moved during the works;</p> <p>(e) method statements for the works carried out;</p>	<p>It is noted that the Applicant has provided a more limited list of items within the definition of “<i>reconductoring detailed design information</i>”. Whilst National Highways accepts that not all items in its full list are relevant to the reconductoring works the following three items should be reintroduced to the definition as all are potentially relevant to those works and therefore must be subject to National Highways oversight. Noting that the definition states “<i>as are relevant to the development</i>” if it transpires that they are not relevant, then there would be no obligation on the Applicant to provide such. By way of example, if the positioning of the scaffolding does not</p>

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	<p>standard as agreed by the undertaker and National Highways;</p> <p>(k) the health and safety file; and</p> <p>(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;</p> <p>“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;</p> <p>“the cash surety” means the sum agreed between the undertaker and National Highways;</p> <p>“commuted sum” means such sum calculated in accordance with FS Guidance S278 Commuted Lump Sum Calculation Method dated 18 January 2010 or any successor guidance, for which an estimate is to be provided prior to the commencement of the specified works, to be used to fund the future cost of maintaining the specified works;</p> <p>“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;</p>		<p>(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;</p> <p>(g) organisation and methods manuals for all products used;</p> <p>(h) as constructed programme;</p> <p>(i) test results and records as required by the highway detailed design information and during construction phase of the project;</p> <p>(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;</p> <p>(k) the health and safety file; and</p> <p>(l) such other information as is required by National Highways to be used to update all</p>	<p>interfere with the existing road restraints systems (safety barriers) then National Highways would not need to review that aspect but it is critical to the safety of the network that National Highways do so should it be necessary:</p> <ul style="list-style-type: none"> • road restraints systems and supporting road restraint risk appraisal process assessment; • earthworks including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk and any required strengthened earthworks

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	<p>“contractor” means any contractor or subcontractor appointed by the undertaker to carry out the specified works;</p> <p>“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;</p> <p>“reconducting detailed design information” means such of the following drawings specifications and calculations as are relevant to the development—</p> <p>(a) site clearance details;</p> <p>(b) boundary, environmental and mitigation fencing;</p> <p>(c) drainage and ducting as required by DMRB CD 535 Drainage asset data and risk management and DMRB CS551 Drainage Surveys standards for Highways;</p> <p>(d) traffic signs and road markings;</p> <p>(e) stage 1 and stage 2 road safety audits and exceptions agreed;</p> <p>(f) topographical survey;</p> <p>(g) maintenance and repair strategy in accordance with DMRB GD304 Designing health and safety into maintenance or any replacement or modification of it;</p> <p>(h) health and safety information including any asbestos survey required by GG105 or any successor document; and</p>		<p>relevant databases and to ensure compliance with National Highway’s Asset Data Management Manual as is in operation at the relevant time;</p> <p>“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;</p> <p>“the cash surety” means the sum agreed between the undertaker and National Highways;</p> <p>“commuted sum” means such sum calculated in accordance with FS Guidance S278 Commuted Lump Sum Calculation Method dated 18 January 2010 or any successor guidance, for which an estimate is to be provided prior to the commencement of the specified works, to be used</p>	<p>appraisal form certification;</p> <ul style="list-style-type: none"> landscaping;

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	<p>(i) other such information that may be required by National Highways to be used to inform the detailed design of the specified works;</p> <p>"highway detailed design information" means such of the following drawings specifications and calculations as are relevant to the development—</p> <p>(a) site clearance details;</p> <p>(b) boundary, environmental and mitigation fencing;</p> <p>(c) road restraints systems and supporting road restraint risk appraisal process assessment;</p> <p>(d) drainage and ducting as required by DMRB CD 535 Drainage asset data and risk management and DMRB CS551 Drainage surveys – standards for Highways</p> <p>(e) earthworks including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk and any required strengthened earthworks appraisal form certification;</p> <p>(f) pavement, pavement foundations, kerbs, footways and paved areas;</p> <p>(g) traffic signs and road markings;</p> <p>(h) traffic signal equipment and associated signal phasing and timing detail;</p> <p>(i) road lighting (including columns and brackets);</p>		<p>to fund the future cost of maintaining the specified works;</p> <p>“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;</p> <p>“contractor” means any contractor or subcontractor appointed by the undertaker to carry out the specified works;</p> <p>“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;</p> <p>“reconducting detailed design information” means such of the following drawings specifications and calculations as are relevant to the development—</p>	

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

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	<p>“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;</p> <p>“DMRB” means the Design Manual for Roads and Bridges or any replacement or modification of it;</p> <p>“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;</p> <p>“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);</p> <p>“highway operations and maintenance contractor” means the contractor appointed by National Highways under the DBFO contract;</p> <p>“nominated persons” means the undertaker’s representatives or the contractor’s representatives on site during the carrying out</p>		<p>(h) stage 1 and stage 2 road safety audits and exceptions agreed;</p> <p>(hi) topographical survey;</p> <p>(j) maintenance and repair strategy in accordance with DMRB GD304 Designing health and safety into maintenance or any replacement or modification of it;</p> <p>(k) health and safety information including any asbestos survey required by GG105 or any successor document; and</p> <p>(l) other such information that may be required by National Highways to be used to inform the detailed design of the specified works;</p> <p>"highway detailed design information" means such of the following drawings specifications and calculations as are relevant to the development—</p>	

