

**Dated 13 June 2025**

**APPLICATION BY RWE RENEWABLES UK DOGGER BANK SOUTH (WEST) LIMITED AND RWE  
RENEWABLES UK DOGGER BANK SOUTH (EAST) LIMITED FOR AN ORDER GRANTING  
DEVELOPMENT CONSENT FOR THE DOGGER BANK SOUTH OFFSHORE WIND FARM  
SCHEME**

**PLANNING INSPECTORATE REFERENCE NUMBER: EN010125**

**REGISTRATION IDENTIFICATION NUMBER: 20050123**

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**WRITTEN REPRESENTATION**  
**submitted on behalf of National Grid Electricity**  
**Transmission plc at Deadline 6**

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## 1 Introduction

- 1.1 This submission is made at Deadline 6 on behalf of National Grid Electricity Transmission plc (**NGET**) in connection with the application by RWE Renewables UK Dogger Bank South (West) Limited and RWE Renewables UK Dogger Bank South (East) Limited (**Applicant**) for the Dogger Bank South Offshore Wind Farms Development Consent Order (**Order**) to enable the construction of the Dogger Bank South Offshore Wind Farm (**Dogger Bank South Project**).
- 1.2 It provides an update on the matters referred to in NGET's submissions to the Examination, being:
- (a) The written representation dated 29 January 2025 (**NGET's Written Representation**) [**REP1-080**];
  - (b) Update on Written Representation and Response to Rule 17 Letter dated 24 April 2025 [**REP4-111**]; and
  - (c) Written representation dated 23 May 2025 [**REP5-064**]
- (together the **NGET Submissions**).
- 1.3 It also provides NGET's response to the various points concerning protective provisions raised in the Planning Inspectorate's Rule 17 letter dated 9 June 2025.
- 1.4 As the Examining Authority is aware, NGET has requested that the set of protective provisions that it has put forward for the benefit of its undertaking (**NGET PPs**, a copy of which are included at **Appendix 1**) should be included in the Order. This is to ensure that NGET's existing apparatus and interests in the vicinity of the Dogger Bank South Project are adequately protected but also to ensure that NGET is able to safeguard land which will be utilised for the construction, maintenance and operation of the Birkhill Wood Substation and the Wanlass Beck Substation (**Birkhill Wood and Wanlass Beck Project**) and the North Humber to High Marnham Project (**NHHM Project**) (together the **NGET Projects**) upon which multiple third party connectee projects (including the Dogger Bank South Project itself) will be reliant. A plan detailing the extent and location of Birkhill Wood and Wanlass Beck Project and a plan showing the extent and location of the NHHM Project were included in [**REP1-080**] (together the **NGET Project Sites**).
- 1.5 As set out in the NGET Submissions, NGET's PPs are necessary to avoid serious detriment to not just NGET but multiple third party connectee projects reliant on the delivery of the NGET Projects at the NGET Project Sites.
- 1.6 NGET is concerned with regards to the adequacy of the protective provisions proposed by the Applicant in its Deadline 3 submission [**REP3-034**] (**D3 PPs**). NGET considers that the D3 PPs would cause serious detriment to NGET's undertaking and its ability to carry out the NGET Projects.

## 2 Summary of NGET's position

- 2.1 NGET's position has been clear and unchanged throughout the Examination. It requires the NGET PPs to be included in the Order for the reasons set out in the NGET Submissions and detailed further below.

- 2.2 With regard to the ExA's request in the Rule 17 Letter that Statutory Bodies provide their case in relation to s127/s138 of the 2008 Planning Act, NGET is a statutory undertaker within the meaning of section 127(8) PA 2008.
- 2.3 In these circumstances, section 127(2) and (5) provide that any order granting development consent for the Project may only include provision authorising the compulsory acquisition of NGET's land or rights therein if this can be done without serious detriment to the carrying on of NGET's undertaking (whether by the provision of replacement land or otherwise) or if any detriment in consequence of the acquisition of a right can be made good.
- 2.4 Section 138 of PA 2008 applies where an Order authorises the acquisition of land (compulsorily or by agreement) and there subsists over the land a relevant right or there is on, under or over the land relevant apparatus.
- 2.5 S138(4) provides that an Order may include provision for the extinguishment of the relevant right or the removal of relevant apparatus only if the Secretary of State is satisfied that the extinguishment, or removal, is necessary for the purpose of carrying out the development to which the Order relates.
- 2.6 As well as ensuring existing NGET infrastructure and interests are adequately protected, NGET requires control over the NGET Project Site in order to construct the Birkhill Wood Substation and Wanlass Beck Substation as well as the NHHM Project. The Birkhill Wood Substation is required for the Dogger Bank South Project connection and the NHHM Project is required for the second stage of the Dogger Bank South Project.
- 2.7 Other customers will be connecting into the Birkhill Wood Substation once it is built and therefore NGET needs to ensure that the Applicant's proposals do not have the effect of sterilising the land for that purpose. NGET needs to retain control of the land in order to facilitate those connections in the most economical and efficient manner.
- 2.8 The Applicant's proposals to compulsorily acquire rights and impose restrictions over, and to take temporary possession of, any of NGET's land as well as the NGET Project Site land would cause serious detriment to NGET's undertaking, for the reasons set out below. NGET notes that the Applicant has at no stage explained why it considers that the tests in section 127 and section 138 PA 2008 can be met, particularly given the deficiencies in the D3 PPs discussed below.
- 2.9 NGET's position is that this serious detriment can only be addressed by including the NGET PPs in the Order.

### **3 Outstanding points on protective provisions**

- 3.1 The D3 PPs deviate from NGET's PPs in a number of key respects and provide inadequate protection for both the existing and future NGET infrastructure within the vicinity of the Dogger Bank South Project.
- 3.2 A comparison between the D3 PPs and NGET's PPs is included at Appendix 2 to illustrate the outstanding points between the parties. NGET's concerns with these differences are as follows:
- Omission of safeguarding provisions for the NGET Projects (paragraphs 3 – 7 and associated definitions)
- 3.3 As set out in the NGET Submissions, NGET is under a legal obligation to connect new sources of energy generation to its transmission network. It has connections agreements with third party

connectee projects at this location, including the Dogger Bank South Project, to deliver their connections to the national grid. .

- 3.4 Accordingly, this is not the typical situation of two 'rival' projects potentially wishing to utilise the same land at some point in the future and NGET is not attempting to prevent the Dogger Bank South Project from proceeding. It is merely trying to ensure adequate safeguarding controls over the relevant areas of land where there are interfaces to ensure that it is able to deliver its projects and, ultimately, enable the Dogger Bank South Project and other third party projects reliant on the NGET Projects to connect to the national grid. The NGET PPs provide for that protection and ensure ongoing co-ordination and co-operation to allow both projects to proceed.
- 3.5 It is important for NGET to secure its proposed form of protective provisions in order to ensure consistency with other DCOs and so avoid unnecessary complications going forward. This will ultimately be for the benefit of all the connectee projects at this location, including the Dogger Bank South Project, because it will ensure that no single project can prejudice NGET's ability to bring forward the critical infrastructure that all of these projects are reliant on in this location.
- 3.6 In this regard the safeguarding provisions in the NGET PPs have clear precedent in other recent DCOs. For example, the NGET PPs have been secured in the Awel y Môr Offshore Wind Farm Development Consent Order 2023 (**the AYM DCO**) to safeguard NGET's proposed Bodelwyddan substation extension and associated works as well as protect its existing apparatus and interests.. In that case, as here, the DCO project is reliant on NGET's proposed substation works for its connection to the national grid, along with multiple other connectee projects at that location. We would note in particular that the AYM DCO project is in part owned by RWE Renewables, a company affiliated with the Applicant in the Dogger Bank South Project. It is unclear why a different approach is being taken here by the Applicant.
- 3.7 The NGET PPs have also been included in the final form of Order requested by the applicant for the Mona Offshore Wind Farm Development Consent Order which, if consented, will be another connectee project reliant on the delivery of NGET's proposed upgrade to Bodelwyddan substation. The Examination relating to the Mona Offshore Wind Farm DCO closed on 16 January 2025 and the Secretary of State's decision is now pending.
- 3.8 Similarly the NGET PPs were included in the Byers Gill Solar Development Consent Order (**Byers Gill DCO**), again for the protection of future infrastructure. The Examination relating to the Byers Gill DCO closed on 23 January 2025 and the Secretary of State's decision is now pending. Similarly to the AYM DCO, the Byers Gill DCO was promoted by RWE Renewables UK Solar and Storage Limited, a company affiliated with the Applicant in the Dogger Bank South Project. Again, it is unclear why a different approach is being taken here.
- 3.9 More broadly, the principle of securing safeguarding provisions for the protection of statutory undertakers has also been set in The Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022 for the benefit of National Grid Carbon Limited for future infrastructure.
- 3.10 There is no reason for a different approach to be taken here with regards to securing protective provisions for the protection of existing and future infrastructure, especially as the project the subject of the proposed DCO is itself reliant on the delivery of the future infrastructure in question..

