

PLANNING ACT 2008

**THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE)
RULES 2010**

**APPLICATION BY ELEMENTS GREEN TRENT LTD FOR A
DEVELOPMENT CONSENT ORDER**

POSITION STATEMENT ON BEHALF OF

nationalgrid

NATIONAL GRID ELECTRICITY TRANSMISSION PLC

23 April 2026

Introduction

1. This Position Statement is submitted on behalf of National Grid Electricity Transmission plc ("**NGET**") and sets out, in greater detail, the matters identified as outstanding between NGET and Elements Green Trent Limited (the "**Applicant**") in the Statement of Common Ground submitted at Deadline 6 and Appendix 2 to it (the marked-up comparison of the protective provisions). It should be read in conjunction with NGET's Relevant Representation (submitted to the Examining Authority on 2 October 2025) and NGET's Written Representation (REP1-097). For ease of reference, NGET's preferred form of protective provisions accompany this statement. While NGET has, and will continue to, liaise with the Applicant in an attempt to resolve the outstanding issues, NGET maintains its objection to the Project in its current form.
2. The matters that remain to be resolved are summarised below and are addressed in turn in this statement:
 - a) Paragraph 6 – restriction on the use of powers of compulsory acquisition over NGET's land, apparatus and interests;
 - b) Paragraph 9(10) – the operation of the "new plan" provisions;
 - c) Paragraph 10(1) – payment of NGET's reasonably anticipated costs;
 - d) Paragraph 11(7) – insurance and security in relation to permitted preliminary works, including the exclusion of the proposed "Modified Permitted Preliminary Works", the proposed indemnity cap and the requirement for acceptable security;
 - e) Paragraph 15 – arbitration and dispute resolution; and
 - f) Paragraph 17 - the inclusion of bespoke protective provisions for the protection of NGET's future infrastructure projects (in particular the SCRE/WRRE Project).

NGET and the National Electricity Transmission System

3. NGET owns, operates and maintains the high-voltage electricity transmission network in England and Wales (the "**NETS**"). The NETS transports large volumes of electricity across the country, connecting generators (including renewable generators such as the Project) with the distribution networks that supply homes and businesses in England and Wales. NGET operates under a transmission licence issued by Ofgem and is subject to regulation by Ofgem and to its duties under the Electricity Act 1989.
4. National Energy System Operator Ltd ("**NESO**") manages the connection application and offer process between parties wishing to connect to the NETS (such as the Applicant) and the relevant Transmission Owner (here, NGET). Those obligations are imposed on NESO by way of its transmission licence, Ofgem, the Electricity Act 1989 and several electricity transmission codes.
5. The NETS is itself nationally significant infrastructure and a highly valuable national resource. Connections to it are essential if the Government's ambition for the UK to accelerate its transition from fossil fuel generation to renewable energy is to be achieved. It is therefore vital that the NETS receives the highest degree of protection in the draft Order.

