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# Steeple Renewables Project

**Section 127 / 138 Report**

April 2026

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## Section 127 / 138 Report

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## 1 INTRODUCTION

- 1.1 Steeple Solar Farm Limited (the “**Applicant**”) submitted in May 2025 an application for a development consent order (“**DCO**”) to the Secretary of State for the Steeple Renewables Project (the “**Project**”). The application was accepted by the Planning Inspectorate on 11 June 2025.
- 1.2 The DCO includes provisions of the compulsory acquisition of rights in land, including the acquisition of interests and rights in “statutory undertakers land”, as defined by Section 127 of the Planning Act 2008 (the “**2008 Act**”). As the DCO will affect statutory undertakers’ interest in land, the Applicant believes that Section 127 of the 2008 Act is engaged by the DCO. Section 138 of the 2008 Act is also engaged as there are relevant rights benefitting statutory undertakers and relevant apparatus belong to those undertakers.
- 1.3 This document (the “**Report**”) is the Applicant’s case demonstrating that there is no serious detriment arising from the acquisition of any land where statutory undertakers have an interest and that the extinguishment and relocation of the relevant rights is necessary for the purpose of carrying out the development.
- 1.4 This Report has also sought to address ExQ2 9.4.1 of the Examining Authority’s Second Written Questions [PD-008], by providing a summary of the status of all of the protective provisions agreed and those still engaged in discussions at Section 2 of this Report. This summary refers to all statutory undertakers and other relevant parties, who do not qualify as ‘statutory undertakers’ as defined in Section 8 of the Acquisition of Land Act 1981 and who’s interests do not therefore require consideration under Section 127 or 138 of the 2008 Act for the purpose of this Report.

### Section 127 of the 2008 Act

- 1.5 Section 127 of the 2008 applies to land (statutory undertakers’ land) if:
- (a) *the land has been acquired by statutory undertakers for the purposes of their undertaking,*
  - (b) *a representation has been made about an application for an order granting development consent before the completion of the examination of the application, and the representation has not been withdrawn,*
  - (c) *the Secretary of State, as a result of the representation, is satisfied that:*
    - (i) *the land is used for the purposes of carrying on the statutory undertakers’ undertaking, or*
    - (ii) *an interest in the land is held for those purposes.*
- 1.6 For the purpose of Section 127 of the 2008, “land” includes any interest in or right over land (as defined in Section 159 of the 2008 Act).
- 1.7 If the representations made have not been withdrawn and the Secretary of State is satisfied that the land or an interest in the land is used for the purposes of carrying on a statutory undertaking, then the DCO may include provisions authorising the compulsory acquisition of land or right over statutory undertakers’ land by the creation of a new right over and **only to the extent that** the Secretary of State is satisfied that the requirements of Section 127 of the 2008 Act have been met.
- 1.8 In these circumstances the DCO may only include a provision authorising the compulsory acquisition of statutory undertakers’ land or of a right over statutory undertakers’ land by creation of a new right over land where the Secretary of State is satisfied that:
- (a) *the land or right may be purchased and not replaced without **serious detriment** of the carrying on of the undertaking; or*
  - (b) *it can be replaced with other land belonging to, or available for acquisition by, the undertaker without **serious detriment** to the carrying on of the undertaking.*
- 1.9 There is no statutory definition of ‘serious detriment’. However, the test for ‘serious detriment’ is wide and holistic and is taken to mean more than a mere disadvantage. In the Examiner’s Recommendation Report in

the Lake Lothing (Lowestoft) Third Crossing Development Consent Order 2020, the inspector recognised, at paragraph 8.5.138, that ‘*serious detriment is a matter of judgement on the scale of impact on the undertaking and that the decision maker should take a holistic approach.*’

### **Section 138 of the 2008 Act**

- 1.10 Section 138 of the 2008 Act applies to land if:
- (a) *there subsists over the land a relevant right, or*
  - (b) *there is on, under or over the land relevant apparatus.*
- 1.11 Section 138 provides that a DCO may include provision for the extinguishment of the relevant right, or the removal of the 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 DCO relates.
- 1.12 The DCO includes the power for the Applicant to extinguish the rights of, remove or reposition the apparatus belonging to the statutory undertakers, and as such the Applicant believes that Section 138 of the 2008 Act is engaged.
- 1.13 The Applicant considers that the test of necessity is demonstrated in the Statement of Reasons [REP3-007] which sets out which work numbers occur in each plot number. The Land Rights Tracker [EN010163/EX/8.5] summarises which plots in the Book of Reference [REP1-005] apply to each statutory undertaker. Cross referencing these plots with the statement of reasons, the Examining Authority and Secretary of State will be able to determine which works are required in each plot and why the right is therefore necessary. It should be noted also that all protective provisions for any statutory undertaker contain controls regarding the removal of apparatus, to ensure that any such exercise of the rights in the Order would be subject to the consent of the relevant statutory undertaker.

### **Planning Act 2008: Content of a Development Consent Order Required for Nationally Significant Infrastructure Projects (MHCLG and DLUHC, April 2024)**

- 1.14 Government guidance from the Ministry of Housing, Communities and Local Government and the Department for Levelling Up, Housing and Communities on the content required for the DCO of a nationally significant infrastructure project states that [emphasis added]:

*“Applicants should expect to agree the form of protective provisions with the relevant parties for inclusion in the draft DCO prior to submitting the application for development consent. Where agreement on protective provisions has not been reached during the pre-application stage, applicants should include their preferred drafting taking into account the standard protective provisions commonly used by the relevant party (usually statutory undertakers) and endorsed in recent DCO decisions. [...]*

*Most statutory undertakers have now developed their own preferred form of protective provisions which is very helpful to the preparation of the draft DCO. However, these must be adapted as necessary, so they accurately reflect the proposed development. **They should also not simply negate other provisions of the DCO, particularly concerning proposed compulsory acquisition of statutory undertakers’ land.***

*Examining Authorities are expected to ensure that the final form of a recommended DCO contains protective provisions which are bespoke to the application under consideration.”*

## **2 POSITION WITH STATUTORY UNDERTAKERS AND OTHER RELEVANT PARTIES**

- 2.1 Since the inception of the Project, the Applicant has been working with various statutory undertakers and other relevant parties whose interests are affected to seek to agree appropriate protections for their interests.
- 2.2 Pursuant to the request of the Examining Authority within ExQ2 9.4.1, this section provides a short summary of the status of all prospective protective provisions for the purpose of the Project.

### **Anglian Water Services Limited (“Anglian Water”)**

Protective provisions with Anglian Water have been agreed and included within the DCO at Deadline 5. The Applicant anticipates the withdrawal of Anglian Water's objection to the Project at Deadline 6.

