

**Submissions of National Highways Limited submitted at Deadline 8 in response  
to submissions made by the Applicant at Deadline 7.**

**Application by National Grid Electricity Transmission for an Order granting  
Development Consent for the Yorkshire Green Energy Enablement (Green) Project**

**Planning Inspectorate Reference Number: EN020024**

## **1 Introduction**

- 1.1 National Highways (“NH”) has prepared these submissions in response to comments made by the Applicant at Deadline 7. As the ExA will be aware, the areas of disagreement between the parties have narrowed significantly since Deadline 6 however it has not been possible to reach full agreement with the Applicant and therefore NH is not able to remove its outstanding objection to the Application unless the form of protective provisions included at Appendix 1 to this submission are included in any made order.
- 1.2 NH relies on all submissions made to the examination to date and does not repeat in these submissions points already made. NH does however provide further information and detail to assist the ExA when adjudicating on the outstanding matters of disagreement between the parties.
- 1.3 The two matters addressed in these submissions are (i) the indemnity included in the protective provisions; and (ii) compulsory acquisition of land that forms part of the local highway network.

## **2 The Indemnity**

- 2.1 There are two documents of relevance submitted by the Applicant at Deadline 7 and these are addressed in turn below.

### Document 8.34.5 Applicant’s Position Statement - Protective Provisions Not Yet Agreed with National Highways

- 2.2 At paragraph 1.2 of this document the Applicant addresses the issue of the indemnity that is included in the protective provisions. The parties have been unable to agree suitable wording in this regard due to NH’s objection to the Applicant seeking to qualify its standard indemnity, a position no different to that taken by the Applicant themselves when NH promotes its own DCOs.
- 2.3 The Applicant states that it is required to take this approach to protect the electricity consumer who would otherwise ultimately bear the cost of an uncapped indemnity. This is slightly misleading. The Applicant is a private company. It is not a public body like NH and is not funded by the taxpayer. Any financial decisions taken by the Applicant will be made on a commercial basis. A company making annual profits and paying shareholder dividends could choose to absorb additional costs in numerous ways, it does not automatically follow that it would be the electricity consumer that would “*otherwise bear the cost*”

*of an uncapped indemnity*". Nevertheless, it should not matter, NH is funded by the taxpayer so should not have to accept additional liabilities so that shareholders of a private company can benefit from higher profits. By taking this position the Applicant is saying that NH (and by extension the taxpayer) should bear any costs above the cap.

- 2.4 The Applicant justifies imposing a £30million indemnity cap "*based on the upper end of what would be expected for works considered to fall within standard and usual business practices.*" No evidence is presented to justify this statement which is not surprising as it is impossible to quantify such losses. Just like the Applicant refuses to quantify such losses when itself objects to any cap on indemnities, NH takes the same approach. The purpose of the indemnity is to ensure that the project does not present any financial risk to NH, and therefore the taxpayer. The authorised development involves carrying out works over and in the vicinity of the Strategic Road Network which carries high speed traffic including a large volume of heavy goods vehicles. Any damage caused to NH assets may be capable of being repaired at a cost of £30 million or less however there are additional liabilities that could be far higher. Should an incident occur on the network as a result of the Applicant's works it is impossible to say whether or not £30 million would be sufficient to cover any resultant liabilities - a multi vehicle incident with numerous injuries or fatalities could easily result in liabilities well in excess of such an amount. It is clear that the Applicant has not given any thought to its £30 million cap and by doing so it places NH and the taxpayer at financial risk.
- 2.5 The Applicant's case for qualifying NH's standard indemnity is because, in their view, any works on or over the strategic road network will be limited. This position is misconceived. Whilst NH disagrees that the works are limited, it need not matter. No matter how limited works may be, they still present a risk to NH's undertaking and any incident on a high speed road has the potential of being significant and therefore result in significant liabilities. For these reasons it is not appropriate to seek to quantify an indemnity cap based on the level of works themselves. Again, this is no different to the position that the Applicant takes with regards their own indemnities.

Document 8.33 Applicant's Response to the Examining Authority's commentary and questions on the draft Development Consent Order (DC1)

- 2.6 The Applicant was asked to respond to the following question by the ExA:
- Respond to the point made by National Highways regarding the fact that the Applicant does not agree to caps on indemnities in the reverse situation and has thus proposed removal of dDCO para 75(2) ([REP6-064], para 20(2), page 53).
- 2.7 The Applicant responded as follows:

The position National Grid takes as a third-party asset holder affected by other DCOs is distinct from the position here. Where National Grid's apparatus is directly affected by a proposed development, it seeks proportionate protections. The works associated with this Project will not directly affect the strategic road network and so an indemnity proportionate to the works being undertaken is sought by National Grid so that it can uphold its regulated duty to the electricity consumer.