Section 127 Planning Act 2008

6. NGET is a statutory undertaker within the meaning of section 127(8) of the Planning Act 2008 ("**PA 2008**"). Section 127(2) and (5) of the PA 2008 accordingly 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.
7. NGET owns and operates substations and multiple 400 kV overhead lines that are located within and in close proximity to the Order Limits, comprising the Staythorpe 1B, 1C and 400 kV substations and a network of high-voltage overhead lines and associated underground apparatus, including the ZDF, ZDA, KK, 4ZV and ZD circuits. These assets form an essential part of the NETS in England and Wales. As a responsible statutory undertaker, NGET must meet its statutory obligations and ensure that any development does not adversely affect its ability to do so; NGET therefore has a duty to protect its position in relation to infrastructure and land which is within or in close proximity to the draft Order Limits. NGET's rights to retain its apparatus in situ and its rights of access to inspect, maintain, renew and repair such apparatus must be maintained at all times and access to that apparatus must not be restricted.
8. All of the land in respect of which the Applicant proposes to secure powers of compulsory acquisition (of interests or rights) or of temporary possession was acquired by NGET for the purposes of its statutory undertaking. NGET's position is that the Applicant's proposals to acquire compulsorily rights and impose restrictions over, and to take temporary possession of, NGET's land and apparatus would, in the absence of suitable protective provisions, cause serious detriment to NGET's undertaking.
9. The Applicant has not satisfactorily demonstrated that the test in section 127 PA 2008 is met. It has merely asserted, without evidence, that the relevant test is satisfied. Given that section 127 was expressly included by Parliament in PA 2008 to protect statutory undertakers such as NGET, this is not an acceptable approach. Compliance with section 127 must not be treated as an afterthought. NGET's preferred protective provisions have been developed over a long period of time in order to prevent serious detriment being caused to its undertaking by third party works. For this reason, NGET submits that they should only be modified for very good reasons. The Applicant has advanced no such reasons. The serious detriment NGET has identified should therefore be addressed by including the protective provisions sought by NGET in full.
10. The Applicant has also referred to section 138 of the PA 2008, which provides for the extinguishment of 'relevant rights' and the removal of 'relevant apparatus' of statutory undertakers. Article 33 of the draft Order engages section 138. The Applicant states in its Statement of Reasons that the test in section 138 is satisfied because the operation of Article 33 is subject to the protective provisions in Schedule 13. However, the adequacy of those protective provisions is precisely what is in dispute. The Applicant's argument is therefore circular. NGET submits that unless the protective provisions are in the form sought by NGET, the test in section 138 cannot be said to be satisfied, and the powers in Article 33 should not be exercisable against NGET's land, apparatus and rights.
11. The Applicant relies on Planning Inspectorate guidance dated 30 April 2024, which states that statutory undertakers' preferred form of protective provisions "*must be adapted as necessary so they accurately reflect the proposed development*". NGET does not dispute this general proposition; it is self-evident that protective provisions must reflect the specific

development in question. However, the guidance does not, as the Applicant appears to suggest, mean that protective provisions should be amended simply to suit the Applicant's own preferences and commercial considerations. NGET's protective provisions have been developed over many years and reflect the position that NGET considers necessary to protect the NETS. NGET submits that the Examining Authority and Secretary of State should accordingly be slow to depart from them and should only do so when clear and compelling reasons have been advanced by the applicant. In this case, the Applicant has not done so.

Paragraph 6 – Restriction on the use of powers of compulsory acquisition

12. NGET seeks the inclusion of the following well-established restriction on the exercise of compulsory acquisition powers in respect of its land, apparatus and interests:

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.

13. Connections to the NETS are a highly valuable national resource. NGET, as the relevant statutory undertaker, plays a vital role in coordinating connections to the NETS and is able, and obliged, to take a whole-system view of those connections rather than considering the issue only in terms of the needs of individual applicants. Allowing the Applicant to acquire compulsorily the rights and restrictions it seeks would interfere with NGET's ability to carry out that coordinating role and may prevent others from connecting to the transmission system or make such connections unnecessarily complex. This is of particular relevance to the substation land (plots 1/9, 1/10, 1/11, and 1/12), where NGET must retain the ability to determine where and how connections to the NETS are made. Ofgem would also be likely to be concerned if NGET were prevented from managing future connections for the benefit of a single developer. The exercise of compulsory acquisition powers over NGET's land and apparatus would therefore cause serious detriment to NGET's undertaking, and the test in section 127 PA 2008 cannot be met absent the restriction sought.
14. More broadly, all of the land over which the Applicant seeks compulsory acquisition powers was acquired by NGET for the purposes of its statutory undertaking. That land is held by NGET for the public benefit, to enable NGET to discharge its obligations as the owner and operator of the NETS. The same reasoning that applies to land required for the coordination of connections applies with equal force to this wider category of land: if the Applicant were able to acquire compulsorily rights or restrictions over land that NGET has acquired for the purposes of its undertaking, NGET's ability to use that land to carry out its statutory functions would be compromised. The restriction sought by NGET is therefore necessary in respect of all of NGET's land within the Order Limits, not only land at the substation.
15. The Applicant has raised, at length, the making of the CPO by NGET in respect of the SCRE/WRRE Project. The Applicant's position appears to be that it cannot accept a restriction on its compulsory acquisition powers while its land is subject to NGET's CPO. With respect, this is a distraction from the substantive issues. The substantive case for the restriction in paragraph 6 does not depend on how NGET acquired the land in question; the same arguments apply whether the land has been in NGET's ownership for many years or has been acquired (or is to be acquired) under the CPO. It is the use to which the land is put, and the need to protect NGET's ability to carry out its statutory functions, that matter.