#### **Exolum Pipeline Systems Limited ("Exolum")**

Protective provisions with Exolum have been agreed and included within the DCO at Deadline 5. The Applicant anticipates the withdrawal of Exolum's objection to the Project at Deadline 6.

#### **Trent Valley Internal Drainage Board ("TV IDB")**

Protective provisions with TV IDB have been agreed and included in the DCO at Deadline 6. As directed by TV IDB, the Applicant has submitted a letter detailing the withdrawal of TV IDB's objection to the Project at Deadline 6.

#### **Cadent Gas Limited ("Cadent")**

Protective provisions with Cadent have been agreed and included within the DCO at Deadline 5. The Applicant anticipates the withdrawal of Cadent's objection to the Project at Deadline 6.

#### **EDF Energy (Thermal Generation) Limited ("EDF")**

Protective provisions with EDF have been agreed and included within the DCO at Deadline 5. The Applicant anticipates the withdrawal of EDF's objection to the Project at Deadline 6.

#### **National Grid Electricity Distribution (East Midlands) PLC ("NGED")**

Protective provisions with NGED have been agreed and included within the DCO at Deadline 5. The Applicant anticipates the withdrawal of NGED's objection to the Project at Deadline 6.

#### **West Burton Solar Project Limited ("West Burton"):**

Protective provisions with West Burton have been agreed and included within the DCO at Deadline 5. The Applicant and West Burton continue to engage in negotiation as to the completion of a side agreement which is unlikely to be completed prior to close of examination. However, the side agreement is a private agreement which will not affect the DCO and therefore is not something which would affect the Examining Authority's recommendation.

#### **Holcim UK Limited ("Holcim")**

Holcim requested a co-operation agreement in their relevant representation. The Applicant has since been negotiating protective provisions, as stated in its Land Rights Tracker. Protective provisions with Holcim are not agreed and have not been included in the DCO at Deadline 5. Holcim are not a statutory undertaker. Therefore, they do not enjoy the same protections as set out in section 127 and 138 Planning Act 2008. The protective provisions sought by Holcim sought to address commercial sensitivities rather than statutory undertakings. Should protective provisions not be agreed prior to close, then the parties will continue to discuss the option of a co-operation agreement to address commercial concerns.

- 2.3 For the purposes of this Report, the Applicant has not reached agreement with three parties, these are:

#### **Network Rail Infrastructure Limited ("Network Rail")**

Network Rail has interests affected by the Project. Network Rail has submitted a relevant representation [RR-043] and written representations [REP1-021] and [REP2-067]. The Applicant has been engaging with Network Rail with a view to agreeing protective provisions. The protective provisions with Network Rail have not been agreed. Further detail as to the points of disagreement within the protective provisions is detailed further at Section 3 of this Report.

#### **UK Atomic Energy Authority ("UKAEA") and UK Fusion Energy Limited ("UKFE") (together)**

Protective provisions with UKAEA and UKFE (formerly UK Industrial Fusions Limited (UKIFS)) jointly have not yet been agreed and have not been included in the DCO at Deadline 5. The Applicant remains committed to engagement with UKAEA and UKFE with respect of the agreement and inclusion of protective provision into the DCO and is confident that all matters with UKAEA and UKFE will be resolved prior to the close of the examination. Further detail as to the points of disagreement within the protective provisions is detailed further at Section 3 of this Report.

For avoidance of doubt, the Applicant understands that UKAEA or UKFE are currently not a statutory undertaker meaning that the tests in Sections 127 and 138 would not apply. However, given the wider strategic importance of the bodies the Applicant has treated these bodies as statutory undertakers for the purposes of its report. Please note that in any decision made by the Secretary of State, section 127 and 138 should not be applied in relation to any party that is not a statutory undertaker.

### **National Grid Electricity Transmission PLC (“NGET”)**

NGET has interests affected by the Project. NGET submitted a relevant representation [RR-049] and made written and oral representations [REP2-069], [REP3-053], [REP4-005], [REP4-006], [REP4-006], [REP4-007]. The Applicant has been engaging with NGET with a view to agreeing appropriate protective provisions for the protection of NGET’s existing infrastructure. The protective provisions with NGET have not been agreed. Further detail as to the points of disagreement within the protective provisions is detailed further at Section 3 of this Report.

- 2.4 Together, **Network Rail, UKAEA and UKFE** (together) and **NGET** are identified as the “**SU(s)**” for the purpose of this Report.
- 2.5 The Applicant proposes to acquire freehold land and rights in land, such land or interests in land. The extent to which the SU’s interests are affected is set out in the Book of Reference, or by summary in the Land Rights Tracker.
- 2.6 The SUs have made representations to the Planning Inspectorate in relation to the DCO and the Applicant remains in ongoing discussions with the SUs regarding the DCO application, but the SUs’ representations have not currently been withdrawn. The test in Section 127 will continue to apply until the objections are withdrawn.
- 2.7 For the purposes of Section 127, the Applicant’s position is that adequate protections for the benefit of the SUs are provided for within its DCO. The DCO submitted by the Applicant at Deadline 5 includes protective provisions for the benefit of the SUs which reflect the result of negotiations with the SUs and follow recent precedents for other recent Projects.
- 2.8 As such, the Applicant’s position is that Section 127(3) is engaged in that the SUs Land subject to compulsory acquisition can be acquired from the SUs as it does not cause serious detriment to the carrying on of the undertaking.

### 3 CONSIDERATION IN RESPECT OF EACH SU

- 3.1 Further to the summary provided in Section 2 of this Report, the Applicant has, at the request of the Examining Authority's in its Rule 17 – Request for Further Information submitted following Deadline 5 [PD-010], provided a table at **Appendix 5** of this Report illustrating the wording included in the DCO at Deadline 6 which remains in disagreement.
- 3.2 References to the paragraph numbers of protective provisions within this Report are references to those protective provisions as appended to this Report and may therefore differ from the paragraph numbers as contained within the DCO submitted at Deadline 6.

#### **Network Rail**

- 3.3 At this stage in the examination there are still outstanding points of disagreement between the Applicant and Network Rail in respect of the protective provisions as included in Schedule 10 of the DCO at Deadline 2, these are set out below. As outlined within this Report, the Applicant maintains that this set of protective provisions, as included at Schedule 10 of the DCO, best reflects suitable protective provisions, consistent with other made DCOs for other projects and provides the right balance between protecting Network Rail's assets and its ability to continue to carry out its statutory undertakings, whilst enabling the Applicant to properly and efficiently implement the Project without tangible risks of delay.
- 3.4 The Applicant remains committed to engagement with Network Rail for the remainder of the examination and, if necessary, beyond.
- 3.5 The Applicant has set out the extent of its amendments against the Network Rail standard provisions in tracked changed in **Appendix 1** of this Report. The below discusses, and justifies, core amendments which the Applicant considers go beyond minor clerical amendments.