- 2.8 It is noted that the Applicant does not directly answer the ExA's question. It does not disagree with the point made by NH, it merely states that "*it seeks proportionate protections*". From NH's experience the Applicant takes a blanket approach and does not agree to its indemnity being qualified, that is certainly NH's experience when promoting its own schemes. In addition, it is noted that the same indemnity wording that the Applicant asks of NH is also included in the recently made Longfield Solar Farm Order 2023. The ExA will note that it does not include a cap.

### **Indemnity**

40.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay on demand the cost reasonably and properly incurred by National Grid in making good such damage or restoring the supply; and

(b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid and including Network Code Claims, other than arising from any default of National Grid. (2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid as a consequence of the authorised development or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker

from liability under the provisions of this sub-paragraph (1) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—

(a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, employees, servants, contractors or agents; and

(b) any part of the authorised development and/or any other works authorised by this Part of this Schedule carried out by National Grid as an assignee, transferee or lessee of the undertaker with the benefit of this Order pursuant to section 156 of the Planning Act 2008 or article 33 (consent to transfer the benefit of the Order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised development yet to be executed and not falling within this sub-paragraph will be subject to the full terms of this Part of this Schedule including this paragraph 40.

(4) National Grid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(5) National Grid must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.<sup>1</sup>

2.9 The Applicant is seeking to impose something on NH that it is unwilling to accept itself when the party’s roles are reversed. Further, it is seeking to benefit from the DCO process removing NH’s control to gain itself a better position than when carrying out works outside of the DCO process. In this regard NH routinely enters into licences with the Applicant pursuant to the New Roads and Street Works Act 1991 permitting the Applicant to carry out works above protected streets. These licences include an indemnity in similar terms to that contained in the protective provisions. It is uncapped and the Applicant routinely agrees to such. A copy of such a licence is included at Appendix 2 to this submission. The indemnity provision can be found at

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<sup>1</sup> Schedule 15, Part 4, Paragraph 40 of the [Longfield Solar Farm Order 2023](#)

paragraph 7 which was accepted by the Applicant in January of this year. The Applicant is seeking to obtain a better position for itself given that the DCO will provide the authority to carry out works rather than it needing the explicit consent from NH, knowing that in such situations an uncapped indemnity is required before consent is given.

### **3 Compulsory acquisition of land that forms part of the local highway network**

- 3.1 NH has objected to the compulsory acquisition of land that it owns that forms part of the local highway network. The North Yorkshire Council (“**NYC**”) are the highway authority in this location and have instructed NH to maintain this objection due to the impact such would have on its undertaking. Whilst NYC hope to reach agreement with the Applicant with regards to land interests and works, at the time of writing they have not done so.
- 3.2 Compulsory acquisition of this land would result in the land being removed from public ownership which would cause serious detriment to the highway authority’s undertaking. NH relies on its submissions made at Deadline 7 in this regard. These submissions are made to protect NYC’s undertaking and there are strong public policy reasons why compulsory acquisition should not be agreed without offering NH and NYC the protections they require. NH’s protective provisions have been drafted in such a way to ensure those protections are in place and if accepted would satisfy both NH and NYC on this point.

### **4 Summary**

- 4.1 For the reasons given above, NH maintains its objection to the Application.
- 4.2 NH have tried to act reasonably and proportionately to reach agreement with the Applicant on all matters and to enable it to withdraw its objection. Whilst significant progress has been made, unfortunately the parties have been unable to agree all matters.
- 4.3 For the reasons stated in these submissions, together with those made throughout the examination, there are very strong public policy reasons why NH’s protective provisions should be included in any order that is made. To not do so would result in serious detriment to the statutory undertaking of two highway authorities and would not be in the public interest.
- 4.4 A further copy of those protective provisions are included at Appendix 1 to this submission and NH respectfully ask that the same are included in the DCO should it be made.

4.5 Should the ExA or the Secretary of State wish to discuss these matters further, NH would be happy to assist in whatever way it can.