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	<p>of the specified works as notified to National Highways from time to time;</p> <p>“programme of works” means a document setting out the sequence and timetabling of the specified works;</p> <p>“provisional certificate” means the certificate of provisional completion relating to those aspects of the specified works that have resulted in any alteration to the strategic road network to be issued by National Highways in accordance with paragraph 10 when it considers the specified works are substantially complete and may be opened for traffic;</p> <p>“road safety audit” means an audit carried out in accordance with the road safety audit standard;</p> <p>“road safety audit standard” means DMRB Standard HD GG119 or any replacement or modification of it;</p> <p>“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;</p> <p>“Specification for Highways Works” means the specification for highways works forming part of the manual of contract documents for highway works published by National</p>		<p>(a) site clearance details;</p> <p>(b) boundary, environmental and mitigation fencing;</p> <p>(c) road restraints systems and supporting road restraint risk appraisal process assessment;</p> <p>(d) drainage and ducting as required by DMRB CD 535 Drainage asset data and risk management and DMRB CS551 Drainage surveys – standards for Highways</p> <p>(e) earthworks including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk and any required strengthened earthworks appraisal form certification;</p> <p>(f) pavement, pavement foundations, kerbs, footways and paved areas;</p>	

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	<p>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;</p> <p>“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 on, in, under or over the strategic road network for which National Highways is the highway authority;</p> <p>“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; “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</p> <p>“winter maintenance” means maintenance of the road surface to deal with snow and ice</p> <p>(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</p>		<p>(g) traffic signs and road markings;</p> <p>(h) traffic signal equipment and associated signal phasing and timing detail;</p> <p>(i) road lighting (including columns and brackets);</p> <p>(j) regime of California Bearing Ratio testing;</p> <p>(k) electrical work for road lighting, traffic signs and signals;</p> <p>(l) motorway communications as required by DMRB;</p> <p>(m) highway structures and any required structural approval in principle;</p> <p>(n) landscaping;</p> <p>(o) proposed departures from DMRB standards;</p> <p>(p) walking, cycling and horse riding assessment and review report;</p>	

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	to the same as amended, substituted or replaced, and with such modifications as are required in those circumstances.		<p>(q) stage 1 and stage 2 road safety audits and exceptions agreed;</p> <p>(r) utilities diversions;</p> <p>(s) topographical survey;</p> <p>(t) maintenance and repair strategy in accordance with DMRB GD304 Designing health and safety into maintenance or any replacement or modification of it;</p> <p>(u) health and safety information including any asbestos survey required by GG105 or any successor document; and</p> <p>(v) other such information that may be required by National Highways to be used to inform the detailed design of the specified works;</p> <p>“DBFO contract” means the contract between National Highways and the highway operations and maintenance contractor for the</p>	

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			<p>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;</p> <p>“DMRB” means the Design Manual for Roads and Bridges or any replacement or modification of it;</p> <p>“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;</p> <p>“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</p>	

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			<p>Management Regulations 2015 (or such updated or revised regulations as may come into force from time to time);</p> <p>“highway operations and maintenance contractor” means the contractor appointed by National Highways under the DBFO contract;</p> <p>“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;</p> <p>“programme of works” means a document setting out the sequence and timetabling of the specified works;</p> <p>“provisional certificate” means the certificate of provisional completion relating to those aspects of the specified works that</p>	

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			<p>have resulted in any alteration to the strategic road network to be issued by National Highways in accordance with paragraph 10 when it considers the specified works are substantially complete and may be opened for traffic;</p> <p>“road safety audit” means an audit carried out in accordance with the road safety audit standard;</p> <p>“road safety audit standard” means DMRB Standard HD GG119 or any replacement or modification of it;</p> <p>“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;</p>	

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			<p>“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;</p> <p>“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 on, in, under or over the strategic road network for which National Highways is the highway authority;</p> <p>“strategic road network” means any part of the road network including trunk roads, special roads or streets for which National</p>	

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			<p>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;</p> <p>“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</p> <p>“winter maintenance” means maintenance of the road surface to deal with snow and ice</p> <p>(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</p>	

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			modifications as are required in those circumstances.	
3. 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 15 but for the purposes of any approvals required under this Part of Schedule 15 the undertaker shall liaise directly with National Highways.	Provision is agreed.	No proposed changes.	Provision is agreed.
4. General	4. Notwithstanding the limits of deviation permitted pursuant to article 5 (limits of deviation) of this Order, no works in carrying out, maintaining or diverting the authorised development may be carried out on, under or over the strategic road network at a distance, when constructed, within 5.5 metres vertically of the lowest point of the ground unless with the express consent of National Highways.	<p>The creation of an "envelope" to protect NH's assets. This distinguishes between the reconductoring works, which involve a scaffold over the strategic road network but no works to the network itself; and works which are on, in or within 5.5m vertically of the strategic road network.</p> <p>The distinction between these two types of work is then carried through</p>	4. Notwithstanding the limits of deviation permitted pursuant to article 5 (limits of deviation) of this Order, no works in carrying out, maintaining or diverting the authorised development may be carried out on, under or over the strategic road network at a distance, when constructed, within 5.5 metres vertically-of the lowest point of the ground unless with the express consent of National Highways.	National Highways does not object to the principle of the Applicant's intentions here but does request the deletion of the words "when constructed" given this creates ambiguity over when the provision would apply and could result in works that should be captured not being captured causing unnecessary risks to National Highways and the SRN.