(a) **Amendments to paragraph 129(3) (regarding the restrictions on the use of compulsory acquisition powers).**

Paragraph 129(3) seeks to provide a restriction upon the undertaker's use of the compulsory purchase powers contained within the DCO and Sections 271 and 272 of the Town and Country Planning Act 1990 (“**1990 Act**”). Section 271 and 272 of the 1990 Act concern the ‘extinguishment’ of rights of statutory undertakers. The Applicant accepts Network Rail's standard wording in paragraph 129(3) save for one minor, clarificatory amendment sought to provide explicit reference to the right of the applicant to divert and ‘extinguish’ any right of access of Network Rail to the railway property where Network Rail's consent is first obtained. In order to make appropriate reference to Section 271 and 272 of the 1990 Act, the Applicant believes that it is appropriate, for the avoidance of doubt, that this minor, clarificatory amendment is included. The inclusion of this amendment is consistent with the HyNet Carbon Dioxide Pipeline Order (the “**HyNet DCO**”);

(b) **Amendments to paragraph 130(3) (regarding the approval process of specified works).**

Paragraph 130(3) provides that, pursuant to the stated approval process, Network Rail may provide notice to the undertaker stating that it desires to carry out any specified works which Network Rail believe may affect the stability of the railway property or the safe operation of traffic on the railway itself. The Applicant has sought an obligation for Network Rail to seek consent from the undertaker prior to carrying out those specified works. This is considered a reasonable addition to the Network Rail standard provisions. Network Rail do not have the ability to carry out the authorised development without the consent of the Secretary of State. Where Network Rail wish to carry out specified works, then the undertaker of the DCO will need to apply to the Secretary of State pursuant to Article 5 of the DCO. In addition, the undertaker of the DCO has, as its imperative, the consideration of the timely and efficient execution of works. Should Network Rail request to carry out works, it would be for the undertaker to determine whether or not to permit this or vary its design to avoid that requirement. The Applicant acknowledges Network Rail's primary objective regarding the safe operation of the railway but considers that it is appropriate that the decision as to who carries out these works remains at the discretion of the undertaker. Paragraphs 130 to 132 already provide appropriate facilities and opportunity for Network Rail to impose any reasonable conditions on the

undertaker in carrying out of such specified works as may be required. Further, it would not be appropriate for Network Rail undertake such works where this sits outside of its expertise. This wording is consistent with and reflective of the precedent protective provisions of the HyNet DCO.

(c) **Amendments to paragraph 130(5) (approval process for specified works in the case of an emergency).**

As part of the approval process, the Applicant is required to provide NR with '*proper and sufficient plans*' of any proposed specified works for the approval of Network Rail's engineer (not to be unreasonably withheld or denied). Where such approval has not been provided within 28 days beginning with the date on which the plans were provided to Network Rail, the undertaker may serve notice requiring Network Rail to confirm whether approval has been provided within 28 days. Where confirmation from Network Rail has not been provided within this further period prior approval will be deemed to have been given. As stated above, the Applicant is content with the approval process.

However, in order to enable the proper and safe implementation of the Project and to account for any unforeseen concerns that may arise during any phase of the Project, the Applicant has sought inclusion of a sub-paragraph to enable the undertaker to carry out those specified works in the case of an emergency. The Applicant's proposed wording was agreed and included in the HyNet DCO. The proposed wording provides that, in cases of emergency only, the undertaker will not be bound by the approval process specified above and will be permitted to carry out the necessary specified work subject to providing Network Rail with notice as soon as reasonably practicable as well as subsequently providing a plan and description of the works as soon as is reasonably practicable;

The Applicant considers this a reasonable and proportionate drafting measure. It should be noted that "specified works" includes so much of any of the authorised development as is situated upon, across, under or over or within 15 metres of railway property, and includes maintenance. The Applicant considers that it does not function to either the Applicant's nor Network Rail's benefit if, in event of unforeseen circumstances, emergency operations are not able to be lawfully carried out without the approval of Network Rail. The Applicant understands that the safety of the railway is paramount, but clearly there may be circumstances whereby some level of operations are required urgently to make the Project or Network Rail's assets safe pending a full engineering solution.

(d) **Amendment to paragraph 131(2) (indemnity for protective and / or specified works).**

This paragraph provides that the undertaker must indemnify Network Rail for any costs arising out of any damage to, or interference or obstruction of railway property is caused by the carrying out of construction of a specified work. The Applicant does not contest the case for the inclusion of this indemnity, but has sought amendments to clarify the scope of such an indemnity arising from those works such that the undertaker would not be liable for any costs that are not reasonably foreseeable. As such, the Applicant has sought the removal of the wording 'or in consequence of' and has proposed complimentary wording '*always excluding any consequential or indirect loss*', which was agreed and included in the HyNet DCO;

(e) **Amendments to paragraph 134(1) (construction of specified works).**

Network Rail are seeking a position whereby should they wish to alter their railway property as a consequence of the Project, at any point in time, then the undertaker must pay to Network Rail the reasonable cost of those alterations. The Applicant considers this an unreasonable requirement. The Applicant's position is that it is reasonable for it to indemnify Network Rail for any temporary or permanent alterations required as a result of the construction of the Project but that an ongoing liability in this respect is not proportionate. The Applicant has proposed that there be a 24 month holding over period whereby Network Rail are able to identify any works following completion of the specified works. The Applicant considers this a reasonable position; Network Rail are still able to appropriately ensure that there is no serious detriment to their undertaking as a result of compulsory acquisition of their land as they will have a full two years to identify any works that are required informed by the operation of the Project that had not been identified during construction.

(f) **Amendments to paragraph 134(2) (construction of specified works).**

As set out above, the Applicant seeks the same in principal amendments (with the same justifications) in the context of paragraph 134(2) as it does in paragraph 130(3), in that where Network Rail provides notice to the undertaker seeking consent to carry out specified works during their construction due to concerns regarding the safety and / or stability of the railway then such consent is to be at the discretion of the undertaker. Additionally, the Applicant seeks a clarificatory amendment requiring Network Rail to take reasonable steps to mitigate its losses. This Applicant understands that this wording is consistent with both HyNet DCO and Network Rail's existing statutory functions requiring them to minimise losses and therefore sees no reason why this wording could not be accepted by the Secretary of State.