#### Omission of 'acceptable security' and 'acceptable insurance' provisions

- 3.11 Whilst the Applicant has agreed to the concept of indemnification of NGET, the Applicant has omitted the 'acceptable security' and the 'acceptable insurance' provisions. NGET requires that

both 'acceptable security' and 'acceptable insurance' be provided for within its protective provisions and the principle of inclusion of both is well established in protective provisions. There are multiple precedents in existing DCOs - for example in the recently granted Viking CCS Development Consent Order. The principle is also well established in other forms of infrastructure agreements, for example, highways agreements anticipate statutory highways authorities having recourse to both insurance and a form of security.

- 3.12 Both insurance and security are required on the basis that not including one or the other would leave NGET open to irrecoverable liabilities and losses. Insurance may not cover all losses and liabilities anticipated under the indemnity, particularly as NGET has no right to review or approve the terms of the insurance to ensure that it has sufficient levels of coverage for all risks. It is therefore appropriate that NGET should have recourse to a parent company or bond to recover relevant costs and losses.

Omission of Acquisition of Land provisions (paragraph 11)

- 3.13 A restriction on the Dogger Bank South Project's powers of compulsory acquisition is absolutely necessary and a standard provision included for the benefit of statutory undertakers. It has multiple precedents in existing DCOs, including the AYM DCO referred to above. This provision is one of the core elements of protective provisions to ensure that NGET has control over the NGET Project Sites and in relation to its existing apparatus and interests.
- 3.14 Given that the Dogger Bank South Project and multiple other connectee projects will be connecting into the Birkill Wood Substation, NGET needs to ensure that the construction of the NGET Projects is not prejudiced or interfered with as a result of the Applicant using compulsory powers.

Amendment to paragraph 13(1) (Facilities and rights for alternative apparatus)

- 3.15 Paragraph 12 provides that in the event that, as result of the Authorised Development, new alternative apparatus for the benefit of NGET must be provided by the Applicant. Paragraph 13 deals with facilities and rights to be provided in relation to the alternative apparatus.
- 3.16 The Applicant has removed drafting that states that the facilities and rights afforded to NGET should be no less favourable on the whole to NGET than those enjoyed previously unless otherwise agreed. It is unclear why this provision has been removed given that it is a standard position where interference is had with statutory undertaker apparatus so that statutory undertakers are not unduly adversely affected as a result of a third party development.

Amendment to paragraph 14 (Retained Apparatus)

- 3.17 The Applicant has inserted timescales into paragraph 14(5)(a) with the effect that any conditions NGET may have in relation to the proposed specified works must be communicated to the Applicant within 28 days of submission of plans. The same timescales have been inserted in paragraph 14(6) in relation to modifications that NGET may require for the provision of protective works.
- 3.18 NGET cannot be tied to such timescales in case it is unable to meet them; this is possible given the nature of NGET as a large organisation with multiple projects taking place concurrently. It is also unclear as to what the effect of not meeting such timescales would be: would NGET approval be deemed to be given and therefore the specified works could take place without NGET having provided commentary or required conditions in the interests of safety? NGET would always act reasonably to ensure that comments were provided expeditiously and, given

the interconnected nature of the projects, it would not seek to cause unnecessary delay to the Dogger Bank South Project.

Removal of reference to NGET guidance notes

- 3.19 Paragraph 14(12) of the NGET PPs refers to compliance with NGET's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines". This is a clear sign-post with regards to how the Authorised Development should take place and is necessary to ensure compliance with NGET standards of safety. It is unclear why the Applicant would seek to remove it.

Amendments to paragraph 15 (Expenses)

- 3.20 The Applicant has made a number of amendments to paragraph 15:
- (a) Amendment of payment timescale from 30 days to 60 days: NGET considers that 30 days is a reasonable timescale for payment and it should not be unduly burdened by costs that are due from the Applicant as a result of the Dogger Bank South Project.
  - (b) Exclusion of consequential and indirect loss: Exclusion of these losses would preclude NGET's ability to recover costs, losses, etc arising from penalties or fines that have been incurred as a result of, for example damage caused to apparatus by the authorised works. NGET cannot agree to this and it is not equitable that it should be liable for such costs and losses as a result of a third party project.
  - (c) Removal of reasonably anticipated costs: The principle of payment of anticipated costs is well established under protective provisions. There are some costs and expenses that NGET would reasonably be able to anticipate and provide invoices for, such as fee estimates and

Amendments to paragraph 20 (Arbitration)

- 3.21 The Applicant has sought to remove references to paragraphs 12(2), 12(4), 13(1) and 14 so that any disputes between the parties would be settled by arbitration. NGET considers that these paragraphs deal with technical issues on which NGET must retain absolute authority. A third party arbitrator would not be able to sufficiently determine the extent of the impact on NGET's electricity transmission infrastructure network arising from these issues.
- (a) Paragraph 12(2) deals with the provision of necessary rights and facilities for alternative apparatus by the Applicant to NGET's reasonable satisfaction. NGET must be satisfied that what is being proposed by the Applicant for alternative apparatus is suitable and safe for the purposes of its undertaking. NGET is the expert in this regard and this should not be the subject of third-party arbitration.
  - (b) Paragraph 12(4) deals with the way that alternative apparatus is constructed. Again NGET is the expert in this regard and a third-party arbitrator would not be able to determine what is suitable for NGET's undertaking.
  - (c) Paragraph 13(1) deals with the facilities and rights afforded to NGET as a result of alternative apparatus being constructed. NGET must be assured that what is being proposed would not be less favourable than previously enjoyed so as to protect its undertaking sufficiently.

- (d) Paragraph 14 deals with the protection of retained apparatus and the approvals process for specified works. The extent and type of technical detail that is being considered here would not be suitable for third party arbitration and NGET must be absolutely satisfied that what is being proposed by the specified works would not adversely affect their apparatus and interests to ensure the safety of its assets and integrity of the national grid.

#### Amendments replacing 'authorised works' with 'specified works'

- 3.22 Throughout the D3 PPs, the Applicant has sought to replace 'authorised works' with 'specified works'. 'Specified works' is a term that is only intended to be used in reference to certain provisions within the protective provisions e.g. in relation to the approval mechanisms under the Retained Apparatus paragraph. As a general principle, NGET should not be liable for costs or losses incurred as a result of the Dogger Bank South Project; reference to 'specified works' indicates a narrowing of this principle which is a standard principle under protective provisions with statutory undertakers.
- 3.23 In addition, the use of 'specified works' within the context of paragraphs 10 and 11 is not correct when considered within the meaning of the whole, particularly where assets are not being retained in situ and are instead being removed under paragraph 7(2). 'Specified works' excludes apparatus which has been removed as a result of paragraph 7(2). Referring only to 'specified works' and not 'authorised works' within paragraph 10 (Expenses) and paragraph 11 (Indemnity) would preclude costs or losses associated with this removal which the remaining drafting (e.g. paragraph 10(1)) clearly anticipates being covered. Similarly, reference to authorised works at paragraph 11 clearly anticipates coverage in relation to these removal works.

#### Other amendments

- 3.24 There are other amendments to the NGET PPs altering or inserting timescales to which NGET cannot agree to on the basis that the timescales proposed could not realistically be complied with.
- 3.25 The net effect of all of the above is that the D3 PPs are inadequate to avoid serious detriment to NGET's undertaking..

## **4 Status of negotiations**

- 4.1 Based on its discussions with the Applicant, it is NGET's understanding that the Applicant is continuing to reserve its position on the NGET protective provisions until agreement is reached between the parties. NGET notes the position set out by the Applicant at Deadline 3 in relation to the D3 PPs that if bespoke protective provisions cannot be agreed prior to the close of Examination, the D3 PPs form of protective provisions will be included in an updated version of the DCO at Deadline 8 of the Examination (**the Final Draft DCO**).
- 4.2 Since an agreed position has not yet been reached, NGET must continue to maintain the position as set out throughout the NGET Submissions and request that NGET's PPs should be included in the DCO in place of the Applicant's D3 PPs.
- 4.3 NGET will continue to engage with the Applicant to negotiate and agree the protective provisions for the benefit of NGET before the close of the Examination. It requests that the Applicant actively engages with issues raised by NGET to reach a resolution as swiftly as possible. This is necessary to ensure that not only are NGET's existing apparatus and interests are protected but that the future infrastructure and interests required by NGET to facilitate the connection of the Applicant's project into the National Grid are not adversely affected.

- 4.4 For this reason NGET also reserves its right to request the opportunity to appear at a hearing before the close of the Examination in order to expand on the content of this written submission and the NGET Submissions if necessary.