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		to the remainder of the protective provisions in setting distinct commitments based on what would be appropriate, in practice, for each type of work.		
5. General	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.	Provision is agreed.	No proposed changes.	Provision is agreed.
6. 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.	Provision is agreed.	No proposed changes.	Provision is agreed.
7. Prior approvals and security	7. — (1) In respect of any specified works being at least, when constructed, 5.5 metres above the surface of the strategic road network, such works must not commence until—	<u>Two tiers of approval:</u> Differing levels of information are required for works within the 5.5m envelope and those outside of this.	7. — (1) In respect of any specified works being at least, when constructed, 5.5 metres above the surface of the strategic road network, such works	National Highways makes the same comment as that above for Paragraph 4. The principle here is accepted but the use of

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	<p>(a) Evidence that 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;</p> <p>(b) the programme of works has been approved by National Highways;</p> <p>(c) the reconductoring 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—</p> <p>(i) the detailed design information, including scaffolding to oversail the strategic road network, incorporating all recommendations and any exceptions approved by National Highways under sub-paragraph (a);</p> <p>(ii) details of the proposed road space bookings;</p> <p>(iii) the identity and suitability of the contractor and nominated persons;</p> <p>(iv) a process for stakeholder liaison, with key stakeholders to be identified and agreed between National Highways and the undertaker;</p> <p>(v) information demonstrating that the walking, cycling and horse riding assessment and review process undertaken by the</p>	<p>This ensures no undue burden on reconductoring works but also protects NH against any unforeseen works which National Grid has the power to undertake under the associated development provisions within Schedule 1 and, therefore, fully protecting NH for the exercise of wider powers within the DCO.</p> <p><u>Exclusion of power of approval for DCO powers:</u></p> <p>Because NH have an approval right over the specified works, it would be duplicative and potentially risk delivery of the Project if a requirement was included within the protective provisions which required prior approval to exercise</p>	<p>must not commence until—</p> <p>(a) Evidence that 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;</p> <p>(b) the programme of works has been approved by National Highways;</p> <p>(c) the reconductoring 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—</p> <p>(i) the detailed design information, including scaffolding to oversail the strategic road network, incorporating all recommendations and any exceptions approved by</p>	<p>the words “when constructed” causes ambiguity and should be deleted.</p> <p>The addition of 7(3) is necessary to remove all of National Highways objections to the DCO articles. Without the inclusion of 7(3) then National Highways maintains its previously stated objections in that regard. Whilst the acceptance of National Highways’ protective provisions has now addressed some of those initial concerns, a number still remain and the list included at 7(3) reflects that, noting that this list has now reduced significantly from the original set.</p> <p>National Highways appreciates the Applicant’s acknowledgment of its</p>

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	<p>undertaker in relation to the specified works has been adhered to in accordance with DMRB GG142 – Designing for walking, cycling and horse riding; and</p> <p>(d) where necessary, a scheme of traffic management has been submitted by the undertaker and approved by National Highways such scheme to be capable of amendment by agreement between the undertaker and National Highways from time to time, unless otherwise agreed by National Highways.</p> <p>(2) In respect of specified works save for those which fall under sub-paragraph (1), such works must not commence until—</p> <p>(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;</p> <p>(b) the programme of works has been approved by National Highways;</p> <p>(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—</p> <p>(i) the highway detailed design information, incorporating all recommendations and any exceptions</p>	<p>DCO powers over NH land.</p> <p>The Yorkshire Green Project needs to be delivered by 2027. Any delay could have potential implications on this. Inclusion of NH's proposed wording has the potential to hinder progress of the Project and fetters rights under the DCO. In the context of ongoing discussions relating to the land rights heads of terms and in line with the approach taken on protective provisions elsewhere within the DCO.</p> <p><u>Approvals process:</u> Due to the potential safety implications acknowledged regarding working over the strategic road network, no deemed approval has been</p>	<p>National Highways under sub-paragraph (a);</p> <p>(ii) details of the proposed road space bookings;</p> <p>(iii) the identity and suitability of the contractor and nominated persons;</p> <p>(iv) a process for stakeholder liaison, with key stakeholders to be identified and agreed between National Highways and the undertaker;</p> <p>(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</p> <p>(d) where necessary, a scheme of traffic management has been submitted by the</p>	<p>concerns regarding 'deemed approval' and welcomes its deletion from its version of the protective provisions. National Highways sees no reason why there needs to be different 56 day approval processes for the two types of works and therefore suggests to avoid any confusion or ambiguity subparagraph (d) of paragraph 7(5) [paragraph 7(4) of the Applicant's version] should be deleted.</p> <p>The other change that National Highways requests in respect of paragraph 7 relates to subparagraph (6) [subparagraph (5) of the Applicant's version], National Highways requires collateral warranties from any contractor carrying out works that may effect its network to ensure that</p>