(g) **Amendments to paragraph 134(2), 135 and 140(1)**

The Applicant seeks a clarificatory amendment to those paragraphs where Network Rail benefit from an indemnity with respect of fees, costs, expenses etc. where those fees are required to be reasonable, they should also be required to be properly incurred. Network Rail should not be permitted to benefit at the expense of the undertaker where such costs are claimed. The Applicant considers this to be consistent with the current drafting in that in order for any fee, cost, expense etc. claimed to be reasonable it must also have been properly incurred. Therefore, the Applicant does not consider this to alter the position in such a way to impact Network Rail's ability to exercise its statutory functions.

(h) **Amendments to paragraph 140(1) including sub-paragraphs 140(1)(c) (indemnity for costs).**

In addition to seeking the same restrictions on the extent of any such indemnity as sought with respect of paragraph 131(2) above and the obligations to mitigate losses as sought with respect of paragraph 134(2) above, the Applicant seeks an amendment to sub-paragraph 140(1)(c). Network Rail's preferred provisions provide that the undertaker must pay all reasonably and properly incurred costs, charges, damages and expenses as appropriate, including as a result of any act or omission of the undertaker or any person in its employ or sub-contracted whilst accessing to or egressing from the authorised development. The Applicant does not contest the principal of this indemnity and is content to provide it, however, the Applicant seeks a clarificatory amendment to make clear that this indemnity does not include an obligation for the undertaker to indemnify Network Rail where it takes its access by virtue of a public right. The amendment is sought with reference to the railway which runs across the site and includes a level crossing which is subject to an existing bridleway. The Applicant can foresee that it would be likely that an undertaker may cross Network Rail property using this bridleway. Access or egress by way of this bridleway presents a 'no change' position in that the DCO does not alter this existing right. This means that the Applicant (and / or relevant undertaker), or any persons in its employ, is able to cross Network Rail property using this bridleway currently. Therefore, there is no justification for Network Rail seeking to impose an additional indemnity relating to the use of this bridleway. In addition, there would be no justification for the Secretary of State to impose an obligation for the undertaker to pay Network Rail's costs in this instance, as clearly the Project is not creating a serious detriment, where it is relying on existing public rights.

To summarise, the Applicant agrees to provide Network Rail an indemnity to pay its reasonable costs etc., by reason of any act or omission of any person in its employ whilst accessing to or egressing from the authorised development, except where that access is taken by virtue of an existing public right. The amendment provided at 140(1)(c) operates to secure this.

(i) **Amendment to paragraph 145 (transfer of benefit).**

The Applicant proposes an amendment to the period in which the undertaker is required to give Network Rail notice of its intention to transfer the benefit of the order pursuant to Article 5 of the DCO. The Applicant seeks a reduction from 28 days to 7 days so as to more closely align with the notice period outlined in Article 5(6) of the DCO and the wording of precedent protective provisions for the benefit of Network Rail such as the Net Zero Teesside Order 2024.

The Applicant considers this entirely reasonable as paragraph 145 does not seek a consent from Network Rail, rather paragraph 145 operates only to notify Network Rail of a potential change. Given there is no consent procedure, the Applicant can see no justification for a period of one month. The Applicant can see no reason why the Secretary of State could determine that a 7 day notice period would create a “serious detriment” in respect of Network Rail’s undertaking.

- 3.6 On the basis of the above explanations, the Applicant considers that the protective provisions set out in Schedule 10 of the DCO for the benefit of Network Rail ensure that there would be no serious detriment to Network Rail’s statutory undertaking if the Applicant were to acquire these rights and interests in the land and the criteria in Section 127 is satisfied.

### **UKAEA and UKFE**

- 3.7 At this stage in the examination there are still outstanding points of disagreement between the Applicant and UKAEA and UKFE in respect of the protective provisions.
- 3.8 The Applicant has set out the extent of its amendments against UKAEA/UKFE's standard provisions in tracked change in **Appendix 4** of this Report. The below discusses, and justifies, core amendments which the Applicant considers go beyond minor clerical amendments.

(a) **An amendment to paragraph 149 (definition of “UKFE”)**

UKFE want the benefit of the protective provisions to pass to any "successor to its functions".

UKFE has no statutory functions, albeit that it has been established as a delivery vehicle for the STEP Project. The Applicant is content to accept the principle that the body who will undertake the STEP Project has the benefit of the protective provisions, but considers that a reference to unspecified non-statutory "functions" to be too amorphous and uncertain.

The Applicant is therefore suggesting a mechanism by which UKAEA should be able to substitute another company for UKFE, as successor to UKFE's functions to deliver the STEP project.

(b) **An amendment to paragraph 149 (definition of “West Burton Power Station”)**

UKFE has asked for a certified plan to be included in the DCO showing the power station. The boundary of the power station has been agreed and a draft plan has been sent to UKFE's solicitor. UKFE has not yet finally approved this plan. The draft plan has been referenced in Schedule 12 the DCO and submitted at Deadline 6.

(c) **An amendment to paragraph 153 (Specified Works)**

UKFE requested the removal of deeming provisions in respect of the approval of plans and details which are to be approved by them.

The Applicant has agreed to remove deeming provisions, but it is concerned about the possibility of an impasse. It has therefore included drafting which includes a clear route for dealing with disputes, or UKFE's failure to respond, by referring the matter to arbitration. UKFE has indicated it does not agree to these amendments.

(d) **An amendment to paragraph 160 (Notice and Approvals)**

The Applicant is content to extend the protection of the protective provisions to UKFE, but is concerned that it should not be required to seek two sets of consents or approvals in relation to the STEP project. This would be unnecessarily administratively burdensome, and could lead to contradictory approvals or conditions.

The undertaker's amendment to paragraph 160 provides that consent or approval by one of UKAEA or UKFE would be sufficient. UKFE's response to this amendment is awaited.

- 3.9 On the basis of the above explanations, the Applicant considers that the protective provisions set out in Schedule 10 of the DCO for the benefit of UKAEA and UKFE ensure that there would be no serious detriment to UKAEA and / or UKFE (should UKAEA and UKFE be treated as statutory undertakers for the purpose of this Report) or any statutory undertaking if the Applicant were to acquire these rights and interests in the land and the criteria in Section 127 is satisfied.