## **5 Summary of NGET's position**

- 5.1 In light of the above, NGET's position remains as set out in NGET's Written Representation.
- 5.2 NGET's Written Representation provides both NGET's PPs and the explanation as to why the NGET PPs are necessary. In summary, NGET has existing and future infrastructure that needs to be protected via the protective provisions that NGET is proposing be included in the final form of the Order. These protective provisions include wording that have precedent in other development consent orders that have been recently granted. Without inclusion of the protective provisions, serious detriment would be caused to NGET's undertaking as well as to other third-party projects that are reliant on NGET's existing and future electricity transmission infrastructure (including the Dogger Bank South Project itself).
- 5.3 Since an agreed position has not been reached with the Applicant, NGET must continue to maintain the position set out in NGET's Written Representation and requests that NGET's PPs should be included in the Order accordingly. NGET also reserves its right to request the opportunity to appear at a hearing before the close of the Examination if necessary.

**Addleshaw Goddard LLP on behalf of NGET**

**13 June 2025**



## **Appendix 1**

### **NGET PPs**

# NATIONAL GRID ELECTRICITY TRANSMISSION PLC

## Schedule 1 SCHEDULE 1

### PROTECTIVE PROVISIONS

#### PART 1

#### FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC AS ELECTRICITY UNDERTAKER

##### Application

1.(1) For the protection of National Grid Electricity Transmission Plc as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Grid Electricity Transmission Plc.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid Electricity Transmission Plc, where the benefit of this Order is transferred or granted to another person under article [5] (*benefit of Order*) –

(a) any agreement of the type mentioned in subparagraph (1) has effect as if it had been made between National Grid Electricity Transmission Plc and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to National Grid Electricity Transmission Plc on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid Electricity Transmission Plc (but without prejudice to paragraph 16(3)b).

##### Interpretation

2. In this Part of this Schedule—

“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than: (i) “A-” if the rating is assigned by Standard & Poor’s Ratings Group or Fitch Ratings; and “A3” if the rating is assigned by Moody’s Investors Services Inc.;

“acceptable insurance” means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained (a) during the construction period of the authorised works; and (b) after the construction period of the authorised works in respect of any use and maintenance of the authorised works by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/credit rating meets the same requirements as an “acceptable credit provider”, such insurance shall include (without limitation):

(a) a waiver of subrogation and an indemnity to principal clause in favour of National Grid Electricity Transmission Plc

(b) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate;

“acceptable security” means either:

(a) a parent company guarantee from a parent company in favour of National Grid Electricity Transmission Plc to cover the undertaker’s liability to National Grid Electricity Transmission Plc to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Grid Electricity Transmission Plc and where required by National Grid Electricity Transmission Plc,

accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or

(b) a bank bond or letter of credit from an acceptable credit provider in favour of National Grid Electricity Transmission Plc to cover the undertaker's liability to National Grid Electricity Transmission Plc for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Grid Electricity Transmission Plc);

"access works" means any part of Work Nos. [33A/B, 18A/B] described in Schedule 1 of this Order (authorised development);

"alternative apparatus" means appropriate alternative apparatus to the satisfaction of National Grid Electricity Transmission Plc to enable National Grid Electricity Transmission Plc to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means:

(a) electric lines or electrical plant as defined in the 1989 Act, belonging to or maintained by National Grid Electricity Transmission Plc together with any replacement apparatus; and

(b) such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid Electricity Transmission Plc for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus. and

(c) any electrical lines or electrical plant as defined in the 1989 Act, any mains, pipes, plant or other apparatus belonging to, operated or maintained by National Grid Electricity Transmission Plc for the purposes of the construction, operation and maintenance of the Birkhill Wood Project, whether temporary or permanent, and includes, where the context so requires, apparatus constructed as part of the authorised works and intended for the beneficial use by National Grid Electricity Transmission Plc ("Birkhill Wood apparatus"); and

(d) any electrical lines or electrical plant as defined in the 1989 Act, any mains, pipes, plant or other apparatus belonging to, operated or maintained by National Grid Electricity Transmission Plc for the purposes of the construction, operation and maintenance of the North Humber to High Marnham Project, whether temporary or permanent, and includes, where the context so requires, apparatus constructed as part of the authorised works and intended for the beneficial use by National Grid Electricity Transmission Plc ("North Humber to High Marnham apparatus"); and

(e) any electrical lines or electrical plant as defined in the 1989 Act, any mains, pipes, plant or other apparatus belonging to, operated or maintained by National Grid Electricity Transmission Plc for the purposes of the construction, operation and maintenance of the Wanlass Beck Project, whether temporary or permanent, and includes, where the context so requires, apparatus constructed as part of the authorised works and intended for the beneficial use by National Grid Electricity Transmission Plc ("Wanlass Beck apparatus");

(a) "authorised works" has the same meaning as is given to the term "authorised development" in article [2(1)] (interpretation) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

(b) "Birkhill Wood Project" means [the proposed new substation to be known as Birkhill Wood Substation to be located at Creyke Beck in the East Riding of Yorkshire, construction of access road from the A1079, overhead line works, utilities and watercourse crossings and associated works to be undertaken by National Grid Electricity Transmission Plc and any temporary construction compounds and laydown areas for such works];

(c) "Birkhill Wood Site" includes –

(a) land on which any Birkhill Wood apparatus is situated; and

(b) land on which Birkhill Wood apparatus is anticipated to be situated which is necessary for the construction, use or maintenance of the Birkhill Wood Project (in so far as the same has been notified by National Grid Electricity Transmission Plc in writing to the undertaker);

(d) "commence" and "commencement" in this Part of this Schedule shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid Electricity Transmission Plc (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Grid Electricity Transmission Plc’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“Incentive Deduction” means any incentive deduction National Grid Electricity Transmission Plc Electricity Transmission plc receives under its electricity transmission licence which is caused by an event on its transmission system that causes electricity not to be supplied to a demand customer and which arises as a result of the authorised works;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid Electricity Transmission Plc to construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Grid Electricity Transmission Plc” means National Grid Electricity Transmission Plc (Company Number 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989;

"Dogger Bank South project works" means any part of Work Nos. 15A/B, 18A/B, 31A/B, 32A/B, 34A/B described in Schedule 1 of this Order (authorised development)

“NGESO” means as defined in the STC;

(e) "North Humber to High Marnham Project" means the proposed new high voltage electricity transmission line and associated works between a new substation at Creyke Beck in the East Riding of Yorkshire and a new substation at High Marnham in Nottinghamshire to be undertaken by National Grid Electricity Transmission Plc;

" North Humber to High Marnham Site" includes –

(a) land on which any North Humber to High Marnham apparatus is situated; and

(b) land on which North Humber to High Marnham apparatus is anticipated to be situated which is necessary for the construction, use or maintenance of the North Humber to High Marnham Project (in so far as the same has been notified by National Grid Electricity Transmission Plc in writing to the undertaker);

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“parent company” means a parent company of the undertaker acceptable to and which shall have been approved by National Grid Electricity Transmission Plc acting reasonably;

"shared area works" means:

(a) the Dogger Bank South project works;

(b) the access works; and

(c) any part of the authorised works taking place on any land associated with the Birkhill Wood Project, the North Humber to High Marnham Project, the Wanlass Beck Site and/or any access thereto;

(f) “specified works” means any of the authorised works or activities undertaken in association with the authorised works which:

- (g) (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise; and/or
  - (h) (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise.; and/or
  - (i) (c) includes any of the activities that are referred to in development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".
  - (j) "STC" means the System Operator Transmission Owner Code prepared by the electricity Transmission Owners and NGESO as modified from time to time;
  - (k) "STC Claims" means any claim made under the STC against National Grid Electricity Transmission Plc arising out of or in connection with the de-energisation (whereby no electricity can flow to or from the relevant system through the generator or interconnector's equipment) of a generator or interconnector party solely as a result of the de-energisation of plant and apparatus forming part of National Grid Electricity Transmission Plc's transmission system which arises as a result of the authorised works;
  - (l) "Transmission Owner" means as defined in the STC;  
"undertaker" means the undertaker as defined in article 2(1) of this Order;
  - (m) "Wanlass Beck Project" means [the proposed extension of the existing Wanlass Beck Substation, construction of access road from the A1079, overhead line works, utilities and watercourse crossings and associated works to be undertaken by National Grid Electricity Transmission Plc and any temporary construction compounds and laydown areas for such works]<sup>1</sup>;
- "Wanlass Beck Site" includes –
- (a) land on which any Wanlass Beck apparatus is situated; and
  - (b) land on which Wanlass Beck apparatus is anticipated to be situated which is necessary for the construction, use or maintenance of the Wanlass Beck Project (in so far as the same has been notified by National Grid Electricity Transmission Plc in writing to the undertaker);

### **Interaction with the North Humber to High Marnham Project, Wanlass Beck Project and/or the Birkhill Wood Project**

**3.** Without limiting any other provision of this Part of this Schedule, the undertaker must use reasonable endeavours to avoid any conflict arising between the construction, maintenance and operation of the authorised works and the North Humber to High Marnham Project, the Wanlass Beck Project and/or the Birkhill Wood Project. For the purposes of this paragraph, "reasonable endeavours" means –

- (a) undertaking consultation on the detailed design and programming of the shared area works and all works associated with or ancillary to the shared area works to ensure that the design and programme for the Dogger Bank South project works does not unreasonably impede or interfere with the North Humber to High Marnham Project, the Wanlass Beck Project and/or the Birkhill Wood Project;
- (b) having regard to the proposed programme of works for the North Humber to High Marnham Project, the Wanlass Beck Project and/or the Birkhill Wood Project as may be made available to the undertaker by National Grid Electricity Transmission Plc and facilitating a co-ordinated approach to the programme, land assembly, and the carrying out of the shared area works and the North Humber to High Marnham Project, the Wanlass Beck Project and/or the Birkhill Wood Project;
- (c) providing a point of contact for continuing liaison and co-ordination throughout the construction and operation of the authorised works; and
- (d) keeping National Grid Electricity Transmission Plc informed on the programme of works for the authorised works.