**National Highways Limited**

**13 September 2023**

## APPENDIX 1



## PART 6

### FOR THE PROTECTION OF NATIONAL HIGHWAYS LIMITED

#### **Application etc.,**

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

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

#### **Interpretation**

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

(2) In this Part of this Schedule—

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

- (a) as constructed drawings in both PDF and AutoCAD DWG formats for anything designed by the undertaker; in compliance with Interim Advice Note 184 or any successor document;
- (b) list of suppliers and materials used, as well as any relevant test results and CCTV surveys (if required to comply with DMRB standards);
- (c) product data sheets and technical specifications for all materials used;
- (d) as constructed information for any utilities discovered or moved during the works;
- (e) method statements for the works carried out;
- (f) in relation to road lighting, signs, and traffic signals any information required by Series 1300 and 1400 of the Specification for Highway Works or any replacement or modification of it;
- (g) organisation and methods manuals for all products used;
- (h) as constructed programme;
- (i) test results and records as required by the highway detailed design information and during construction phase of the project;
- (j) a stage 3 road safety audit subject to any exceptions to the road safety audit standard as agreed by the undertaker and National Highways;
- (k) the health and safety file; and
- (l) such other information as is required by National Highways to be used to update all relevant databases and to ensure compliance with National Highway's Asset Data Management Manual as is in operation at the relevant time;

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

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

“commuted sum” means such sum calculated 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;

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

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

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

“reconducting detailed design information” means such of the following drawings specifications and calculations as are relevant to the development—

- (a) site clearance details;
- (b) boundary, environmental and mitigation fencing;
- (c) road restraints systems and supporting road restraint risk appraisal process assessment;
- (d) drainage and ducting as required by DMRB CD 535 Drainage asset data and risk management and DMRB CS551 Drainage Surveys standards for Highways;
- (e) earthworks including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk and any required strengthened earthworks appraisal form certification
- (f) landscaping;
- (g) traffic signs and road markings;
- (h) stage 1 and stage 2 road safety audits and exceptions agreed;
- (i) topographical survey;
- (j) maintenance and repair strategy in accordance with DMRB GD304 Designing health and safety into maintenance or any replacement or modification of it;
- (k) health and safety information including any asbestos survey required by GG105 or any successor document; and
- (l) other such information that may be required by National Highways to be used to inform the detailed design of the specified works;

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

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

“DBFO contract” means the contract between National Highways and the highway operations and

maintenance contractor for the maintenance and operation of parts of the strategic road network which are within the Order Limits or any successor or replacement contract that may be current at the relevant time;

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

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

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

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

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

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

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

“road safety audit” means an audit carried out in accordance with the road safety audit standard;

“road safety audit standard” means DMRB Standard HD GG119 or any replacement or modification of it;

“road space booking” means road space bookings in accordance with National Highways’ Asset Management Operational Requirements (AMOR) including Network Occupancy Management System (NOMS) used to manage road space bookings and network occupancy;

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

“specified works” means so much of any work, including highway works and signalisation, authorised by this Order including any maintenance of that work, as is on, in, under or over 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; “utilities” means any pipes wires cables or equipment belonging to any person or body having power or consent to undertake street works under the New Roads and Street Works Act 1991; and

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

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

## **General**

**3.** In respect of any part of the strategic road network that is managed under a DBFO contract both National Highways and the highway operations and maintenance contractor shall have the benefit of this Part 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.

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 within 5.5 metres vertically of the lowest point of the ground unless with the express consent of National Highways save in respect of any temporary oversailing equipment which falls below the 5.5m height temporarily during construction, provided that such equipment's installed position is above 5.5m, where such express consent is not required.

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

### **Works outside the Order limits**

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

### **Prior approvals and security**

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

- (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;
- (b) the programme of works has been approved by National Highways;
- (c) the reconditioning detailed design of the specified works comprising of the following details, insofar as considered relevant by National Highways, has been submitted to and approved by National Highways—
  - (i) the detailed design information, including scaffolding to oversail the strategic road network, incorporating all recommendations and any exceptions approved by National Highways under sub-paragraph (a);
  - (ii) details of the proposed road space bookings;
- (iii) the identity and suitability of the contractor and nominated persons;
- (iv) a process for stakeholder liaison, with key stakeholders to be identified and agreed between National Highways and the undertaker;
- (v) information demonstrating that the walking, cycling and horse riding assessment and review process undertaken by the undertaker in relation to the specified works has been adhered to in accordance with DMRB GG142 – Designing for walking, cycling and horse riding; and
- (d) 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.