### **NGET**

- 3.10 NGET is not the freehold owner of any land affected by the Scheme. As such, the Applicant does not seek any powers of compulsory acquisition or temporary possession in respect of land owned by NGET. However, the Applicant requires powers of compulsory acquisition and temporary possession over a number of plots containing existing NGET infrastructure in order to deliver the Project. The relevant plots are listed in NGET's relevant representation [RR-049] and further detailed within those documents referenced at Section 1.13 of this Report.
- 3.11 As explained at ISH3, and summarised at [REP4-031], the Applicant recognises the need to secure protective provisions in respect of *existing* NGET infrastructure. However, there remains a dispute between the Applicant and NGET as to whether the Steeple Renewables DCO should include protective provisions to protect *future* NGET assets relating to a project for which NGET intends to make an application for a DCO, known as the North Humber to High Marnham project ("NHHM").
- 3.12 The Applicant has and will continue to engage with NGET in respect of the areas of outstanding disagreement throughout the remainder of the examination and, if necessary, beyond. However, agreement has not been reached on (a) the principle of imposing provisions for the protection of future assets or (b) the drafting of any such protective provisions. As such, it is necessary for the Applicant to set out its position on the protective provisions that it invites the Secretary of State to impose on the DCO.

### **Existing NGET assets**

- 3.13 The Applicant invites the Secretary of State to impose provisions for the protection of existing NGET assets in the form set out at **Appendix 2** of this Report (*Applicant suggested Protective Provisions for Steeple NHHM at D5*). These have changed in two respects from those submitted by the Applicant in [REP2-052] (at pages 342 – 353) in that the **Appendix 2** version accepts the drafting sought by NGET on "*acceptable insurance*" and "*acceptable security*". As amended, the Applicant submits that these provide an appropriate balance between protecting NGET's existing assets and enabling the Applicant to implement the Scheme without tangible risks of delay.
- 3.14 The imposition of the protective provisions proposed by the Applicant will ensure that there will be no serious detriment to NGET's undertaking as a result of the powers of compulsory acquisition sought by the Applicant.

### **Future NGET assets**

- 3.15 It is agreed between the Applicant and NGET that Sections 127 and 138 of the Planning Act 2008 do not apply to land or apparatus that may be owned by a statutory undertaker in the future (see the Applicant's written summary of ISH3 [REP4-031] at page 44, paragraphs 9 – 10; NGET's written summary of ISH3 [REP4-007], paragraph 20 and NGET's Response to CAH1 and ISH3 Action Points [REP4-005] at page 3).
- 3.16 The Applicant's position remains that it is unnecessary and inappropriate to impose provisions on the Project's DCO for the protection of future NGET assets for the reasons given in [REP1-008]; [REP2-052] and [REP4-031]. However, one of the Action Points arising from the CAH1 [EV6-006] was for the Applicant to consider, without prejudice to its position, a form of protective provisions to protect any future assets that may be comprised in the NHHM project.
- 3.17 In accordance with the Examining Authority's request, the Applicant provides without prejudice drafting at **Appendix 3** of this Report (*Applicant suggested Protective Provisions for Steeple NHHM WP to Examination*). This drafting takes as its base the protective provisions advanced by NGET [RR-049] with amendments proposed by the Applicant showed by way of tracked changes.
- 3.18 The amendments proposed by the Applicant within **Appendix 3** can be summarised as follows:

(a) **An amendment to paragraph 2 (the definition of the “North Humber to High Marnham Project”)**

To clarify that any protective provisions shall be limited to the land, interests and apparatus physically within the Order Limits for the NHHM in the development consent application submitted to the Secretary of State and as provided for in a plan attached to the protective provisions as contemplated in ExQ2 7.2.7. The intention of this amendment is to provide a degree of certainty that the land subject to protection would be fixed at the date of confirmation of the Project’s DCO by reference to NGET’s application. This certainty allows the undertaker to undertake detailed design of the project.

(b) **Amendments to paragraph 3 (interaction with the NHHM project)**

To ensure that the undertaker of the Project would retain exclusive access to the NHHM land to carry out its development for a specified period to enable it to meet its grid connection offer. This is required to ensure that the undertaker is not constrained in its ability to successfully implement and complete its project.

(c) **An amendment to paragraph 7 (acquisition of land)**

To acknowledge the undertaker’s rights of access to the NHHM land (as proposed through the amendment to paragraph 3).

(d) **An amendment to paragraph 11 (expenses)**

To include provision for NGET to pay the undertaker compensation for any loss suffered in observing the provisions of paragraph 3 (interaction with the NHHM project), such sum to be subject to arbitration if not agreed. This is required to reflect the inevitability that is leaving the NHHM land clear of panel development the undertaker will lose valuable generating development for which it should be compensated.

3.19 The Applicant wishes to stress that in offering this without prejudice drafting, as prefaced in its oral submissions at the CAH1, it has very significant reservations about the ability of any protective provision drafting to effectually provide for:

- (a) the payment of compensation by a party with the benefit of the protective provision to the undertaker of a DCO; and
- (b) the co-ordination of construction of two national significant infrastructure projects, neither of which are in existence at the time of drafting the terms of the protective provisions given that such matters are invariably dealt with by mutually negotiated and agreed bilateral contracts between such parties in which any necessary level of detail can be included on binding protocols to be observed on design, construction, operation and compensation for loss.

3.20 The Applicant also reiterates that it has provided this drafting in response to a request from the Examining Authority and it is without prejudice to its fundamental objection to the imposition of protective provisions in respect of future NGET assets. Land and assets that may be owned by a statutory undertaker in the future do not fall within Sections 127 or 138 of the Planning Act 2008 and the Applicant’s position remains that it would be wholly inappropriate to impose the protective provisions advanced by NGET, even with the amendments suggested by the Applicant, on the Project’s DCO.

3.21 To be clear, there is no question of the Examining Authority having to determine the relative importance of the Project and NGET’s proposed NHHM project through this examination. NGET will have every opportunity to justify its preferred route and to secure such powers as it considers necessary through its own DCO application in due course. Through that process, the Applicant and other interested parties will have the opportunity to make representations about alternative routes and to interrogate NGET’s justification for the exercise of compulsory acquisition powers. NGET plainly recognises that it will have the opportunity to secure necessary land interests through its own DCO in due course (see [REP3-053] – ‘*In the absence of suitable PPs.....the NHHM project would need to address the interaction between the 2 projects through its own DCO application*’). There is no justification for seeking to circumvent that process through the imposition of protective provisions on the Project’s DCO.

- 3.22 The effect of imposing protective provisions for the NHHM project on this DCO will be to deprive the Applicant of a legitimate opportunity to test NGET's case on route selection, alternatives and its compelling case in the public interest by effectively safeguarding land within the Applicant's Order Limits for the benefit of NGET.
- 3.23 As such, the Applicant invites the Secretary of State to impose the protective provisions in the form set out at at **Appendix 2** for the protection of existing NGET assets only.