### **Shared area works**

**4.** The undertaker must not except with the prior written agreement of National Grid Electricity Transmission Plc carry out the shared area works, or any part of it.

**5.**—

(1) Before beginning to construct any shared area works, or any part of it, the undertaker must submit to National Grid Electricity Transmission Plc plans of the relevant shared area works (or part of it) and such further particulars available to it as National Grid Electricity Transmission Plc may request within 21 days of receipt of the plans reasonably requested.

(2) Any shared area works must not be constructed except in accordance with such plans as may be approved in writing by National Grid Electricity Transmission Plc.

**6.—**(1) Any approval of National Grid Electricity Transmission Plc required under this Schedule—

- (a) must not be unreasonably withheld or delayed;
- (b) in the case of a refusal must be accompanied by a statement of grounds or refusal; and
- (c) may be given subject to such reasonable requirements as National Grid Electricity Transmission Plc may have in connection with the safe, economic and efficient construction, commissioning, operation, maintenance and future decommissioning of the North Humber to High Marnham Project, the Wanlass Beck Project and/or the Birkhill Wood Project or otherwise for the protection of the North Humber to High Marnham apparatus, the Wanlass Beck apparatus and/or the Birkhill Wood Project apparatus,
- (d) provided always that in relation to a refusal under sub-paragraph (b) or any requirements requested pursuant to sub-paragraph (c) the undertaker shall be permitted to refer such matters to dispute resolution pursuant to paragraph [20]
- (e) (2) National Grid Electricity Transmission Plc must employ reasonable endeavours to respond to the submission of any plans within a period of 56 days from the date of submission of the plans. If National Grid Electricity Transmission Plc require further particulars, such particulars must be requested by National Grid Electricity Transmission Plc no later than 21 days from the submission of plans and thereafter National Grid Electricity Transmission Plc must employ reasonable endeavours to respond to the submission within 56 days from receipt of the further particulars.
- (f)

**7.—**(1) The undertaker must give to National Grid Electricity Transmission Plc not less than 14 days' notice in writing of its intention to commence construction of any shared area works and notice in writing of its completion not later than 7 days after the date on which it is completed and National Grid Electricity Transmission Plc will be entitled by its officer to watch and inspect the construction of such works.

(2) If any part of the shared area works is constructed otherwise than in accordance with paragraph 5(2) above National Grid Electricity Transmission Plc may by notice in writing identify the extent to which the shared area works do not comply with the approved details and request the undertaker at the undertaker's own expense carry out remedial works so as to comply with the requirements of paragraph 5(2) of this Schedule or such alternative works as may be agreed with National Grid Electricity Transmission Plc or as otherwise may be agreed between the parties.

(3) Subject to sub-paragraph (4), if within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (2) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, National Grid Electricity Transmission Plc may execute the works specified in the notice and any reasonable expenditure incurred by National Grid Electricity Transmission Plc in so doing will be recoverable from the undertaker.

(4) In the event of any dispute as to whether sub-paragraph (2) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, National Grid Electricity Transmission Plc will not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph [20]

## **On Street Apparatus**

**8.** Except for paragraphs [9] (apparatus in streets subject to temporary closure), [13] (retained apparatus: protection of National Grid Electricity Transmission Plc as Electricity Undertaker), [15] (expenses) and [16] (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid Electricity Transmission Plc, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid Electricity Transmission Plc are regulated by the provisions of Part 3 of the 1991 Act.

## **Apparatus of National Grid Electricity Transmission Plc in streets subject to temporary closure**

9.—(1) Where any street is closed under article [10] (*temporary closure of streets*), if National Grid Electricity Transmission Plc has any apparatus in the street or accessed via that street National Grid Electricity Transmission Plc has the same rights in respect of that apparatus as it enjoyed immediately before the closure and the undertaker must grant to National Grid Electricity Transmission Plc, or procure the granting to National Grid Electricity Transmission Plc of, legal easements reasonably satisfactory to National Grid Electricity Transmission Plc in respect of such apparatus and access to it prior to the closure of any such street but nothing in this paragraph affects any right of the undertaker or National Grid Electricity Transmission Plc to require the removal of that apparatus under paragraph [11] or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph [14].

(2) Notwithstanding the temporary closure or diversion of any street under the powers of article [10] (*temporary closure of streets*), National Grid Electricity Transmission Plc is at liberty at all times to take all necessary access across any such closed street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of closure or diversion was in that street

## **Protective works to buildings**

10. The undertaker, in the case of the powers conferred by article [17] (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus, the Wanlass Beck Site, the North Humber to High Marnham Site or to the Birkhill Wood Site without the prior written consent of National Grid Electricity Transmission Plc (such consent not to be unreasonably withheld or delayed).

## **Acquisition of land**

11. (1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus or ((b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Grid Electricity Transmission Plc otherwise than by agreement.

(2) Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not unless otherwise agreed in writing with National Grid Electricity Transmission Plc appropriate, acquire or take temporary possession of any land forming part of the North Humber to High Marnham Site, the Wanlass Beck Site, the Birkhill Wood Site (such agreement not to be unreasonably withheld or delayed) and/or any access thereto.

(3) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid Electricity Transmission Plc and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid Electricity Transmission Plc or affect the provisions of any enactment or agreement regulating the relations between National Grid Electricity Transmission Plc and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid Electricity Transmission Plc reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid Electricity Transmission Plc and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid Electricity Transmission Plc unless otherwise agreed by National Grid Electricity Transmission Plc, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(4) Save where otherwise agreed in writing between National Grid Electricity Transmission Plc and the undertaker the undertaker and National Grid Electricity Transmission Plc agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid Electricity Transmission Plc and/or other enactments relied upon by National Grid Electricity Transmission Plc as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(5) Any agreement or consent granted by National Grid Electricity Transmission Plc under paragraph 15 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

### **Removal of apparatus**

**12.**—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid Electricity Transmission Plc to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid Electricity Transmission Plc in accordance with sub-paragraph (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid Electricity Transmission Plc a minimum of 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid Electricity Transmission Plc reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph

(3), secure any necessary consents for the alternative apparatus and afford to National Grid Electricity Transmission Plc to its satisfaction (taking into account paragraph 8(1)) the necessary facilities and rights

- (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(4) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid Electricity Transmission Plc must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to assist the undertaker to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation does not extend to the requirement for National Grid Electricity Transmission Plc to use its compulsory purchase powers to this end unless it elects to so do.

(5) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid Electricity Transmission Plc and the undertaker

(6) National Grid Electricity Transmission Plc must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Grid Electricity Transmission Plc of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

### **Facilities and rights for alternative apparatus**

**13.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid Electricity Transmission Plc facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Grid Electricity Transmission Plc and must be no less favourable on the whole to National Grid Electricity Transmission Plc than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid Electricity Transmission Plc.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid Electricity Transmission Plc than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the matter may be referred to arbitration in accordance with paragraph 20 (*Arbitration*) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to



National Grid Electricity Transmission Plc as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

**Retained apparatus: protection of National Grid Electricity Transmission Plc as Electricity Undertaker**

- 14.—**(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid Electricity Transmission Plc a plan of the works to be executed and seek from National Grid Electricity Transmission Plc details of the underground extent of their electricity assets.
- (2) In relation to specified works the plan to be submitted to National Grid Electricity Transmission Plc under sub-paragraph (1) must include a method statement and describe—
- (a) the exact position of the works;
  - (b) the level at which these are proposed to be constructed or renewed;
  - (c) the manner of their construction or renewal including details of excavation, positioning of plant;
  - (d) the position of all apparatus;
  - (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
  - (f) any intended maintenance regimes; and
  - (g) an assessment of risks of rise of earth issues.
  - (h) a ground monitoring scheme, where required.
- (3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing; -
- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
  - (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
  - (c) details of load bearing capacities of trenches;
  - (d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;
  - (e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;
  - (f) written details of the operations and maintenance regime for any cable, including frequency and method of access;
  - (g) assessment of earth rise potential if reasonably required by National Grid Electricity Transmission Plc's engineers; and
  - (h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of up to and including 26 tonnes in weight.
- (4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until National Grid Electricity Transmission Plc has given written approval of the plan so submitted.
- (5) Any approval of National Grid Electricity Transmission Plc required under sub-paragraph (4)—
- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (7) and,  
may be given subject to such reasonable requirements as National Grid Electricity Transmission Plc may have in connection with the safe and efficient construction, commissioning, operation and maintenance of the North Humber to High Marnham Project, the Wanlass Beck Project and/or the Birkhill Wood Project; and
  - (b) must not be unreasonably withheld or delayed.
- (6) In relation to any specified works to which sub-paragraphs (2) or (3) applies, National Grid Electricity Transmission Plc may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus
- (7) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by

agreement between the undertaker and National Grid Electricity Transmission Plc and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid Electricity Transmission Plc for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid Electricity Transmission Plc will be entitled to watch and inspect the execution of those works.