16. The Applicant's concern is, in any event, already addressed by the unreasonableness and arbitration safeguards in NGET's preferred form of protective provisions. Paragraph 13(2) provides that wherever NGET's consent, agreement or approval is required, it must not be unreasonably withheld or delayed, and any dispute as to reasonableness may be referred to arbitration. If the Applicant considers that NGET has unreasonably refused consent to the exercise of compulsory acquisition powers, it has a remedy. The Applicant also has the further safeguard of having objected to the CPO and pursuing that objection through the statutory confirmation process, which it has done.
17. Far from being a reason to omit the paragraph 6 restriction, the making of the CPO is in fact a positive reason to include it. The overlap between the Order Land and the land subject to the CPO demonstrates that there is real potential for conflict between the Applicant's works and NGET's works. The paragraph 6 restriction, together with the co-ordination provisions sought by NGET elsewhere in the protective provisions, provides a mechanism for managing that potential conflict in a controlled way. Without it, the Applicant would be free to exercise compulsory acquisition powers in a manner that could prejudice the SCRE/WRRE Project.
18. Allowing NGET to exercise control over the use of powers of compulsory acquisition will enable it to ensure that the serious detriment described above does not occur. The restriction is appropriately balanced: paragraph 13(2) of NGET's preferred form of protective provisions provides that wherever NGET's consent, agreement or approval is required, it must not be unreasonably withheld or delayed. To the extent that the Applicant considers any refusal by NGET to consent to the exercise of compulsory acquisition powers to be unreasonable (which NGET considers extremely unlikely), the dispute may be referred to arbitration under the procedure in the protective provisions. NGET submits that this represents a reasonable balance between the interests of the Applicant and the protection of NGET's undertaking.
19. The restriction is also well-precedented and appears in NGET's protective provisions in almost all DCOs, as well as in the protective provisions of other statutory undertakers such as Network Rail. Most relevantly for present purposes, the same restriction has been included in the two most recent solar farm DCOs to be made by the Secretary of State, both of which were determined within the last three months:
 - a) **The Springwell Solar Farm Order 2026** (made on 8 April 2026): paragraph 78(1) of Part 7 of Schedule 15 (protection of NGET) provides in identical terms that "*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 NGET otherwise than by agreement*"; and
 - b) **The Fenwick Solar Farm Order 2026** (made on 18 February 2026): paragraph 89 of Part 7 of Schedule 12 (protection of NGET) is in materially identical terms.
20. The Secretary of State's decision on the Rampion 2 Offshore Wind Farm Extension Project Development Consent Order ("**R2DCO**") provides further recent precedent: a restriction on the use of powers of compulsory acquisition was included at paragraph 5 of Part 3 of Schedule 10 of the R2DCO, and similar provisions were included in the Sheringham and Dudgeon Extensions Offshore Wind Farm DCO. The Applicant's deletion of paragraph 6 (acquisition of land) from NGET's preferred form is accordingly contrary to recent and established Secretary of State practice on solar and other NSIPs and should not be accepted.

Paragraph 9(10) – New plan

21. Paragraph 9(10) of NGET's preferred form addresses the position where the undertaker submits a new plan in lieu of one previously submitted, and confirms that the provisions of paragraph 9 apply to the new plan. The Applicant seeks to add the words "as a plan under sub-paragraph 9(1)" to paragraph 9(10).
22. With respect, the drafting is already clear in this regard, and the Applicant's additional words are unnecessary. The wording reflects NGET's standard protective provisions, which are included in almost all DCOs. The same drafting was included, without the Applicant's proposed additions, in paragraph 81(6)(d) of Part 7 of Schedule 15 to the Springwell Solar Farm Order 2026 and in the equivalent provision of Part 7 of Schedule 12 to the Fenwick Solar Farm Order 2026. The Applicant has identified no problem with the wording that requires solving. NGET submits that its preferred wording should be retained.