## **Appendix 1**

### **Applicant suggested Protective Provisions for Network Rail (Tracked)**

**PART 11**  
**FOR THE PROTECTION OF RAILWAY INTERESTS**

**126.** The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 140 of this Part of this Schedule any other person on whom rights or obligations are conferred by that paragraph.

**127.** In this Part of this Schedule—

“asset protection agreement” means an agreement to regulate the construction and maintenance of the specified work in a form prescribed from time to time by Network Rail;

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of their powers under section 8 (licences) of the Railways Act 1993;

“Network Rail” means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at Waterloo General Office, London SE1 8SW) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited and any successor to Network Rail Infrastructure Limited’s railway undertaking;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail or a tenant or licensee of Network Rail for the purposes of such railway or works, apparatus or equipment;

“regulatory consents” means any consent or approval required under:

- (a) the Railways Act 1993;
- (b) the network licence; and/or
- (c) any other relevant statutory or regulatory provisions;

by either the Office of Rail and Road or the Secretary of State for Transport or any other competent body including change procedures and any other consents, approvals of any access or beneficiary that may be required in relation to the authorised development; [and](#)

“specified work” means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property and, for the avoidance of doubt, includes the maintenance of such works under the powers conferred by article 4 (power to maintain the authorised development) in respect of such works.

**128.—(1)** Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies

with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

**129.**—(1) The undertaker must not exercise the powers conferred by—

- (a) article 3 (development consent granted by the Order);
- (b) article 4 (power to maintain the authorised development);
- (c) article 15 (discharge of water);
- (d) article 17 (authority to survey and investigate the land);
- (e) article 18 (compulsory acquisition of land);
- (f) article 20 (compulsory acquisition of rights);
- (g) article 21 (private rights);
- (h) article 23 (acquisition of subsoil only);
- (i) article 24 (power to override easements and other rights);
- (j) article 27 (temporary use of land for constructing the authorised development);
- (k) article 28 (temporary use of land for maintaining the authorised development);
- (l) article 29 (statutory undertakers);
- (m) article 34 (felling or lopping of trees and removal of hedgerows);
- (n) the powers conferred by section 11(3) (power of entry) of the 1965 Act;
- (o) the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016;
- (p) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016;
- (q) any powers under in respect of the temporary possession of land under the Neighbourhood Planning Act 2017;

in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, article 29 (statutory undertakers), article 24 (power to override easements and other rights) or article 21 (private rights), in relation to any right of access of Network Rail to railway property, but such right of access may be [extinguished or](#) diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over, or seek to impose any restrictive covenants over, any railway property, or extinguish any existing rights of Network Rail in respect of any third party property, except with the consent of Network Rail.

(5) The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.

(6) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions but it shall never be unreasonable to withhold consent for reasons of operational or railway safety (such matters to be in Network Rail's absolute discretion).

(7) The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work.

**130.**—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration under article 38 (arbitration).

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated their disapproval of those plans and the grounds of such disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, [subject to Network Rail seeking consent from the undertaker \(such matters to be in the undertaker's absolute discretion\)](#) and if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying their approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to their reasonable satisfaction.

[\(5\) The undertaker shall not be required to comply with sub-paragraph \(1\) in a case of emergency but in that case it shall give to Network Rail notice as soon as is reasonably practicable, and in addition to that notice shall provide a plan, section and description of those works as soon as reasonably practicable subsequently.](#)

**131.**—(1) Any specified work and any protective works to be constructed by virtue of paragraph 130(4) must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 130;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of ~~or in consequence of,~~ the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction [but always excluding consequential loss or indirect loss.](#)

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its ~~employees~~<sup>servants</sup>, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

**132.** The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as they may reasonably require with regard to a specified work or the method of constructing it.

**133.** Network Rail must at all times afford reasonable facilities to the undertaker and its ~~employees,~~<sup>contractors or</sup> agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

**134.—**(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that specified work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker 56 days' notice (or in the event of an emergency or safety critical issue such notice as is reasonable in the circumstances) of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations or additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed and provides its consent (such matters to be in the undertaker's absolute discretion) Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 130(3), pay to Network Rail all reasonable and properly incurred expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work provided that at all times Network Rail will be under an obligation to take reasonably steps to mitigate its loss and always excluding any consequential or indirect loss.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 135(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

**135.** The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably and properly incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 130(3) or in constructing any protective works under the provisions of paragraph 130(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watchpersons and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably

practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;

- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

**136.—(1)** In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 130(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker’s compliance with sub-paragraph (3)—

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 130(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail’s apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail’s apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail’s apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail’s apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 130(1) has effect subject to the sub-paragraph.

(6) Prior to the commencement of operation of the authorised development the undertaker shall test the use of the authorised development in a manner that shall first have been agreed with Network Rail and if, notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker’s apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail’s apparatus.

(7) In the event of EMI having occurred—

- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker’s apparatus in the investigation of such EMI;

- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI;
  - (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI; and
  - (d) the undertaker shall not allow the use or operation of the authorised development in a manner that has caused or will cause EMI until measures have been taken in accordance with this paragraph to prevent EMI occurring.
- (8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6) –
- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;
  - (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 131.
- (9) To the extent that it would not otherwise do so, the indemnity in paragraph 140(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.
- (10) (For the purpose of paragraph 135(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.
- (11) In relation to any dispute arising under this paragraph the reference in article 38 (arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Engineering and Technology.

**137.** If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

**138.** The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

**139.** Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

**140.—(1)** The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses (but always excluding any consequential or indirect loss) not otherwise provided for in this Part of this Schedule (subject to article 44 (no double recovery)) which may be occasioned to or reasonably and properly incurred by Network Rail—

- (a) by reason of the construction, maintenance or operation of a specified work or the failure thereof; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;
- (c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to or egressing from the authorised development otherwise than by virtue of a public right of way;
- (d) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or

gress from the authorised development by the undertaker or any person in its employ or of its contractors or others;

- (e) in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the carrying out or operation of the authorised development;

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission, provided Network Rail will be under an obligation to take reasonable steps to mitigate its loss and always excluding any consequential loss or indirect loss; and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must—

- (a) give the undertaker reasonable written notice of any such claims or demands;
- (b) not make any settlement or compromise of such a claim or demand without the prior consent of the undertaker;
- (c) take such steps as are within its control and are reasonable in the circumstances to mitigate any liabilities relating to such claims or demands.

(3) The sums payable by the undertaker under sub-paragraph (1) shall if relevant include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub paragraph (4).