(8) Where National Grid Electricity Transmission Plc requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, such protective works must be carried out to National Grid Electricity Transmission Plc's satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required and National Grid Electricity Transmission Plc shall give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid Electricity Transmission Plc in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in section 52 of the 1991 Act but in that case it must give to National Grid Electricity Transmission Plc notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph [(12)] at all times.

At all times when carrying out any works authorised under the Order, the undertaker must comply with National Grid Electricity Transmission Plc's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

## **Expenses**

**15.(1)** Save where otherwise agreed in writing between National Grid Electricity Transmission Plc and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid Electricity Transmission Plc within 30 days of receipt of an itemised invoice or claim from National Grid Electricity Transmission Plc all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Grid Electricity Transmission Plc in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Grid Electricity Transmission Plc in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid Electricity Transmission Plc as a consequence of National Grid Electricity Transmission Plc:
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph [7](3); or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid Electricity Transmission Plc;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph [14 ](*arbitration*) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid Electricity Transmission Plc by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Grid Electricity Transmission Plc in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid Electricity Transmission Plc any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

## **Indemnity**

**16.—**(1) Subject to sub-paragraphs (2) and (3) if by reason or in consequence of the construction of any specified works authorised by this Part of this Schedule or in consequence of the construction, use maintenance or failure of any of the specified works 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 him) 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 specified works) or property of National Grid Electricity Transmission Plc, or there is any interruption in any service provided by National Grid Electricity Transmission Plc, or National Grid Electricity Transmission Plc becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from National Grid Electricity Transmission Plc the cost reasonably and properly incurred by National Grid Electricity Transmission Plc in making good such damage or restoring the supply; and
- (b) indemnify National Grid Electricity Transmission Plc for any other expenses, loss, demands, proceedings, damages, claims, penalties or costs incurred by or recovered from National Grid Electricity Transmission Plc, by reason or in consequence of any such damage or interruption or National Grid Electricity Transmission Plc becoming liable to any third party as aforesaid other than arising from any default of National Grid Electricity Transmission Plc.

(2) The fact that any act or thing may have been done by National Grid Electricity Transmission Plc on behalf of the undertaker or in accordance with a plan approved by National Grid Electricity Transmission Plc or in accordance with any requirement of National Grid Electricity Transmission Plc or under its supervision this will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Grid Electricity Transmission Plc 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 Electricity Transmission Plc, its officers, servants, contractors or agents;
- (b) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable;
- (c) any specified works and/or any other works authorised by this Part of this Schedule carried out by National Grid Electricity Transmission Plc as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article [5] (*benefit of Order*) subject to the proviso that once such works become apparatus ("new apparatus"), any specified works yet to be executed and not falling within this sub-section 3(c) will be subject to the full terms of this Part of this Schedule including this paragraph 10;

(4) National Grid Electricity Transmission Plc must give the undertaker reasonable written notice of any such third party claim or demand as soon as reasonably practicable after National Grid Electricity Transmission Plc became aware of any such claims or demands, and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without the prior 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 Electricity Transmission Plc must use all reasonable steps to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies. If requested to do so by the undertaker, National Grid Electricity Transmission Plc must provide an explanation of how the claim has been minimised. The undertaker will only be liable under this paragraph for claims reasonably and properly incurred by National Grid Electricity Transmission Plc.

(6) National Grid Electricity Transmission Plc 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.

(7) Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Grid Electricity Transmission Plc or in respect of which National Grid Electricity Transmission Plc has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Grid Electricity Transmission Plc's apparatus until the following conditions are satisfied:

- (a) unless and until National Grid Electricity Transmission Plc is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid Electricity Transmission Plc has confirmed the same to the undertaker in writing; and
- (b) unless and until National Grid Electricity Transmission Plc is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Grid Electricity Transmission Plc that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid Electricity Transmission Plc has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with 11(7) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent National Grid Electricity Transmission Plc from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

## **Enactments and agreements**

**17.** Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid Electricity Transmission Plc and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid Electricity Transmission Plc in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

## **Co-operation**

**18.**(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid Electricity Transmission Plc requires the removal of apparatus under paragraph 12(2) or National Grid Electricity Transmission Plc makes requirements for the protection or alteration of apparatus under paragraph 14, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid Electricity Transmission Plc's undertaking and National Grid Electricity Transmission Plc shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) Whenever National Grid Electricity Transmission Plc's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

## **Access**

**19.** If in consequence of the agreement reached in accordance with paragraphs 11(1) and 11(2) or the powers granted under this Order the access to any apparatus, the North Humber to High Marnham Site, the Wanlass Beck Site and/or the Birkhill Wood Site is materially obstructed, the undertaker must to provide such alternative means of access to such apparatus, the North Humber to High Marnham Site, the Wanlass Beck Site and/or the Birkhill Wood Site as will enable National Grid Electricity Transmission Plc to access, maintain or use the apparatus, the North Humber to High Marnham Site, the Wanlass Beck Site and/or the Birkhill Wood Site no less effectively than was possible before such obstruction.

## **Arbitration**

**20.** Save for differences or disputes arising under paragraph 12(2), 12(4) 13(1) and 14 any difference or dispute arising between the undertaker and National Grid Electricity Transmission Plc under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid Electricity Transmission Plc, be determined by arbitration in accordance with article [47] (*arbitration*).

## **Notices**

**21.** Any plans submitted to National Grid Electricity Transmission Plc by the undertaker pursuant to this Part must be submitted using the LSBUD system (<https://lsbud.co.uk/>) or to such other address as National Grid Electricity Transmission Plc may from time to time appoint instead for that purpose and notify to the undertaker in writing.

## **Appendix 2**

### **NGET PPs and D3 PPs comparison**

Schedule 1 ~~SCHEDULE~~ ~~1~~

PROTECTIVE PROVISIONS

PART ~~1~~ ~~1~~

FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC  
AS

ELECTRICITY UNDERTAKER

**Application**

~~1.1.~~ (1) For the protection of National Grid Electricity Transmission Plc as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Grid Electricity Transmission Plc.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid Electricity Transmission Plc, where the benefit of this Order is transferred or granted to another person under article 5 (*benefit of Order*) ~~—~~

(a) any agreement of the type mentioned in subparagraph (1) has effect as if it had been made between National Grid Electricity Transmission Plc and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to National Grid Electricity Transmission Plc on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid Electricity Transmission Plc (~~see~~ but without prejudice to paragraph ~~10~~ 16(3)(~~e~~)b).