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

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

- (c) the detailed design of the specified works comprising of the following details, insofar as considered relevant by National Highways, has been submitted to and approved by National Highways—
    - (i) the highway detailed design information, incorporating all recommendations and any exceptions approved by National Highways under sub-paragraph (a)
    - (ii) details of the proposed road space bookings;
    - (iii) the identity and suitability of the contractor and nominated persons;
    - (iv) a process for stakeholder liaison, with key stakeholders to be identified and agreed between National Highways and the undertaker;
    - (v) information demonstrating that the walking, cycling and horse riding assessment and review process undertaken by the undertaker in relation to the specified works has been adhered to in accordance with DMRB GG142 – Designing for walking, cycling and horse riding; and
  - (d) a scheme of traffic management has been submitted by the undertaker and approved by National Highways such scheme to be capable of amendment by agreement between the undertaker and National Highways from time to time;
  - (e) stakeholder liaison has taken place in accordance with the process for such liaison agreed between the undertaker and National Highways under sub-paragraph (c)(v) above;
  - (f) National Highways has approved the audit brief and CVs for all road safety audits and exceptions to items raised in accordance with the road safety audit standard;
  - (g) the undertaker has agreed the estimate of the commuted sum with National Highways;
  - (h) the scope of all maintenance operations (routine inspections, incident management, reactive and third party damage) to be carried out by the undertaker during the construction of the specified works (which must include winter maintenance) has been agreed in writing by National Highways;
  - (i) the undertaker has procured to National Highways collateral warranties in a form reasonably approved by National Highways from the contractor and designer of the specified works in favour of National Highways to include covenants requiring the contractor and designer to exercise all reasonable skill care and diligence in designing and constructing the specified works, including in the selection of materials, goods, equipment and plant; and
  - (j) a condition survey and regime of monitoring of any National Highways assets or structures that National Highways considers will be affected by the specified works, has been agreed in writing by National Highways,
 

unless otherwise agreed by National Highways.
- (3) The undertaker must not exercise—
- (a) article 14 (temporary stopping up of streets, cycle tracks and public rights of way);
  - (b) article 19 (discharge of water);
  - (c) article 20 (protective works to buildings);
  - (d) article 21 (authority to survey and investigate the land);
  - (e) article 45(2) (Traffic regulation) of this Order,
- (4) 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. The undertaker must provide 28 days’ notice of the exercise of Article 45(1) (Traffic regulation) 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.
- (5) National Highways must prior to the commencement of the specified works or the exercise of any power referenced in sub-paragraph (3) inform the undertaker of the identity of the person who will act as a point of contact on behalf of National Highways for consideration of the information required under sub-

paragraphs (1), (2),(3) or (4).

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

- (a) must not be unreasonably withheld;
- (b) must be given in writing;
- (c) may be subject to any conditions as National Highways considers necessary;
- (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
- (e) in respect of any other approval, 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.

(7) 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 and in respect of any specified works under sub-paragraph (2) collateral warranties in a form agreed by National Highways will be provided.

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

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

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

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

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

- (a) the relevant detailed design information and programme of works approved pursuant to paragraph 7(1) or (2) as appropriate or as subsequently varied by agreement between the undertaker and National Highways;
- (b) the DMRB, the Manual of Contract Documents for Highway Works, including the Specification for Highway Works, together with all other relevant standards as required by National Highways to include, inter alia; all relevant interim advice notes, the Traffic Signs Manual and the Traffic Signs Regulations and General Directions 2016 save to the extent that exceptions from those standards apply which have been approved by National Highways; and
- (c) all aspects of the Construction (Design and Management) Regulations 2015 or any statutory amendment or variation of the same and in particular the undertaker, as client, must ensure that all client duties (as defined in the said regulations) are undertaken to the satisfaction of National Highways.

(4) The undertaker must permit and must require the contractor to permit at all reasonable times persons authorised by National Highways (whose identity must have been previously notified to the undertaker by National Highways) to gain access to the specified works for the purposes of inspection and supervision of the specified works.

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

- (a) other than in accordance with the requirements of this Part of this Schedule; or
- (b) in a way that causes damage to the strategic road network or any other land of National Highways

used for its undertaking,

- (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.

(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.

(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 such sum to be payable within 30 days of demand.

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

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

(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.

(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 reserves the right to withdraw any road space booking granted to the undertaker to ensure compliance with its network occupancy requirements.