(6) In this paragraph—

“the relevant costs” means the costs, losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any specified work including but not limited to any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in subparagraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

**141.** Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 140) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

**142.** In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

**143.** The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the works and land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and

- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

**144.** Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.

**145.** The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 5 (consent to transfer of benefit of the Order) of this Order and any such notice must be given no later than ~~28~~7 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

**146.** The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 36 (certification of plans and documents etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in a format specified by Network Rail.

**147.** In relation to any dispute arising under this part of this Part of this Schedule (except for those disputes referred to in paragraph 136(11)) the provisions of article 38 (Arbitration) shall not apply and any such dispute, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) to the President of the Institution of Civil Engineers.

## **Appendix 2**

### **Applicant suggested Protective Provisions for Steeple NHHM at D5**

# NATIONAL GRID ELECTRICITY TRANSMISSION PLC

## SCHEDULE 1

### PROTECTIVE PROVISIONS

#### PART 1

#### FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC 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 [ ] (*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 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”

(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 the undertaker for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or must be lodged or which gives or will give access to 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 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: 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;

“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;

“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 8(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 8(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 works;

"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 5 (*apparatus in stopped up streets*), 10 (*retained apparatus: protection*), 11 (*expenses*) and 12 (*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 stopped up streets**

4.—(1) Where any street is stopped up under article [ ] [*permanent stopping up, restriction of use and construction of streets, public rights of way and private means of access*], 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 stopping up 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 stopping up 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 8 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 10.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article [ ] [*temporary stopping up and restriction of use of streets*], 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 stopping up or diversion was in that highway.

### **Protective works to buildings**

5.—The undertaker, in the case of the powers conferred by article [ ] [*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) 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.

(3) 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.

(4) Any agreement or consent granted by National Grid Electricity Transmission Plc under paragraph 10 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 9(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 do so.

(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 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 16 (*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 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-paragraphs (4)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and
- (b) 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 authorised development (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, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 8(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 development, 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 8(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 16 (*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 [x] *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 12; 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 12(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 8(2) or National Grid Electricity Transmission Plc makes requirements for the protection or alteration of apparatus under paragraph 10, 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.

### **Access**

14. If in consequence of the agreement reached in accordance with paragraph 7(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus 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 8(2), 8(4) 9(1) and 10 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 [●] (*arbitration*).

### **Notices**

16. Notwithstanding article [ ] (service of notices), any plans submitted to National Grid Electricity Transmission Plc by the undertaker pursuant to paragraph 10 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.

## **End Note:**

### **Incentive Deduction**

The "Incentive Deduction" refers to an incentive in NGET's Electricity Transmission Licence concerning maintaining a continuous supply to demand customers (those parties that take load from the system) by ensuring that its system is functioning fully and efficiently. If there are system issues that prevent supply from reaching demand customers then these customers will be restricted and the incentive is reduced based on the restriction window. Essentially, it is a financial incentive for NGET to ensure its system works efficiently and without faults. The Protective Provisions look to address the scenario where the works that the counterparty is carrying out over or near NGET's system damages that system or otherwise causes it to not function correctly and therefore restrict this supply. In this scenario the counterparty would cover any related deductions to this incentive.

### **STC Claims**

The STC Claims relate to "Interruption Payments" under the electricity codes – the System Operator Transmission Owner Code (STC) and Connection and User of Systems Code (CUSC). These codes were agreed and are updated by Stakeholders (including the energy regulator Ofgem). These payments cover when an event on NGET's transmission system causes generation or

interconnectors to be unable to export their load to the system. If a successful claim is made by a generator or interconnector for interruption, NGET pays the Interruption Payment to NGENSO (as system operator) who in turn pays the generator or interconnector. Again, the purpose of including this in the PP is to cover where the counterparty's actions damage or alter NGET's transmission system and this causes generation to be constrained and interruption payments to be made. The counterparty would cover these payments.

### **Appendix 3**

#### **Applicant suggested Protective Provisions for Steeple NHHM WP to Examination**

# NATIONAL GRID ELECTRICITY TRANSMISSION PLC

## SCHEDULE 1 PROTECTIVE PROVISIONS

### PART 1

#### FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC 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 [ ] (*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 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”

(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 the undertaker for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or must 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 North Humber to High Marnham Project or whether temporary or permanent, and includes, where the context so requires, apparatus constructed as part of the authorised development and intended for the beneficial use by National Grid Electricity Transmission Plc (“North Humber to High Marnham 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;

"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)

Provided always that any land, interests or apparatus to which these protective provisions apply shall be limited to land, interests or apparatus physically within the Order limits of the North Humber to High Marnham development consent order that is submitted to the Secretary of State for confirmation and which is contained within the area delineated by shaded for that purpose on the plan attached hereto reference [xxx];

"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: 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;

"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;

“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 8(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 8(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 NGENSO 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 works;

“Transmission Owner” means as defined in the STC;

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

### **3.—Interaction with the North Humber to High Marnham Project**

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 development and the North Humber to High Marnham Project. For the purposes of this paragraph, “reasonable endeavours” means—

(a) undertaking consultation on the detailed design and programming of the National Grid Electricity Transmission Plc connection works and all works associated with or ancillary to the National Grid connection works to ensure that the design and programme for the National Grid Electricity Transmission Plc connection works does not unreasonably impede or interfere with the North Humber to High Marnham Project;

(b) having regard to the proposed programme of works for the North Humber to High Marnham 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 National Grid Electricity Transmission Plc connection works and the North Humber to High Marnham Project;

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

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

(e) the undertaker having exclusive access to the North Humber to High Marnham land to carry out its development up to and including the date agreed with NESO for energisation of the undertaker’s grid connection;

(f) the undertaker being able during that exclusive access period to carry out all or any part its development that does not conflict with North Humber to High Marnham Project including but not limited to underground cables, access tracks and fencing;

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## On Street Apparatus

4.—Except for paragraphs 5 (*apparatus in stopped up streets*), 10 (*retained apparatus: protection*), 11 (*expenses*) and 12 (*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 stopped up streets

5.—(1) Where any street is stopped up under article [ ] [(*permanent stopping up, restriction of use and construction of streets, public rights of way and private means of access*)], 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 stopping up 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 stopping up 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 8 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 10.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article [ ] [(*temporary stopping up and restriction of use of streets*)], 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 stopping up or diversion was in that highway.

## Protective works to buildings

6.—The undertaker, in the case of the powers conferred by article [ ] [(*protective work to buildings*)], must exercise those powers so as not to obstruct or render less convenient the access to any apparatus or to the North Humber to High Marnham Project without the written consent of National Grid Electricity Transmission Plc.