**Interpretation**

~~2.2.~~ In this Part of this Schedule—

“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than: (i) “A-” if the rating is assigned by Standard & Poor’s Ratings Group or Fitch Ratings; and “A3” if the rating is assigned by Moody’s Investors Services Inc.;

“acceptable insurance” means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained (a) during the construction period of the authorised works; and (b) after the construction period of the authorised works in respect of any use and maintenance of the authorised works by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/credit rating meets the same requirements as an “acceptable credit provider”, such insurance shall include (without limitation):

(a) a waiver of subrogation and an indemnity to principal clause in favour of National Grid Electricity Transmission Plc

(b) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate;

“acceptable security” means either:

(a) a parent company guarantee from a parent company in favour of National Grid Electricity Transmission Plc to cover the undertaker’s liability to National Grid Electricity Transmission Plc to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National

Grid Electricity Transmission Plc and where required by National Grid Electricity Transmission Plc, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or

(b) a bank bond or letter of credit from an acceptable credit provider in favour of National Grid Electricity Transmission Plc to cover the undertaker's liability to National Grid Electricity Transmission Plc for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Grid Electricity Transmission Plc);

"access works" means any part of Work Nos. [33A/B, 18A/B] described in Schedule 1 of this Order (authorised development);

"alternative apparatus" means appropriate alternative apparatus to the ~~reasonable~~ satisfaction of National Grid Electricity Transmission Plc to enable National Grid Electricity Transmission Plc to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means:

(a) electric lines or electrical plant as defined in the 1989 Act, belonging to or maintained by National Grid Electricity Transmission Plc together with any replacement apparatus; and

(b) such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid Electricity Transmission Plc for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus. and

(c) any electrical lines or electrical plant as defined in the 1989 Act, any mains, pipes, plant or other apparatus belonging to, operated or maintained by National Grid Electricity Transmission Plc for the purposes of the construction, operation and maintenance of the Birkhill Wood Project, whether temporary or permanent, and includes, where the context so requires, apparatus constructed as part of the authorised works and intended for the beneficial use by National Grid Electricity Transmission Plc ("Birkhill Wood apparatus"); and

(d) any electrical lines or electrical plant as defined in the 1989 Act, any mains, pipes, plant or other apparatus belonging to, operated or maintained by National Grid Electricity Transmission Plc for the purposes of the construction, operation and maintenance of the North Humber to High Marnham Project, whether temporary or permanent, and includes, where the context so requires, apparatus constructed as part of the authorised works and intended for the beneficial use by National Grid Electricity Transmission Plc ("North Humber to High Marnham apparatus"); and

(e) any electrical lines or electrical plant as defined in the 1989 Act, any mains, pipes, plant or other apparatus belonging to, operated or maintained by National Grid Electricity Transmission Plc for the purposes of the construction, operation and maintenance of the Wanlass Beck Project, whether temporary or permanent, and includes, where the context so requires, apparatus constructed as part of the authorised works and intended for the beneficial use by National Grid Electricity Transmission Plc ("Wanlass Beck apparatus");

(a) "authorised works" has the same meaning as is given to the term "authorised development" in article [2(1)] (interpretation) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

~~"commence" and "commencement" in paragraph 8 of this Part of this Schedule has the same meaning as in article 2 (interpretation) of this Order;~~

(b) "Birkhill Wood Project" means [the proposed new substation to be known as Birkhill Wood Substation to be located at Creyke Beck in the East Riding of Yorkshire, construction of access road from the A1079, overhead line works, utilities and watercourse crossings and associated works to be undertaken by National Grid Electricity Transmission Plc and any temporary construction compounds and laydown areas for such works];

(c) "Birkhill Wood Site" includes –

(a) land on which any Birkhill Wood apparatus is situated; and



(b) land on which Birkhill Wood apparatus is anticipated to be situated which is necessary for the construction, use or maintenance of the Birkhill Wood Project (in so far as the same has been notified by National Grid Electricity Transmission Plc in writing to the undertaker);

(d) “commence” and “commencement” in this Part of this Schedule shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements,

enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid Electricity Transmission Plc (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Grid Electricity Transmission Plc's approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“Incentive Deduction” means any incentive deduction National Grid Electricity Transmission Plc Electricity Transmission plc receives under its electricity transmission licence which is caused by an event on its transmission system that causes electricity not to be supplied to a demand customer and which arises as a result of the authorised works;

“maintain” and “maintenance” ~~includes~~ shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid Electricity Transmission Plc ~~including~~ to construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Grid Electricity Transmission Plc” means National Grid Electricity Transmission Plc (Company Number 2366977) whose registered office is at 1-3 Strand, London, WC2N ~~5E1-1~~5EH or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989;

“Dogger Bank South project works” means any part of Work Nos. 15A/B, 18A/B, 31A/B, 32A/B, 34A/B described in Schedule 1 of this Order (authorised development)

“NGESO” means as defined in the STC;

(e) “North Humber to High Marnham Project” means the proposed new high voltage electricity transmission line and associated works between a new substation at Creyke Beck in the East Riding of Yorkshire and a new substation at High Marnham in Nottinghamshire to be undertaken by National Grid Electricity Transmission Plc;

“North Humber to High Marnham Site” includes –

(a) land on which any North Humber to High Marnham apparatus is situated; and

(b) land on which North Humber to High Marnham apparatus is anticipated to be situated which is necessary for the construction, use or maintenance of the North Humber to High Marnham Project (in so far as the same has been notified by National Grid Electricity Transmission Plc in writing to the undertaker);

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“parent company” means a parent company of the undertaker acceptable to and which shall have been approved by National Grid Electricity Transmission Plc acting reasonably;

"shared area works" means:

(a) the Dogger Bank South project works;

(b) the access works; and

(c) any part of the authorised works taking place on any land associated with the Birkhill Wood Project, the North Humber to High Marnham Project, the Wanlass Beck Site and/or any access thereto;

(f) ~~"specified works"~~ means any of the authorised works or activities undertaken in association with the authorised works which:

(g) (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 67(2) or otherwise; and/or

(h) (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 67(2) or otherwise.; and/or

(i) (c) includes any of the activities that are referred to in development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

(j) "STC" means the System Operator Transmission Owner Code prepared by the electricity Transmission Owners and NGESO as modified from time to time;

(k) "STC Claims" means any claim made under the STC against National Grid Electricity Transmission Plc arising out of or in connection with the de-energisation (whereby no electricity can flow to or from the relevant system through the generator or interconnector's equipment) of a generator or interconnector party solely as a result of the de-energisation of plant and apparatus forming part of National Grid Electricity Transmission Plc's transmission system which arises as a result of the authorised works;

(l) "Transmission Owner" means as defined in the STC;

"undertaker" means the undertaker as defined in article 2(1) of this Order;

(m) "Wanlass Beck Project" means [the proposed extension of the existing Wanlass Beck Substation, construction of access road from the A1079, overhead line works, utilities and watercourse crossings and associated works to be undertaken by National Grid Electricity Transmission Plc and any temporary construction compounds and laydown areas for such works]<sup>1</sup>;

"Wanlass Beck Site" includes –

(a) land on which any Wanlass Beck apparatus is situated; and

(b) land on which Wanlass Beck apparatus is anticipated to be situated which is necessary for the construction, use or maintenance of the Wanlass Beck Project (in so far as the same has been notified by National Grid Electricity Transmission Plc in writing to the undertaker);

### **Interaction with the North Humber to High Marnham Project, Wanlass Beck Project and/or the Birkhill Wood Project**

3. Without limiting any other provision of this Part of this Schedule, the undertaker must use reasonable endeavours to avoid any conflict arising between the construction, maintenance and operation of the authorised works and the North Humber to High Marnham Project, the Wanlass Beck Project and/or the Birkhill Wood Project. For the purposes of this paragraph, "reasonable endeavours" means –

(a) undertaking consultation on the detailed design and programming of the shared area works and all works associated with or ancillary to the shared area works to ensure that the design and programme for the Dogger Bank South project works does not unreasonably impede or interfere with the North Humber to High Marnham Project, the Wanlass Beck Project and/or the Birkhill Wood Project;

(b) having regard to the proposed programme of works for the North Humber to High Marnham Project, the Wanlass Beck Project and/or the Birkhill Wood Project as may be made available to the undertaker by National Grid Electricity Transmission Plc and facilitating a co-ordinated approach to the programme, land assembly, and the carrying out of the shared area works and the North Humber to High Marnham Project, the Wanlass Beck Project and/or the Birkhill Wood Project;

(c) providing a point of contact for continuing liaison and co-ordination throughout the construction and operation of the authorised works; and

- (d) keeping National Grid Electricity Transmission Plc informed on the programme of works for the authorised works.

#### **Shared area works**

4. The undertaker must not except with the prior written agreement of National Grid Electricity Transmission Plc carry out the shared area works, or any part of it.

#### **5.—**

(1) Before beginning to construct any shared area works, or any part of it, the undertaker must submit to National Grid Electricity Transmission Plc plans of the relevant shared area works (or part of it) and such further particulars available to it as National Grid Electricity Transmission Plc may request within 21 days of receipt of the plans reasonably requested.

(2) Any shared area works must not be constructed except in accordance with such plans as may be approved in writing by National Grid Electricity Transmission Plc.

#### **6.—(1) Any approval of National Grid Electricity Transmission Plc required under this Schedule—**

- (a) must not be unreasonably withheld or delayed;
- (b) in the case of a refusal must be accompanied by a statement of grounds or refusal; and
- (c) may be given subject to such reasonable requirements as National Grid Electricity Transmission Plc may have in connection with the safe, economic and efficient construction, commissioning, operation, maintenance and future decommissioning of the North Humber to High Marnham Project, the Wanlass Beck Project and/or the Birkhill Wood Project or otherwise for the protection of the North Humber to High Marnham apparatus, the Wanlass Beck apparatus and/or the Birkhill Wood Project apparatus,
- (d) provided always that in relation to a refusal under sub-paragraph (b) or any requirements requested pursuant to sub-paragraph (c) the undertaker shall be permitted to refer such matters to dispute resolution pursuant to paragraph [20]
- (e) (2) National Grid Electricity Transmission Plc must employ reasonable endeavours to respond to the submission of any plans within a period of 56 days from the date of submission of the plans. If National Grid Electricity Transmission Plc require further particulars, such particulars must be requested by National Grid Electricity Transmission Plc no later than 21 days from the submission of plans and thereafter National Grid Electricity Transmission Plc must employ reasonable endeavours to respond to the submission within 56 days from receipt of the further particulars.