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	<p>approved by National Highways under sub-paragraph (a)</p> <p>(ii) details of the proposed road space bookings;</p> <p>(iii) the identity and suitability of the contractor and nominated persons;</p> <p>(iv) a process for stakeholder liaison, with key stakeholders to be identified and agreed between National Highways and the undertaker;</p> <p>(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</p> <p>(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;</p> <p>(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;</p> <p>(f) National Highways has approved the audit brief and CVs for all road safety audits</p>	<p>included within the protective provisions and appropriate timeframes have been proposed to ensure that there is clarity over what would be regarded as a 'reasonable' response timeframe.</p>	<p>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,</p> <p>unless otherwise agreed by National Highways.</p> <p>(2) In respect of specified works save for those which fall under sub-paragraph (1), such works must not commence until—</p> <p>(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;</p> <p>(b) the programme of works has been approved by National Highways;</p> <p>(c) the detailed design of the specified works comprising of the following details, insofar as considered relevant by</p>	<p>any need for recourse can be dealt with expeditiously and efficiently and that there is no financial risk to National Highways.</p>

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	<p>and exceptions to items raised in accordance with the road safety audit standard;</p> <p>(g) the undertaker has agreed the estimate of the commuted sum with National Highways;</p> <p>(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;</p> <p>(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</p> <p>(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, unless otherwise agreed by National Highways.</p>		<p>National Highways, has been submitted to and approved by National Highways—</p> <p>(i) the highway detailed design information, incorporating all recommendations and any exceptions approved by National Highways under sub-paragraph (a)</p> <p>(ii) details of the proposed road space bookings;</p> <p>(iii) the identity and suitability of the contractor and nominated persons;</p> <p>(iv) a process for stakeholder liaison, with key stakeholders to be identified and agreed between National Highways and the undertaker;</p> <p>(v) information demonstrating that the walking, cycling and horse riding assessment and review process undertaken by the undertaker in relation to the specified</p>	

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	<p>(3) National Highways must prior to the commencement of the specified works 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).</p> <p>(4) Any approval of National Highways required under this paragraph-</p> <p>(a) must not be unreasonably withheld;</p> <p>(b) must be given in writing;</p> <p>(c) may be subject to any conditions as National Highways considers necessary;</p> <p>(d) in respect of any approval under sub-paragraph (1), must be given by the end of the period of 28 days, beginning with the date on which any request for approval has been made and if National Highways has not intimated disapproval of those works and the grounds of disapproval within that period, 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; and</p> <p>(e) in respect of any approval under sub-paragraph (2), shall be deemed to have been refused if neither given nor refused within 56 days of receipt of the information for</p>		<p>works has been adhered to in accordance with DMRB GG142 – Designing for walking, cycling and horse riding; and</p> <p>(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;</p> <p>(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;</p> <p>(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;</p>	

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	<p>approval or, where further particulars are requested by National Highways within 56 days of receipt of the information to which the request for further particulars relate.</p> <p>(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.</p> <p>(6) Any change to the detailed design of the specified works must be approved by National Highways in accordance with this paragraph.</p>		<p>(g) the undertaker has agreed the estimate of the commuted sum with National Highways;</p> <p>(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;</p> <p>(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</p>	

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			<p>the specified works, including in the selection of materials, goods, equipment and plant; and</p> <p>(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, unless otherwise agreed by National Highways.</p> <p>(3) The undertaker must not exercise—</p> <p>(a) article 14 (temporary stopping up of streets, cycle tracks and public rights of way);</p> <p>(b) article 19 (discharge of water);</p> <p>(c) article 20 (protective works to buildings);</p> <p>(d) article 21 (authority to survey and investigate the land);</p>	

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			<p>(e) article 22 (compulsory acquisition of land);</p> <p>(f) article 25 (compulsory acquisition of rights);</p> <p>(g) article 26 (Extinguishment and suspension of private rights);</p> <p>(h) article 36 (temporary use of land by National Grid);</p> <p>(i) article 37 (temporary use of land by NPG);</p> <p>(j) article 38 (temporary use of land by NGN);</p> <p>(k) article 39 temporary use of land for maintaining the authorised development); or</p> <p>(l) article 45 (Traffic regulation) of this Order, over any part of the strategic road network without the consent of National Highways, and National Highways may in</p>	

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			<p>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.</p> <p>(4) National Highways must prior to the commencement of the specified works or the exercise of any power referenced in sub-paragraph (2) inform the undertaker of the identity of the person who will act as a point of contact on behalf of National Highways for consideration of the information required under sub-paragraphs (1), (2) or (3).</p> <p>(5) Any approval of National Highways required under this paragraph-</p>	

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			<p>(a) must not be unreasonably withheld;</p> <p>(b) must be given in writing;</p> <p>(c) may be subject to any conditions as National Highways considers necessary; and</p> <p>(d) — in respect of any approval under sub-paragraph (1), must be given by the end of the period of 28 days, beginning with the date on which any request for approval has been made and if National Highways has not intimated disapproval of those works and the grounds of disapproval within that period, 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</p>	

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			<p>notice from the undertaker; and</p> <p>(e) — in respect of any approval under sub-paragraph (2); shall be deemed to have been refused if neither given nor refused within 56 days of receipt of the information for approval or, where further particulars are requested by National Highways within 56 days of receipt of the information to which the request for further particulars relate.</p> <p>(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.</p>	