Paragraph 10(1) – Anticipated costs

23. Paragraph 10(1) addresses the undertaker's obligation to pay all of NGET's charges, costs and expenses reasonably anticipated within the following three months. While the Applicant accepts the principle of paying NGET's reasonably incurred expenses, it seeks additional wording to confirm that expenses already paid by the undertaker as reasonably anticipated charges cannot subsequently be claimed again as reasonably and properly incurred expenses.
24. Again, it is not entirely clear what problem the Applicant says its proposed amendment solves. NGET submits that the key word is "anticipated": such monies have, by definition, not yet been paid at all and so cannot already have been paid by the undertaker. If the Applicant's concern is that costs paid in advance as anticipated costs might later be claimed again as incurred costs (i.e., double-recovery), NGET submits that this concern is addressed by the ordinary construction of the existing drafting. The word "or" between the two limbs of paragraph 10(1) indicates that they are alternative, not cumulative, bases for recovery: NGET may recover either reasonably anticipated costs or reasonably and properly incurred costs, but not both in respect of the same item. This is the normal English meaning of a disjunctive "or", and it follows that the Applicant's additional wording is superfluous. NGET's position again reflects its standard protective provisions, which have been tested and included in numerous other DCOs without the Applicant's proposed addition. The same wording appears at paragraph 82(1) of Part 7 of Schedule 15 to the Springwell Solar Farm Order 2026 and in the equivalent provision of the Fenwick Solar Farm Order 2026. There is no reason to depart from that established formulation here.

Paragraph 11(7) – Insurance, security and the proposed "Modified Permitted Preliminary Works"

Indemnity, insurance and security

25. NGET seeks an indemnity for losses caused by the Project, supported by acceptable insurance and acceptable security, in the form set out at paragraph 11 of NGET's preferred protective provisions. The starting point is that any losses NGET suffers would not have occurred but for the Applicant's project, and the Applicant should therefore indemnify those losses. That principle is of general application but is particularly powerful in the context of the NETS, which is critical national infrastructure and therefore requires the highest degree of protection. Risks associated with a third-party project must not fall on NGET (and, by

extension, bill payers) to bear or subsidise – it is the Applicant that wishes to carry out works that may affect NGET's apparatus.

26. The scope, nature and extent of the potential liabilities or damages that may arise from the Applicant's actions or omissions are not currently clear or quantifiable, and all possible scenarios or contingencies must therefore be covered. An uncapped indemnity is the most efficient and equitable way of addressing any issues or disputes that may arise, without having to specify or limit the types, amounts or durations of the indemnifiable claims. Given the potentially catastrophic consequences of damage to the NETS, and the fact that it would be NGET and its customers (through no fault of their own) who would be exposed to the risk where losses exceeded any cap, an uncapped indemnity is required.
27. There must also be acceptable insurance on the part of any undertaker carrying out works within 15 metres of NGET's apparatus. There must additionally be a parent company guarantee (or bank bond/letter of credit) constituting acceptable security. This is because insurance, although it may cover a substantial amount, is highly unlikely to cover absolutely everything; the financial consequences of damage caused to NGET's infrastructure by the undertaker or its contractors are potentially extremely significant. Acceptable security ensures that an entity with sufficient financial standing is able to cover any such losses. Both insurance and security are therefore needed to prevent a situation arising where losses are not recoverable under the insurance policy and the Applicant is unable to meet them from its own resources.
28. NGET notes and welcomes the Applicant's confirmation in the Statement of Common Ground that it accepts NGET's requirement for 'acceptable insurance' and 'acceptable security' under the protective provisions. The principle of indemnity, insurance and security is therefore not in dispute.

The proposed "Modified Permitted Preliminary Works" carve-out

29. The Applicant has introduced a defined term, "Modified Permitted Preliminary Works", and proposes to exclude such works from the definitions of "authorised works" and "commence", and from the operation of paragraph 11(7). The "Modified Permitted Preliminary Works" are defined by reference to the "permitted preliminary works" as defined under article 2(1) of the Order, but excluding the diversion and laying of apparatus and any below-ground surveys within 15 metres of NGET's apparatus. The effect of the Applicant's drafting would be that certain works could be undertaken on NGET's land, on land in respect of which NGET has an easement or wayleave for its apparatus, or within 15 metres of NGET's apparatus without NGET being indemnified for loss and without the acceptable insurance or security being in place.
30. The definition of "permitted preliminary works" in article 2(1) of the draft Order is broad. It includes:
 - a. surveys and monitoring;
 - b. environmental mitigation works;
 - c. erection of construction fencing, hoardings and temporary structures;
 - d. setting out of the works;
 - e. remediation works;
 - f. diversion and laying of apparatus; and
 - g. the construction of temporary access roads and haul roads.
31. The "Modified Permitted Preliminary Works" would therefore include all of these activities save for the diversion and laying of apparatus and below-ground surveys. Plainly, a number of the residual activities are capable in principle of damaging NGET's land or

apparatus. The erection of construction fencing and temporary structures, for example, may involve excavation and the driving of posts into the ground, remediation works may involve disturbance of contaminated land in close proximity to NGET's apparatus and the construction of temporary access roads potentially involves significant ground works.