## **Payments**

9.—(1) The undertaker must pay to National Highways a sum equal to the whole of any 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—

- (a) the checking and approval of the information required under paragraph 7;
- (b) the supervision of the specified works;
- (c) the checking and approval of the information required to determine approvals under this Order;
- (d) all costs in relation to the transfer of any land required for the specified works; and
- (e) all legal and administrative costs and disbursements incurred by National Highways in connection with the Order and sub-paragraphs (a)-(d); and
- (f) any value added tax which is payable by National Highways in respect of such costs and expenses and for which it cannot obtain reinstatement from HM Revenue and Customs,

together comprising “the NH costs”.

(2) The undertaker must pay to National Highways upon demand and prior to such costs being incurred the total costs that National Highways believe will be properly and necessarily incurred by National

Highways in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the authorised development.

- (3) National Highways must provide the undertaker with a schedule showing its estimate of the NH costs prior to the commencement of the specified works and the undertaker must pay to National Highways the estimate of the NH costs prior to commencing the specified works and in any event prior to National Highways incurring any cost but the absence of such estimate will not inhibit the commencement of the specified works by the undertaker.
- (4) If at any time after the payment referred to in sub-paragraph (3) has become payable, National Highways reasonably believes that the NH costs will exceed the estimated NH costs it may give notice to the undertaker of the amount that it believes the NH costs will exceed the estimate of the NH costs (the excess) and the undertaker must pay to National Highways within 30 days of the date of the notice a sum equal to the excess.
- (5) National Highways must give the undertaker a final account of the NH costs referred to in sub- paragraph (1) above within 91 days of the issue of the provisional certificate issued pursuant to paragraph 10(4).
- (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;
  - (b) if the account shows that the payment or payments previously made by the undertaker have exceeded the costs incurred by National Highways, National Highways must refund the difference to the undertaker.
- (7) If any payment due under any of the provisions of this Part of this Schedule is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the other party interest at 3% above the Bank of England base lending rate from time to time being in force for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

### **Provisional Certificate**

**10.**—(1) Following any closure or partial closure of any of the strategic road network for the purposes of carrying out the specified works, National Highways will carry out a site inspection to satisfy itself that the strategic road network is, in its opinion, safe for traffic and the undertaker must comply with any requirements of National Highways prior to reopening the strategic road network.

- (2) As soon as the undertaker considers that the provisional certificate may be properly issued it must apply to National Highways for the provisional certificate.
- (3) Following an application for a provisional certificate, National Highways must as soon as reasonably practicable:
- (a) inspect the specified works; and
  - (b) provide the undertaker with a written list of works that are required for the provisional certificate to be issued or confirmation that no further works are required for this purpose.
- (4) When—
- (a) a stage 3 road safety audit for the specified works has been carried out and all recommendations raised including remedial works have (subject to any exceptions agreed) been approved by National Highways;
  - (b) the specified works incorporating the approved remedial works under sub-paragraph (4)(a) and any further works notified to the undertaker pursuant to sub-paragraph 10(3)(b) have been completed to the satisfaction of National Highways;
  - (c) the as built information has been provided to National Highways; and
  - (d) in respect of any specified works captured by paragraph 7(2), the undertaker has paid the commuted sum to National Highways,
- National Highways must issue the provisional certificate.



- (5) On the issue of the provisional certificate the bond sum (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 meet any costs for or arising from the specified works.
- (6) The undertaker must submit a stage 4 road safety audit as required by and in line with the timescales stipulated in the road safety audit standard. The undertaker must comply with the findings of the stage 4 road safety audit and must pay all costs of and incidental to such and provide updated as-built information to National Highways.

### **Opening**

**11.** The undertaker must notify National Highways not less than 56 days in advance of the intended date of opening to the public of the strategic road network and the undertaker must notify National Highways of the actual date the strategic road network will be opened to the public within 14 days of that date.

### **Final condition survey**

**12.** In respect of any specified works approved under paragraph 7(1) or 7(2)—

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

(2) If the re-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.

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

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

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

### **Defects Period**

**13.** In respect of any specified works approved under paragraph 7(2)—

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

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

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

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

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

## **Final Certificate**

**14.** (1) In respect of any specified works approved under paragraph 7(2)—

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

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

(i) inspect the strategic road network; and

(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.

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

(d) When National Highways is satisfied that:

(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

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

National Highways must issue the final certificate after which the bond shall be released in full.

(e) The undertaker must pay to National Highways within 30 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.

(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.

## **Security**

**15.** —In respect of any specified works approved under paragraph 7(2), the works must not commence until—

(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 exceed the bond sum; and

(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.