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			(7) Any change to the detailed design of the specified works must be approved by National Highways in accordance with this paragraph.	
8. Construction of the Specified Works	<p>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.</p> <p>(2) The undertaker must comply with National Highways’ road space booking procedures prior to and during the carrying out of the specified works and no specified works for which a road space booking is required shall commence without a road space booking having first been secured from National Highways.</p> <p>(3) The specified works must be carried out by the undertaker to the satisfaction of National Highways in accordance with—</p> <p>(a) the relevant detailed design information and programme of works approved pursuant to paragraph 7(1) or (2) as appropriate or as subsequently varied by agreement between the undertaker and National Highways;</p> <p>(b) the DMRB, the Manual of Contract Documents for Highway Works, including</p>	<p><u>Reasonableness provisions:</u> An obligation on NH to act reasonably has been added throughout the protective provisions.</p> <p><u>Strategic road network:</u> The obligations have been constrained to the strategic road network, rather than any land owned by NH, acknowledging that, in this case, some land owned by NH is on the local highway network.</p> <p><u>Payment timescales:</u> Removal of sums required to be paid within 30 days of demand to</p>	<p>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.</p> <p>(2) The undertaker must comply with National Highways’ road space booking procedures prior to and during the carrying out of the specified works and no specified works for which a road space booking is required shall commence without a road space booking having first been secured from National Highways.</p> <p>(3) The specified works must be carried out by the undertaker to the</p>	<p>National Highways does not object to the Applicant’s addition of reasonableness provisions although the ExA should note that this is unnecessary and superfluous given as a public body National Highways has a statutory duty to act reasonably and is subject to the usual aspects of public law in that regard.</p> <p>National Highways does object to the Applicant constraining the obligations to the SRN only. An element of the ‘known works’ is works to cross a balancing pond which is a National Highways asset, on</p>

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	<p>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</p> <p>(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.</p> <p>(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.</p> <p>(5) If any part of the specified works is constructed-</p> <p>(a) other than in accordance with the requirements of this Part of this Schedule; or</p> <p>(b) in a way that causes damage to the</p>	<p>accommodate that the National Grid standard payment timeframes are usually slower than this.</p>	<p>satisfaction of National Highways in accordance with—</p> <p>(a) the relevant detailed design information and programme of works approved pursuant to paragraph 7(1) or (2) as appropriate or as subsequently varied by agreement between the undertaker and National Highways;</p> <p>(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</p>	<p>National Highways land, but does not form part of the SRN. National Highways requires the same level of protection for those works as it does for the other reconductoring works' and the obligation on the Applicant to rectify any damage as a result of such works should equally apply.</p> <p>In addition the Applicant has removed the requirement to pay within 30 days of demand. This is a perfectly reasonable provision and no justification has been provided for its removal. A public body should not be out of funds for any longer than is strictly necessary.</p>

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	<p>strategic road network,</p> <p>(c) National Highways acting properly and reasonably may by notice in writing require the undertaker, at the undertaker's own expense, to comply promptly with the requirements of this Part of this Schedule or remedy any damage notified to the undertaker under this Part of this Schedule, to the reasonable satisfaction of National Highways.</p> <p>(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 acting properly and reasonably may by notice in writing require the undertaker, at its own expense, to remedy the damage.</p> <p>(7) If within 28 days on which a notice under sub-paragraph (6) or sub-paragraph (7) is served on the undertaker (or in the event of there being, in the opinion of National Highways, a danger to road users, within such lesser period as National Highways may stipulate), the undertaker has failed to take the steps required by that notice, National Highways may carry out the steps required of the undertaker and may recover any expenditure incurred by National Highways in so doing.</p> <p>(8) Nothing in this Part of this Schedule</p>		<p>have been approved by National Highways; and</p> <p>(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.</p> <p>(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.</p>	

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	<p>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.</p> <p>(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 reasonable satisfaction of National Highways.</p> <p>(10) During the construction of the specified works approved under paragraph 7(2), 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(2)(h) and the undertaker must carry out such maintenance at its own cost.</p> <p>(11) The undertaker must notify National Highways if it fails to complete the specified works in accordance with the agreed programme pursuant to sub-paragraph 7(1)(b)</p>		<p>(5) If any part of the specified works is constructed-</p> <p>(a) other than in accordance with the requirements of this Part of this Schedule; or</p> <p>(b) in a way that causes damage to the strategic road network or any other land of National Highways,</p> <p>(c) National Highways acting properly and reasonably may by notice in writing require the undertaker, at the undertaker's own expense, to comply promptly with the requirements of this Part of this Schedule or remedy any damage notified to the undertaker under this Part of this Schedule, to the reasonable satisfaction of National Highways.</p> <p>(6) If during the carrying out of the authorised development</p>	

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	<p>or 7(2)(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.</p>		<p>the undertaker or its appointed contractors or agents causes damage to the strategic road network then National Highways acting properly and reasonably may by notice in writing require the undertaker, at its own expense, to remedy the damage.</p> <p>(7) If within 28 days on which a notice under sub-paragraph (6) or sub-paragraph (7) is served on the undertaker (or in the event of there being, in the opinion of National Highways, a danger to road users, within such lesser period as National Highways may stipulate), the undertaker has failed to take the steps required by that notice, National Highways may carry out the steps required of the undertaker and may recover any expenditure incurred by National Highways in so doing</p> <p>such sum to be payable</p>	