32. NGET cannot agree to the proposed carve-out. The triggers for the indemnity and for the provision of insurance and security have been determined by NGET based on the risk to its assets. It is the proximity of works to NGET's land and apparatus, not the label attached to those works, that creates the risk to the NETS. Many of the activities within the "Modified Permitted Preliminary Works" could result in damage to, or obstruction of access to, NGET's apparatus. The fact that the Applicant has chosen to exclude some activities (the diversion and laying of apparatus and below-ground surveys) only serves to demonstrate that the Applicant recognises that works in proximity to NGET's apparatus carry risk. It does not follow that the residual activities are risk-free.
33. The triggers for indemnity, insurance and security reflect a risk-based approach that has been adopted consistently by the Secretary of State in almost all made DCOs. The Applicant has provided no substantive justification for the exclusion of the "Modified Permitted Preliminary Works" from paragraph 11(7), simply stating that they are "not appropriate or proportionate". The Applicant does not explain why the same provisions have been found to be "appropriate and proportionate" in the context of numerous other NSIPs but not in this case. The Applicant's reliance on the Planning Inspectorate guidance does not assist. As explained above, the guidance that protective provisions should be adapted to reflect the proposed development does not mean that they should be amended to suit what are, in substance, the Applicant's commercial preferences.
34. Given the potentially catastrophic consequences of damage to the NETS, NGET requires that no works be undertaken on its land, on land in respect of which it has an easement or wayleave for its apparatus, or within 15 metres of NGET's apparatus until acceptable indemnity, insurance and security are in place. NGET's position again reflects its standard protective provisions, which, taken as a whole, provide the level of protection needed for the NETS and have been included in numerous DCOs. NGET's drafting should therefore be preferred.

Paragraph 15 – Arbitration and dispute resolution

35. Paragraph 15 of NGET's preferred protective provisions sets out the arbitration regime applicable to differences between NGET and the Applicant. Consistent with NGET's standard protective provisions, paragraphs 7(2), 7(3), 8(1) and 9 are carved out of the dispute resolution procedure, because they concern matters that NGET requires to remain subject to its sole discretion.
36. The Applicant accepts that arbitration is not appropriate for the matters carved out of paragraph 15. However, the Applicant proposes a multi-tier dispute resolution procedure involving escalation to senior personnel. NGET considers this unnecessary. Escalation to senior personnel is a step that both parties would take in good faith in the ordinary course of managing any dispute – it does not need to be enshrined in the protective provisions. NGET's preferred drafting should be adopted.

Protective provisions for future NGET infrastructure (the SCRE/WRRE Project)

37. The upgrading of the electricity transmission system is crucial for the UK. It is essential for the developers of energy projects (including this Project) that there are sufficient connection opportunities to the NETS to allow the benefits of those projects to be realised.

38. The proposed project identified as being within the Order Limits is the uprating of existing high voltage electricity transmission lines 400kV OHL Cottam – Staythorpe 1 – High Marnham – Stoke Bardolph and 400kV OHL – High Marnham – West Burton also known as SCRE/WRRE Project.
39. Reinforcement includes reconductoring and uprating thermal capacity to enhance power flow from High Marnham substation. The SCRE/WRRE Project enables ~2.5GW additional connection capacity for new renewable generation.
40. The SCRE/WRRE Project is nationally significant infrastructure of Critical National Priority as defined by NPS EN-1 and NPS EN-5. It is therefore vital to achieving the UK's energy objectives, together with the national security, economic, commercial, and net zero benefits associated with those objectives.
41. It is essential to avoid as far as possible any conflict arising between the carrying out, maintenance and operation of the Project and the carrying out, maintenance and operation of the Proposed NGET Project. NGET considers that the protective provisions must make provision for this.
42. A key area of concern for NGET is the likelihood of the potential cumulative effects of the construction of the Project and the Proposed NGET Projects (together with any other projects during the same time period).
43. The wording proposed by NGET would require the Applicant to use reasonable endeavours to avoid conflict between the Project and the Proposed NGET Projects, as follows:

Without limiting any other provision of this Part of this Schedule, the undertaker must use reasonable endeavours to avoid any conflict arising between the carrying out, maintenance and operation of the authorised development and the Proposed NGET Projects . For the purposes of this paragraph, "reasonable endeavours" means –

(a) undertaking consultation with National Grid Electricity Transmission Plc on detailed design and programming of works for the authorised development, taking into account such reasonable representations as National Grid may provide in relation to proposed plans and timetables and ensuring the plans as submitted for approval under the requirements do not unreasonably impede or interfere with the construction of the Proposed NGET Projects;

(b) having regard to the anticipated programme of works for the Proposed NGET Projects and facilitating a co-ordinated approach to construction programming, land assembly, and the carrying out of works in connection with the authorised development and the Proposed NGET Projects where reasonably possible;

(c) undertaking consultation on the detailed design and programming of the authorised development to ensure that the design and programme for the authorised development does not unreasonably impede or interfere with the NGET Projects;

(d) where possible, undertaking the placing of ducting or making provision for the Proposed NGET Projects; and

(e) providing a point of contact for continuing liaison and co-ordination throughout the construction and operation of the authorised development.

44. As can be seen, the wording generally requires cooperation and collaboration between the parties. The inclusion of these provisions will ensure a clear framework for managing coordination between different NSIPs and help to ensure that all projects can be brought forward in an efficient manner. NGET's proposed protective provisions are set out in full in the Appendix.
45. There is clear precedent for NGET's proposed approach in the Awel Y Mor Offshore Wind Farm DCO, which was granted development consent on 20 September 2023. The protective provisions secured in the AYM DCO ensured the protection of existing and future NGET infrastructure at the Bodelwyddan substation. In that case, NGET was bringing forward a project to upgrade the existing Bodelwyddan substation comprising extending the substation itself as well as associated overhead line works to the south of the existing substation to enable the connection of multiple projects in this location. The AYM DCO project was just one of the connecting projects and therefore specific protective provisions were included in the AYM DCO to avoid those future NGET works from being prejudiced by the AYM DCO project. As such, NGET is seeking a form of protective provisions based on those included in the AYM DCO.
46. The Mona Offshore Wind DCO, granted on 4 July 2025, and the Outer Dowsing Offshore Wind (Generating Station) DCO, granted on 10 February 2026, are further examples of where protection for NGET's future assets has been secured.
47. NGET's wording should be preferred to ensure protection for NGET's proposed assets and to allow NGET properly to discharge its statutory obligations.

Conclusion

48. For the reasons set out above, NGET respectfully submits that the protective provisions in the form sought by NGET should be included in the Order. The provisions are necessary to prevent serious detriment to NGET's undertaking, are well-precedented and have, in materially identical form, been included by the Secretary of State in the two most recent solar farm DCOs (and, indeed, in almost all made DCOs). There is nothing about this Project that warrants a different approach.

APPENDIX – NGET'S PREFERRED PROTECTIVE PROVISIONS

NATIONAL GRID ELECTRICITY TRANSMISSION PLC

SCHEDULE 13

PROTECTIVE PROVISIONS

PART 7

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 7 (*consent to transfer 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 11(3)b).

Interpretation

2. In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991;

“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 development 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);

“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) any electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid Electricity Transmission Plc together with any replacement apparatus
- (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 electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid Electricity Transmission Plc together with any replacement apparatus constructed as part of the Proposed NGET Projects, whether temporary or permanent (“Proposed NGET Projects apparatus”);

“authorised works” has the same meaning as is given to the term “authorised development” in article 2(1) 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 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 works¹;

“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: 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;²

“NGESO” means as defined in the STC;

“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;

"Proposed NGET Projects" means the SCRE/WRRE Project

"Proposed NGET Projects Sites" include —

- (a) land on which any Proposed NGET Projects apparatus is situated; and
- (b) land on which Proposed NGET Projects apparatus is anticipated to be situated (in so far as the same has at any time been notified by National Grid Electricity Transmission Plc in writing to the undertaker);

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

- (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
- (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
- (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”.

“STC” means the System Operator Transmission Owner Code prepared by the electricity Transmission Owners and NGESO as modified from time to time;

“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 works³;

“Transmission Owner” means as defined in the STC;

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

On Street Apparatus

3. Except for paragraphs 4 (*apparatus in stopped up streets*), 9 (*retained apparatus: protection*), 10 (*expenses*) and 11 (*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 closed streets

4.—(1) Where any street is closed under article 10 (street works), article 12 (power to alter layout, etc., of streets), article 13 (construction and maintenance of altered streets) article 14 (*temporary prohibition, restriction or diversion of use of streets and public rights of way*) article 15 (*permanent closure of public rights of way*), 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 or highway 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 7 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 9.