## **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.

## **Indemnity**

**17.** —(1) The undertaker fully indemnifies National Highways from and against all costs, claims, expenses, damages, losses and liabilities suffered by National Highways arising from the construction, maintenance or use of the specified works or exercise of or failure to exercise any power under this Order within 30 days of demand save for any loss arising out of or in consequence of any negligent act or default

of National Highways.

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

**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.

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

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

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

### **Land**

**19.** —(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).

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

(3) The undertaker must not under the powers of this Order:

(a) acquire freehold land of National Highways; and/or

(b) seek to impose or extinguish any restrictive covenants over any part of the strategic road network or extinguish any existing rights of National Highways in respect of land owned by National Highways used for its undertaking and any third party property used for National Highways' undertaking, except with the consent of National Highways by written request to [legalservicesinbox@nationalhighways.co.uk](mailto:legalservicesinbox@nationalhighways.co.uk).

(4) Where any land or interest is proposed to be acquired 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.

### **Arbitration**

**20.** Any dispute under this Part of this Schedule shall be settled by arbitration in accordance with article 53 (arbitration).

## APPENDIX 2

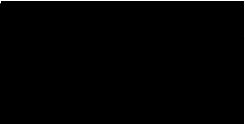
NEW ROADS AND STREETWORKS ACT 1991

SECTION 61 CONSENT

1. The Secretary of State for Transport ("the Secretary of State") as the street authority for the M5 Motorway ("the road"), which is a protected street within the meaning of Section 61 of the New Roads and

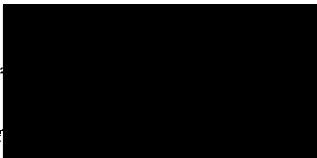
Street Works Act 1991, hereby consents to the placing by National Grid, of National Grid House, Warwick Technology Park, Gallows Hill, Warwick, CV34 6DA ("the undertaker") of a New-Build 400kV Overhead Line Transmission Connection between Huntspill, Sedgemoor and Seabank, Avon which includes the installation of overhead conductors ("the apparatus") over the road between strategic road network junctions 19 and 20 subject to the conditions attached.

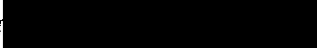
2. The undertaker shall pay the Secretary of State within 14 days of being demanded a sum in respect of the expenses necessarily and reasonably incurred by the Secretary of State in connection with the giving of this consent.

Signed.....  ..... Date.....

Print Name:  ..... on behalf of the Secretary of State

In the capacity of National Highways .....

Signed.....  ..... Date: 18/01/2023.....

Print Name:  ..... on behalf of the undertaker

In the capacity of National Grid Plc. ....

## SCHEDULE

1. The apparatus shall be placed in accordance with the position and at the location indicated in Drawing 4ZOI8B-PTD-ZZZZ-OHD-LNP-ELN-COND-042298 P04 (14/06/2022) annexed to this consent.
2. No work for placing the apparatus over the road shall commence until an acceptable programme for construction has been submitted and all necessary approvals have been given in writing by the Secretary of State.
3. The work shall be carried out to the satisfaction of the Secretary of State who shall be afforded every opportunity he requests to inspect the work.
4. After the apparatus has been placed the undertaker shall not carry out any further works to the apparatus within the boundaries of the road except with the prior written approval of the Secretary of State. Any such works shall be carried out to the satisfaction of the Secretary of State and in accordance with any reasonable conditions which the Secretary of State may from time to time specify.
5. If any works are approved in accordance with condition 4 above the undertaker shall give to the Secretary of State and to the local police adequate notice of the dates and times during which those works will be carried out and shall comply with any requirements laid down by the Secretary of State and the Police for the purpose of preventing danger to or minimising interference with traffic on the road.
6. The undertaker shall maintain the apparatus in a good state of repair and condition.
7. The undertaker shall indemnify and keep indemnified the Secretary of State against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of or in relation to any injuries (including fatal injuries) to any person, or any damage to or the loss of any property whatsoever, which may arise out of or in consequence of the placing, use, retention, maintenance or removal of the apparatus or any associated works, or of anything else done or purported to be done pursuant to this consent, or of any breach by the undertaker of the conditions in this Schedule EXCEPT to the extent, if any, that such injury, damage or loss would not have been sustained but for the wilful default or negligence of the Secretary of State, his officers, servants or agents or his or their contactors or any person in the employ of such agent or contractor.