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			<p>within 30 days of demand.</p> <p>(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.</p> <p>(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 reasonable</p>	

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			<p>satisfaction of National Highways.</p> <p>(10) During the construction of the specified works approved under paragraph 7(2), 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(2)(h) and the undertaker must carry out such maintenance at its own cost.</p> <p>(11) The undertaker must notify National Highways if it fails to complete the specified works in accordance with the agreed programme pursuant to sub-paragraph 7(1)(b) or 7(2)(b) of this Part or suspends the carrying out of any specified work beyond a reasonable period of time and National Highways</p>	

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			reserves the right to withdraw any road space booking granted to the undertaker to ensure compliance with its network occupancy requirements.	
9. Payments	<p>9. —(1) The undertaker must pay to National Highways a sum equal to the whole of any reasonable and proper costs and expenses which National Highways 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—</p> <p>(a) the checking and approval of the information required under paragraph 7;</p> <p>(b) the supervision of the specified works;</p> <p>(c) the checking and approval of the information required to determine approvals under this Order;</p> <p>(d) all costs in relation to the transfer of any land required for the specified works; and</p> <p>(e) all legal and administrative costs and disbursements incurred by National Highways</p>	National Grid has proposed amendments to prevent any undue delays to the programme resulting from payment administration or fee estimate delays.	<p>9. —(1) The undertaker must pay to National Highways a sum equal to the whole of any reasonable and proper costs and expenses which National Highways 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—</p> <p>(a) the checking and approval of the information required under paragraph 7;</p>	The minor changes made to this paragraph are acceptable to National Highways with the exception of time periods for payment. The Applicant is seeking to change this from 28 days to 42. Noting that the Applicant requires payment itself within 30 days when roles are reversed National Highways considers it reasonable for that same period to apply here. A public body should not be without funds for any longer than is strictly necessary.

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	<p>in connection with the Order and sub-paragraphs (a)-(d); and</p> <p>(f) any value added tax which is payable by National Highways in respect of such costs and expenses and for which it cannot obtain reinstatement from HM Revenue and Customs,</p> <p>together comprising “the NH costs”.</p> <p>(2) The undertaker must pay to National Highways upon demand and prior to such costs being incurred the total costs that National Highways believe will be properly and necessarily incurred by National Highways in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the authorised development.</p> <p>(3) National Highways must provide the undertaker with a schedule showing its estimate of the NH costs prior to the commencement of the specified works and the undertaker must pay to National Highways the estimate of the NH costs prior to commencing the specified works and in any event prior to National Highways incurring any cost but the absence of such estimate will not inhibit the commencement of the specified works by the undertaker.</p> <p>(4) If at any time after the payment referred to in sub-paragraph (3) has become</p>		<p>(b) the supervision of the specified works;</p> <p>(c) the checking and approval of the information required to determine approvals under this Order;</p> <p>(d) all costs in relation to the transfer of any land required for the specified works; and</p> <p>(e) all legal and administrative costs and disbursements incurred by National Highways in connection with the Order and sub-paragraphs (a)-(d); and</p> <p>(f) any value added tax which is payable by National Highways in respect of such costs and expenses and for which it cannot obtain reinstatement from HM Revenue and Customs, together comprising “the NH costs”.</p> <p>(2) The undertaker must pay to National Highways upon demand</p>	

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	<p>payable, National Highways reasonably believes that the NH costs will exceed the estimated NH costs it may give notice to the undertaker of the amount that it believes the NH costs will exceed the estimate of the NH costs (the excess) and the undertaker must pay to National Highways within 42 days of the date of the notice a sum equal to the excess.</p> <p>(5) National Highways must give the undertaker a final account of the NH costs referred to in sub- paragraph (1) above within 91 days of the issue of the provisional certificate issued pursuant to paragraph 10(4).</p> <p>(6) Within 42 days of the issue of the final account:</p> <p>(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;</p> <p>(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.</p> <p>(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</p>		<p>and prior to such costs being incurred the total costs that National Highways believe will be properly and necessarily incurred by National Highways in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the authorised development.</p> <p>(3) National Highways must provide the undertaker with a schedule showing its estimate of the NH costs prior to the commencement of the specified works and the undertaker must pay to National Highways the estimate of the NH costs prior to commencing the specified works and in any event prior to National Highways incurring any cost but the absence of such estimate will not inhibit the commencement</p>	

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	<p>of England base lending rate from time to time being in force for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.</p>		<p>of the specified works by the undertaker.</p> <p>(4) If at any time after the payment referred to in sub-paragraph (3) has become payable, National Highways reasonably believes that the NH costs will exceed the estimated NH costs it may give notice to the undertaker of the amount that it believes the NH costs will exceed the estimate of the NH costs (the excess) and the undertaker must pay to National Highways within 42 30 days of the date of the notice a sum equal to the excess.</p> <p>(5) National Highways must give the undertaker a final account of the NH costs referred to in sub-paragraph (1) above within 91 days of the issue of the provisional certificate issued pursuant to paragraph 10(4).</p>	

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			<p>(6) Within 42 30 days of the issue of the final account:</p> <p>(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;</p> <p>(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.</p> <p>(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</p>	

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			from time to time being in force for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.	
11. Provisional Certificate	<p>—(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.</p> <p>(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.</p> <p>(3) Following an application for a provisional certificate, National Highways must as soon as reasonably practicable:</p> <p>(a) inspect the specified works; and</p> <p>(b) provide the undertaker with a written list of works that are required for the provisional certificate to be issued or</p>	Provision is agreed.	No proposed changes.	Provision is agreed.