(2) Notwithstanding the temporary closure or diversion of any highway under the powers of articles of the Order referred to in paragraph 4(1), National Grid Electricity Transmission Plc is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the closure or diversion was in that highway.

Protective works to buildings

5. The undertaker, in the case of the powers conferred by article 20 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid Electricity Transmission Plc.

Acquisition of land

6. (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 acquire any land forming part of the Proposed NGET Projects (such agreement not to be unreasonably withheld or delayed)

(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 9 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

7.—(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 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) below) 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.

(3) 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 may in its sole discretion, 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 shall 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.

(4) 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.

(5) 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

8.—(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 15 (*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

9.—(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 specified 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; and
- (i) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology

(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 the 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-paragraphs (4)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8);
- (b) may be given subject to such reasonable requirements as National Grid may have in connection with the safe and efficient construction, commissioning, operation and maintenance of the Proposed NGET Projects; and
- (c) must not be unreasonably withheld;

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, 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, must be carried out to National Grid Electricity Transmission Plc's satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required and National Grid Electricity Transmission Plc shall give notice 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, sub-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 specified 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 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 (11) at all times.

(12) 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

10.(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 15 (*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 pipe or 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

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use maintenance or failure of any of the authorised 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 authorised works) or property of National Grid Electricity Transmission Plc, or there is any interruption in any service provided, or in the supply of any goods, 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, penalty 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 and including STC Claims or an Incentive Deduction 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 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) shall impose 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 authorised 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 8 (*consent to transfer benefit of Order*) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 11; and/or
- (c) 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;

(4) National Grid Electricity Transmission Plc must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) 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.

(6) National Grid Electricity Transmission Plc must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Grid Electricity Transmission Plc’s reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid Electricity Transmission Plc’s control and if reasonably requested to do so by the undertaker National Grid Electricity Transmission Plc must provide an explanation of how the claim has been minimised, where relevant.

(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

12. 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

13.(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 7(2) or National Grid Electricity Transmission Plc makes requirements for the protection or alteration of apparatus under paragraph 9, 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) For the avoidance of doubt 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.

(3) National Grid must supply the undertaker with regular updates in relation to the Proposed NGET Projects and the Proposed NGET Projects Sites including (but not limited to) providing plans for the Proposed NGET Projects and the anticipated programme of works for the Proposed NGET Projects.

Access

14. If in consequence of the agreement reached in accordance with paragraph 6(1) or the powers granted under this Order the access to any apparatus or the Proposed NGET Projects is materially obstructed, the undertaker must provide such alternative means of access to such apparatus or to the Proposed NGET Projects as will enable National Grid Electricity Transmission Plc to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

15. Save for differences or disputes arising under paragraph 7(2), 7(3) 8(1) and 9 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 42 (*arbitration*).

Notices

16. Notwithstanding article 44 (service of notices), any plans submitted to National Grid Electricity Transmission Plc by the undertaker pursuant to paragraph 9 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.

Interaction with the Proposed NGET Projects

17. Without limiting any other provision of this Part of this Schedule, the undertaker must use reasonable endeavours to avoid any conflict arising between the carrying out, maintenance and operation of the authorised development and the Proposed NGET Projects. For the purposes of this paragraph, “reasonable endeavours” means—

- (a) undertaking consultation with National Grid Electricity Transmission Plc on detailed design and programming of the authorised works, taking into account such reasonable representations as National Grid Electricity Transmission Plc may provide in relation to proposed plans and timetables ;
- (b) having regard to the anticipated programme of works for the Proposed NGET Projects and facilitating a co-ordinated approach to construction programming, land assembly, and the carrying out of the authorised works and the Proposed NGET Projects where reasonably possible;
- (c) undertaking consultation on the detailed design and programming of the authorised development to ensure that the design and programme for the authorised development does not unreasonably impede or interfere with the NGET Projects;
- (d) where possible, undertaking the placing of ducting or making provision for the Proposed NGET Projects; and
- (e) providing a point of contact for continuing liaison and co-ordination throughout the construction and operation of the authorised works.