#### **(f)**

7.—(1) The undertaker must give to National Grid Electricity Transmission Plc not less than 14 days' notice in writing of its intention to commence construction of any shared area works and notice in writing of its completion not later than 7 days after the date on which it is completed and National Grid Electricity Transmission Plc will be entitled by its officer to watch and inspect the construction of such works.

(2) If any part of the shared area works is constructed otherwise than in accordance with paragraph 5(2) above National Grid Electricity Transmission Plc may by notice in writing identify the extent to which the shared area works do not comply with the approved details and request the undertaker at the undertaker's own expense carry out remedial works so as to comply with the requirements of paragraph 5(2) of this Schedule or such alternative works as may be agreed with National Grid Electricity Transmission Plc or as otherwise may be agreed between the parties.

(3) Subject to sub-paragraph (4), if within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (2) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, National Grid Electricity Transmission Plc may execute the works specified in the notice and any reasonable expenditure incurred by National Grid Electricity Transmission Plc in so doing will be recoverable from the undertaker.

(4) In the event of any dispute as to whether sub-paragraph (2) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, National Grid Electricity Transmission Plc will not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph [20]

## On Street Apparatus

~~8.3-~~ Except for paragraphs ~~4~~<sup>9</sup> (apparatus ~~of National Grid Electricity Transmission Plc~~ in streets subject to temporary closure), ~~8~~<sup>13</sup> (retained apparatus: protection of National Grid Electricity Transmission Plc as Electricity Undertaker), ~~9~~<sup>15</sup> (expenses) and ~~40~~<sup>16</sup> (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid Electricity Transmission Plc, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid Electricity Transmission Plc are regulated by the provisions of Part 3 of the 1991 Act.

## Apparatus of National Grid Electricity Transmission Plc in streets subject to temporary closure

~~9.4-~~<sup>4</sup> (1) Where any street is closed under article <sup>10</sup> (*temporary closure of streets*), if National Grid Electricity Transmission Plc has any apparatus in the street or accessed via that street National Grid Electricity Transmission Plc has the same rights in respect of that apparatus as it enjoyed immediately before the closure and the undertaker must grant to National Grid Electricity Transmission Plc, or procure the granting to National Grid Electricity Transmission Plc of, legal easements reasonably satisfactory to National Grid Electricity

Transmission Plc in respect of such apparatus and access to it prior to the closure of any such street but nothing in this paragraph affects any right of the undertaker or National Grid Electricity Transmission Plc to require the removal of that apparatus under paragraph ~~6~~<sup>11</sup> or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph ~~8~~<sup>14</sup>.

(2) Notwithstanding the temporary closure or diversion of any street under the powers of article <sup>10</sup> (*temporary closure of streets*), National Grid Electricity Transmission Plc is at liberty at all times to take all necessary access across any such closed street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of closure or diversion was in that street.

## Protective works to buildings

~~10.5-~~ The undertaker, ~~must exercise in the case of~~ the powers conferred by article <sup>17</sup> (protective work to buildings), ~~must exercise those powers~~ so as not to obstruct or render less convenient the access to any apparatus ~~, the Wanlass Beck Site, the North Humber to High Marnham Site or to the Birkhill Wood Site~~ without the prior written consent of National Grid Electricity Transmission Plc (such consent not to be unreasonably withheld or delayed).

## Acquisition of land

11. (1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus or ((b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Grid Electricity Transmission Plc otherwise than by agreement.

(2) Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not unless otherwise agreed in writing with National Grid Electricity Transmission Plc appropriate, acquire or take temporary possession of any land forming part of the North Humber to High Marnham Site, the Wanlass Beck Site, the Birkhill Wood Site (such agreement not to be unreasonably withheld or delayed) and/or any access thereto.

(3) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid Electricity Transmission Plc and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid Electricity Transmission Plc or affect the provisions of any enactment or agreement regulating the relations between National Grid Electricity Transmission Plc and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid Electricity Transmission Plc reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid Electricity Transmission Plc and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid Electricity Transmission Plc unless otherwise agreed by National Grid Electricity Transmission Plc, and

it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(4) Save where otherwise agreed in writing between National Grid Electricity Transmission Plc and the undertaker the undertaker and National Grid Electricity Transmission Plc agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid Electricity Transmission Plc and/or other enactments relied upon by National Grid Electricity Transmission Plc as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(5) Any agreement or consent granted by National Grid Electricity Transmission Plc under paragraph 15 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

## **Removal of apparatus**

~~12.6.~~ (1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid Electricity Transmission Plc to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid Electricity Transmission Plc in accordance with sub-paragraph (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid Electricity Transmission Plc a minimum of 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid Electricity Transmission Plc reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph

(3), secure any necessary consents for the alternative apparatus and afford to National Grid Electricity Transmission Plc to its ~~reasonable~~ satisfaction (taking into account paragraph ~~78~~(1)) the necessary facilities and rights

(a) ~~(a)~~ for the construction of alternative apparatus in other land of or land secured by the undertaker; and

(b) ~~(b)~~ subsequently for the maintenance of that apparatus.

~~(34)~~ If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid Electricity Transmission Plc must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to assist the undertaker to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation does not extend to the requirement for National Grid Electricity Transmission Plc to use its compulsory purchase powers to this end unless it elects to so do.

~~(45)~~ Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid Electricity Transmission Plc and the undertaker ~~or in default of agreement settled by arbitration in accordance with this Order.~~

~~(56)~~ National Grid Electricity Transmission Plc must, after the alternative apparatus to be provided or constructed has been agreed ~~or settled by arbitration in accordance with this Order~~, and subject to a written diversion agreement having been entered into between the parties and the grant to National Grid Electricity Transmission Plc of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed

without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.



## Facilities and rights for alternative apparatus

**13.7.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid Electricity Transmission Plc facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National and must be no less favourable on the whole to National Grid Electricity Transmission Plc ~~or in default of agreement settled by arbitration in accordance with this Order than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid Electricity Transmission Plc.~~

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are ~~in the opinion of the arbitrator~~ less favourable on the whole to National Grid Electricity Transmission Plc than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the matter may be referred to arbitration in accordance with paragraph 20 (Arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid Electricity Transmission Plc as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

## Retained apparatus: protection of National Grid Electricity Transmission Plc as Electricity Undertaker

**14.8.**—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid Electricity Transmission Plc a plan of the works to be executed and seek from National Grid Electricity Transmission Plc details of the underground extent of their electricity assets.

(2) In relation to specified works the plan to be submitted to National Grid Electricity Transmission Plc under sub-paragraph (1) must include a method statement and describe—

- (a) ~~(a)~~ the exact position of the works;
- (b) ~~(b)~~ the level at which these are proposed to be constructed or renewed;
- (c) ~~(c)~~ the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) ~~(d)~~ the position of all apparatus;
- (e) ~~(e)~~ by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) ~~(f)~~ any intended maintenance regimes; and
- (g) ~~(g)~~ an assessment of risks of rise of earth issues.
- (h) ~~(h)~~ a ground monitoring scheme, where required.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing; -

- (a) ~~(a)~~ details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) ~~(b)~~ demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) ~~(c)~~ details of load bearing capacities of trenches;
- (d) ~~(d)~~ details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) ~~(e)~~ a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;
- (f) ~~(f)~~ written details of the operations and maintenance regime for any cable, including frequency and method of access;
- (g) ~~(g)~~ assessment of earth rise potential if reasonably required by National Grid Electricity

Transmission Plc's

engineers; and

- (h) ~~(h)~~ evidence that trench bearing capacity is to be designed to support overhead line construction traffic of up to and including 26 tonnes in weight.

(4) The undertaker must not commence any ~~specified~~ works to which sub-paragraphs (2) or (3) apply until National Grid Electricity Transmission Plc has given written approval of the plan so submitted.

(5) Any approval of National Grid Electricity Transmission Plc required under sub-paragraph (4)—

(a) ~~(a)~~ may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (7) ~~provided that any conditions are communicated to the undertaker within a period of 28 days beginning with the date on which a plan is submitted to National Grid Electricity Transmission Plc in accordance with sub-paragraph (1);~~ and,

~~and~~ may be given subject to such reasonable requirements as National Grid Electricity Transmission Plc may have in connection with the safe and efficient construction, commissioning, operation and maintenance of the North Humber to High Marnham Project, the Wanlass Beck Project and/or the Birkhill Wood Project; and

(b) ~~(b)~~ must not be unreasonably withheld or delayed.