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	<p>confirmation that no further works are required for this purpose.</p> <p>(4) When—</p> <p>(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;</p> <p>(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;</p> <p>(c) the as built information has been provided to National Highways; and</p> <p>(d) in respect of any specified works approved under paragraph 7(2), the undertaker has paid the commuted sum to National Highways,</p> <p>National Highways must issue the provisional certificate.</p> <p>(5) On the issue of the provisional certificate the bond sum (if applicable) 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</p>			

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	<p>meet any costs for or arising from the specified works.</p> <p>(6) The undertaker must submit a stage 4 road safety audit as required by and in line with the timescales stipulated in the road safety audit standard. The undertaker must comply with the findings of the stage 4 road safety audit and must pay all costs of and incidental to such and provide updated as-built information to National Highways.</p>			
11. Opening	<p>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.</p>	Provision is agreed.	No proposed changes.	Provision is agreed.
12. Final condition survey	<p>In respect of any specified works approved under paragraph 7(2)—</p> <p>(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</p>	<p>Due to the nature of the reconditioning works, a final condition survey should not be required following the provisional certificate.</p> <p>The obligation to obtain a final condition survey will still be required for any works within the 5.5m envelope.</p>	<p>In respect of any specified works approved under paragraph 7(1) or 7(2)—</p> <p>(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</p>	<p>There would still be a requirement for a <i>Final Condition Survey</i> following the reconditioning works and so this paragraph needs to be amended accordingly. Whilst this requirement may be less onerous for these types of works, nevertheless National Highways must still</p>

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	<p>specified works include any works beneath the strategic road network.</p> <p>(2) If the re-survey 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.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p>		<p>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.</p> <p>(2) If the re-survey 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.</p> <p>(3) If the undertaker fails to carry out the remedial work in accordance with the approved scheme, National Highways may</p>	<p>have the ability to require such where it considers it necessary to ensure that the SRN is safe for public use and that any costs are met by the Applicant and not the public purse.</p>

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			<p>carry out the steps required of the undertaker and may recover any expenditure it reasonably incurs in so doing.</p> <p>(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.</p> <p>(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.</p>	

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13. Defects Period	<p>In respect of any specified works approved under paragraph 7(2)—</p> <p>(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—</p> <p>(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);</p> <p>(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</p> <p>(c) in respect of all other defects notified to the undertaker, within 4 weeks of receiving notification of the same.</p> <p>(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.</p>	Provision is agreed.	No proposed changes.	Provision is agreed.
14. Final Certificate	<p>(1) In respect of any specified works approved under paragraph 7(2)—</p> <p>(a) The undertaker must apply to National</p>	Due to the nature of the reconductoring works, provision of a final	(1) In respect of any specified works approved under paragraph 7(2)—	This is agreed subject to National Highways requirement for

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	<p>Highways for the final certificate no sooner than 12 months from the date of the provisional certificate.</p> <p>(b) Following receipt of the application for the final certificate, National Highways must as soon as reasonably practicable:</p> <p>(i) inspect the strategic road network; and</p> <p>(ii) 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.</p> <p>(c) The undertaker must carry out such works notified to it pursuant to sub-paragraph 14(2).</p> <p>(d) When National Highways is satisfied that:</p> <p>(i) 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</p> <p>(ii) the NH costs have been paid to National Highways in full;</p> <p>National Highways must issue the final certificate after which the bond shall be released in full.</p> <p>(e) The undertaker must pay to National</p>	<p>certificate should not require any further obligations on NH than the provisional certificate.</p> <p>The obligations tied to obtaining a final certificate will still be required for any works within the 5.5m envelope.</p>	<p>(a) The undertaker must apply to National Highways for the final certificate no sooner than 12 months from the date of the provisional certificate.</p> <p>(b) Following receipt of the application for the final certificate, National Highways must as soon as reasonably practicable:</p> <p>(i) inspect the strategic road network; and</p> <p>(ii) 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.</p> <p>(c) The undertaker must carry out such works notified to it pursuant to sub-paragraph 14(2).</p> <p>(d) When National</p>	<p>payment to be made within 30 days for the reasons stated earlier.</p>

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	<p>Highways within 42 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.</p> <p>(2) In respect of any specified works approved under paragraph 7(1), the undertaker may apply for a final certificate at any time following issue of the provisional certificate, whereupon National Highways must issue a final certificate forthwith.</p>		<p>Highways is satisfied that:</p> <p>(i) 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</p> <p>(ii) the NH costs have been paid to National Highways in full;</p> <p>National Highways must issue the final certificate after which the bond shall be released in full.</p> <p>(e) The undertaker must pay to National Highways within 42 30 days of demand the costs reasonably incurred by National Highways in identifying the defects and supervising and inspecting the</p>	

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			<p>undertaker's work to remedy the defects that it is required to remedy pursuant to these provisions.</p> <p>(2) In respect of any specified works approved under paragraph 7(1), the undertaker may apply for a final certificate at any time following issue of the provisional certificate, whereupon National Highways must issue a final certificate forthwith.</p>	
15. Security	<p>—In respect of any specified works approved under paragraph 7(2), the works must not commence until—</p> <p>(1) 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</p>	Provision is agreed.	No proposed changes.	Provision is agreed.

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	<p>exceed the bond sum; and</p> <p>(2) 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.</p>			
16. Commuted sums	No wording proposed as included in definition above.	Provision is agreed.	No proposed changes.	Provision is agreed.
16. Insurance	16. 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.	Provision is agreed.	No proposed changes.	Provision is agreed.
20. Indemnity	—(1) The undertaker fully indemnifies National Highways from and against all costs, claims, expenses, damages, losses and liabilities suffered by National Highways directly arising from the construction, maintenance or use of the specified works or exercise of or failure to exercise any power	National Grid has sought to impose reasonable limitations on its liability due to the anticipated nature of the	(1) The undertaker fully indemnifies National Highways from and against all costs, claims, expenses, damages, losses and liabilities suffered by National Highways	National Highways does not agree to the indemnity being capped. This exposes National Highways, as a public body, to unacceptable financial risk. The

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	<p>under this Order save for any loss arising out of or in consequence of any negligent act or default of National Highways.</p> <p>(2) Any indemnity under this part of Schedule 15 shall be limited to a maximum aggregate liability of the Undertaker to National Highways for all claims to a sum of £30,000,000 (thirty million pounds sterling).</p>	works and need to protect the consumer.	<p>directly 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.</p> <p>(2) Any indemnity under this part of Schedule 15 shall be limited to a maximum aggregate liability of the Undertaker to National Highways for all claims to a sum of £30,000,000 (thirty million pounds sterling).</p>	position taken by National Highways in this regard is no different to that taken by the Applicant itself who does not agree to caps on indemnities.
18. Maintenance of the specified works	<p>18. —(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.</p> <p>(2) If, for the purposes of maintaining the specified works, the undertaker needs to occupy any road space, the undertaker must</p>	Provision is agreed.	No proposed changes.	Provision is agreed.

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	<p>comply with National Highways' road space booking requirements and no maintenance of the specified works for which a road space booking is required shall commence without a road space booking having first been secured (save for in the event of an emergency situation).</p> <p>(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.</p> <p>(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.</p>			
19. Land	<p>—(1) Following the issue of a final certificate pursuant to paragraph 14(4) National Highways may serve notice on the undertaker that it wishes to take a freehold transfer of land within the extent of strategic road network boundary which is not in the ownership of National Highways but has been acquired by the undertaker for the purposes of carrying out the specified works approved under paragraph 7(2).</p> <p>(2) If the undertaker receives notice under sub-paragraph (1) then the undertaker must effect a freehold transfer of the land which is</p>	Whilst National Grid is committed to obtaining land rights by agreement, it cannot fetter its right to compulsory acquisition powers should these be required to complete the Project.	(1) Following the issue of the final certificate pursuant to paragraph 14(4) National Highways may serve notice on the undertaker that it wishes to take a freehold transfer of land within the extent of strategic road network boundary which is not in the ownership of National Highways but has been acquired by the undertaker	For reasons already stated by National Highways during the examination, the Applicant's compulsory acquisition proposals will cause serious detriment to National Highways undertaking if approved without protections being afforded to National Highways. National

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	<p>the subject of the notice and complete such transfer as soon as reasonably practicable at no cost to National Highways.</p> <p>(3) The undertaker must not under the powers of this Order 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 legalservicesinbox@nationalhighways.co.uk.</p> <p>(4) Where any land or interest is proposed to be acquired for the benefit of National Highways, the undertaker must, unless otherwise agreed by National Highways, exercise article 22 (compulsory acquisition of land) and article 25 (compulsory acquisition of rights) as applied by articles 32 (modification of Part 1 of the 1965 Act) and article 33 (application of the 1981 Act) of this Order to directly vest in National Highways any such land or interest.</p>		<p>for the purposes of carrying out the specified works approved under paragraph 7(2).</p> <p>...</p> <p>(3) The undertaker must not under the powers of this Order:</p> <p>(a) acquire or use land forming part of;</p> <p>(b) acquire new or existing rights over; or</p> <p>(c) seek to impose or extinguish any restrictive covenants over;</p> <p>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 legalservicesinbox@nationalhighways.co.uk</p>	<p>Highways is in discussions with the Applicant outside of the examination to reach agreement on these lands issues which would negate the need for compulsory acquisition. The DCO in its current form leaves a number of National Highways' significant concerns unaddressed. The National Highways version of sub paragraph (3) would address that.</p>
20. Arbitration	20. Any dispute under this Part of this Schedule shall be settled by arbitration in accordance with article 53 (arbitration).	Provision is agreed.	No proposed changes.	Provision is agreed.

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