(6) In relation to any specified works to which sub-paragraphs (2) or (3) applies, National Grid Electricity Transmission Plc may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus ~~and National Grid Electricity Transmission Plc must notify the undertaker of such modifications within a period of 28 days beginning with the date on which the plan required under sub-paragraph (2) or (3) has been submitted to National Grid Electricity Transmission Plc.~~

(7) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and National Grid Electricity Transmission Plc and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid Electricity Transmission Plc for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid Electricity Transmission Plc will be entitled to watch and inspect the execution of those works.

(8) Where National Grid Electricity Transmission Plc requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, such protective works must be carried out to National Grid Electricity Transmission Plc's ~~reasonable~~ Plc's satisfaction prior to the commencement of any ~~specified~~ authorised works ~~(or any relevant part thereof)~~ for which protective works are required and National Grid Electricity Transmission Plc ~~must~~ shall give notice of its requirement for such works within ~~28~~ 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid Electricity Transmission Plc in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to ~~7~~ 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the ~~specified~~ authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph ~~will~~ shall apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in section 52 of the 1991 Act but in that case it must give to National Grid Electricity Transmission Plc notice as soon as is reasonably practicable and a plan of those works and must comply with ~~subparagraphs~~ sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph [(12)] at all times.

At all times when carrying out any works authorised under the Order, the undertaker must comply with National Grid Electricity Transmission Plc's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

## Expenses

~~15.9.~~ 15.9.—(1) Save where otherwise agreed in writing between National Grid Electricity Transmission Plc and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid Electricity Transmission Plc within ~~60~~ 30 days of receipt of an itemised invoice or claim from

National Grid Electricity Transmission Plc all charges, costs and expenses ~~(but always excluding any consequential or indirect loss)~~ reasonably anticipated within the following three months or reasonably and properly incurred by National Grid Electricity Transmission Plc in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any ~~specified~~ authorised works including without limitation—

(a) ~~(a)~~ any costs reasonably incurred by or compensation properly paid by National Grid Electricity Transmission Plc in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid Electricity Transmission Plc as a consequence of National Grid Electricity Transmission Plc:

(i) ~~(i)~~ using its own compulsory purchase powers to acquire any necessary rights under paragraph ~~6~~ 7(3); or

(ii) ~~(ii)~~ exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid Electricity Transmission Plc;

(b) ~~(b)~~ in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;

(c) ~~(c)~~ the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) ~~(d)~~ the approval of plans;

(e) ~~(e)~~ the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

(f) ~~(f)~~ the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) ~~(2)~~ There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) ~~(3)~~ If in accordance with the provisions of this Part of this Schedule—

(a) ~~(a)~~ apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) ~~(b)~~ apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 14 ~~1~~ (*arbitration*) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid Electricity Transmission Plc by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) ~~(4)~~ For the purposes of sub-paragraph (3)—

(a) ~~(a)~~ an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) ~~(b)~~ where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) ~~(5)~~ Any amount which apart from this sub-paragraph would be payable to National Grid Electricity Transmission Plc in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid Electricity Transmission Plc any ~~financial~~ financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.



## Indemnity

~~16.10.~~—(1) Subject to sub-paragraphs (2) and (3) ~~and to article 51 (no double recovery)~~, if by reason or in consequence of the construction of any specified works authorised by this Part of this Schedule or in consequence of the construction, use maintenance or failure of any of the specified works 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 him) 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 specified works) or property of National Grid Electricity Transmission Plc, or there is any interruption in any service provided by National Grid Electricity Transmission Plc, or National Grid Electricity Transmission Plc becomes liable to pay any amount to any third party, the undertaker will—

- (a) ~~(a)~~ bear and pay on demand accompanied by an invoice or claim from National Grid Electricity Transmission Plc the cost reasonably and properly incurred by National Grid Electricity Transmission Plc in making good such damage or restoring the supply; and
- (b) ~~(b)~~ indemnify National Grid Electricity Transmission Plc for any other expenses, loss, demands, proceedings, damages, claims, penalties or costs incurred by or recovered from National Grid Electricity Transmission Plc, by reason or in consequence of any such damage or interruption or National Grid Electricity Transmission Plc becoming liable to any third party as aforesaid other than arising from any default of National Grid Electricity Transmission Plc.

(2) ~~(2)~~ The fact that any act or thing may have been done by National Grid Electricity Transmission Plc on behalf of the undertaker or in accordance with a plan approved by National Grid Electricity Transmission Plc or in accordance with any requirement of National Grid Electricity Transmission Plc or under its supervision this will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this ~~subparagraph~~ sub-paragraph (1) unless National Grid Electricity Transmission Plc 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) ~~(3)~~ Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—

- (a) ~~(a)~~ any damage or interruption to the extent that it is attributable to the neglect or default of National Grid

Electricity Transmission Plc, its officers, servants, contractors or agents;

- (b) ~~(b)~~ any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable;
- (c) ~~(c)~~ any specified works and/or any other works authorised by this Part of this Schedule carried out by National Grid Electricity Transmission Plc as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article [5] (*benefit of Order*) subject to the proviso that once such works become apparatus ("~~new apparatus~~"), any specified works yet to be executed and not falling within this sub-section 3(c) will be subject to the full terms of this Part of this Schedule including this paragraph 10;

(4) ~~(4)~~ National Grid Electricity Transmission Plc must give the undertaker reasonable written notice of any such third party claim or demand as soon as reasonably practicable after National Grid Electricity Transmission Plc became aware of any such claims or demands, and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without the prior 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) ~~(5)~~ National Grid Electricity Transmission Plc must use all reasonable steps to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies. If requested to do so by the undertaker, National Grid Electricity Transmission Plc must provide an explanation of how the claim has been minimised. The undertaker will only be liable under this paragraph for claims reasonably and properly incurred by National Grid Electricity Transmission Plc.

(6) ~~(6)~~ National Grid Electricity Transmission Plc 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.

(7) Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Grid Electricity Transmission Plc or in respect of which National Grid Electricity Transmission Plc has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Grid Electricity Transmission Plc's apparatus until the following conditions are satisfied:

- (a) unless and until National Grid Electricity Transmission Plc is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid Electricity Transmission Plc has confirmed the same to the undertaker in writing; and
- (b) unless and until National Grid Electricity Transmission Plc is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Grid Electricity Transmission Plc that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid Electricity Transmission Plc has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with 11(7) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent National Grid Electricity Transmission Plc from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

### **Enactments and agreements**

~~17.11.~~ Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid Electricity Transmission Plc and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid Electricity Transmission Plc in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

### **Co-operation**

~~18.12.~~—(1) Where in consequence of the proposed construction of any part of the ~~specified~~ authorised works, the undertaker or National Grid Electricity Transmission Plc requires the removal of apparatus under paragraph ~~6~~12(2) or National Grid Electricity Transmission Plc makes requirements for the protection or alteration of apparatus under paragraph ~~8~~14, the undertaker ~~must~~shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the ~~specified~~ authorised works and taking into account the need to ensure the safe and efficient operation of National Grid Electricity Transmission ~~Plc's~~Plc's undertaking and National Grid Electricity Transmission Plc ~~must~~shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) ~~For the avoidance of doubt whenever~~Whenever National Grid Electricity Transmission ~~Plc's~~Plc's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

### **Access**

~~19.13.~~ If in consequence of the agreement reached in accordance with paragraphs 11(1) and 11(2) or the powers granted under this Order the access to any apparatus, the North Humber to High Marnham Site, the Wanlass Beck Site and/or the Birkhill Wood Site is materially obstructed, the undertaker must ~~use reasonable endeavours~~ to provide such alternative means of access ~~over the Order land~~ to such apparatus, the North Humber to High Marnham Site, the Wanlass Beck Site and/or the Birkhill Wood Site as will enable National Grid Electricity Transmission Plc to access, maintain or use the apparatus, the North Humber to High Marnham Site, the Wanlass Beck Site and/or the Birkhill Wood Site no less effectively than was possible before such obstruction.

### **Arbitration**

~~20. 14.~~AnySave for differences or disputes arising under paragraph 12(2), 12(4) 13(1) and 14 any difference or dispute arising between the undertaker and National Grid Electricity Transmission Plc under

this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid Electricity Transmission Plc, be determined by arbitration in accordance with article [\[47\]](#) (*arbitration*).

## Notices

~~[21.15](#)~~. ~~Notwithstanding article 46 (*service of notices*), any~~ [Any](#) plans submitted to National Grid Electricity Transmission Plc by the undertaker pursuant to this Part must be submitted using the LSBUD system (<https://lsbud.co.uk/>) or [to](#) such other address as National Grid Electricity Transmission Plc may from time to time appoint instead for that purpose and notify to the undertaker in writing.