## Acquisition of land

7.— (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 North Humber to High Marnham Project (such agreement not to be unreasonably withheld or delayed having regard to the undertaker's rights of access to the North Humber to High Marnham land in the definition of "reasonable endeavours" in paragraph 3 hereof)

(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

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

#### Removal of apparatus

8. ~~(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).

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(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 9(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

9. ~~(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 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.

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(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 16 (*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

10. ~~(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.

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(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-paragraphs (4)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and,
- (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 North Humber to High Marnham Project
- (c) and 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 authorised development (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, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 8(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 development, 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

~~H.(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—

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- (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 8(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 16 (*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.

~~(5)(6)~~ In consideration of relying upon the benefit of any of these Protective Provisions National Grid Electricity Transmission Plc accepts that it will pay the undertaker compensation for any loss suffered by the undertaker in observing the provisions of paragraph 3 hereof including but not by way of limitation permanent loss in development area as a result of not carrying out surface development within the North Humber to High Marnham land such sum to be subject to arbitration under paragraph 16 hereof if not agreed.

#### Indemnity

12.—~~(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-

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- (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 [x] *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 12; 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 12(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**

13. 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**

14.(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 8(2) or National Grid Electricity Transmission Plc makes requirements for the protection or alteration of apparatus under paragraph 10, 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.

#### **Access**

15. If in consequence of the agreement reached in accordance with paragraph 7(1) or the powers granted under this Order the access to any apparatus or the North Humber to High Marnham Project is materially obstructed, the undertaker must provide such alternative means of access to such apparatus or to the North Humber to High Marnham Project as will enable National Grid Electricity Transmission Plc to maintain or use the apparatus no less effectively than was possible before such obstruction.

#### **Arbitration**

16. Save for differences or disputes arising under paragraph 8(2), 8(4) 9(1) and 10 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 [●] (*arbitration*).

#### **Notices**

17. Notwithstanding article [ ] (service of notices), any plans submitted to National Grid Electricity Transmission Plc by the undertaker pursuant to paragraph 10 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.

### **End Note:**

#### **Incentive Deduction**

The "Incentive Deduction" refers to an incentive in NGET's Electricity Transmission Licence concerning maintaining a continuous supply to demand customers (those parties that take load from the system) by ensuring that its system is functioning fully and efficiently. If there are system issues that prevent supply from reaching demand customers then these customers will be restricted and the incentive is reduced based on the restriction window. Essentially, it is a financial incentive for NGET to ensure its system works efficiently and without faults. The Protective Provisions look to address the scenario where the works that the counterparty is carrying out over or near NGET's

system damages that system or otherwise causes it to not function correctly and therefore restrict this supply. In this scenario the counterparty would cover any related deductions to this incentive.

### **STC Claims**

The STC Claims relate to “Interruption Payments” under the electricity codes – the System Operator Transmission Owner Code (STC) and Connection and User of Systems Code (CUSC). These codes were agreed and are updated by Stakeholders (including the energy regulator Ofgem). These payments cover when an event on NGET’s transmission system causes generation or interconnectors to be unable to export their load to the system. If a successful claim is made by a generator or interconnector for interruption, NGET pays the Interruption Payment to NGESO (as system operator) who in turn pays the generator or interconnector. Again, the purpose of including this in the PP is to cover where the counterparty’s actions damage or alter NGET’s transmission system and this causes generation to be constrained and interruption payments to be made. The counterparty would cover these payments.

## **Appendix 4**

### **Applicant suggested Protective Provisions for UKAEA and UKFE (Tracked)**

## PART 12

### FOR THE PROTECTION OF THE UK ATOMIC ENERGY AUTHORITY AND UK FUSION ENERGY LTD

#### Application

148.—(1) Subject to sub-paragraph (2) for the protection of UKAEA and UKFE as referred to in this Part of this Schedule the following provisions have effect unless otherwise agreed in writing between the undertaker and UKAEA [or UKFE](#).

(2) Unless otherwise agreed in writing between the undertaker and UKAEA paragraphs 154 and 155 will only apply for the protection of UKAEA and UKFE from the point that UKAEA is the owner of the UKAEA land.

#### Interpretation

149.—(1) In this Part of this Schedule—

“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than—

- (a) “A-” if the rating is assigned by Standard & Poor’s Ratings Group or Fitch Ratings; and
- (b) “A3” if the rating is assigned by Moody’s Investors Services Inc.

“acceptable insurance” means a third party liability insurance policy effected and maintained by the undertaker or its contractor with a combined property damage and bodily injury limit of not less than £20,000,000 (twenty million pounds) per occurrence or series of occurrences arising out of one event or such lower amount as may be approved by UKAEA. Such insurance shall be maintained during the construction period of the authorised development 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 UKAEA; and
- (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.

“authorised development” has the same meaning in article 2(1) of this Order and for the purposes of this Part of this Schedule includes the use, maintenance and decommissioning of the authorised development and construction of any works authorised by this Part of this Schedule;

“commence” and “commencement” has the same meaning as in article 2(1) of this Order, except in this Part of this Schedule it includes any below ground surveys, below ground monitoring and ground work operations;

“functions” includes powers and duties;

“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;

“specified works” means any of the authorised development or activities undertaken in association with the authorised development within the West Burton Power Station;

[“STEP project” means the project to construct a Spherical Tokamak for Energy Production at the West Burton Power Station;](#)

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

“UKAEA” means the United Kingdom Atomic Energy Authority, or any successor in its functions, and for the purposes of paragraphs 151 to 160 only shall also include UKFE ~~which may give consent, agreement or approval on behalf of UKAEA for the purposes of paragraphs 139 to 145 below;~~

“UKAEA land” means the land within plots 05/04, 05/05, 05/06, 05/07 and 05/10 as shown on the land plan and described in the book of reference;

“UKFE” means UK Fusion Energy Limited (company number 14620804) whose registered office is at C7 Culham Science Centre Campus, Abingdon, Oxfordshire, United Kingdom, OX14 3DB or ~~any successor in its functions~~ such other company as may be substituted, by written notice from UKAEA to the undertaker, as being the successor to UKFE’s functions to deliver the STEP project; and

“West Burton Power Station” means land shown edged red on the plan ~~of that~~ named “the West Burton Power Station plan” identified in the table at Schedule 12 (documents to be certified) and which is certified by the Secretary of State as the West Burton Power Station plan for the purposes of this Order.

### **Streets subject to temporary prohibition or restriction of use and public rights of way**

**150.**—(1) Notwithstanding the temporary prohibition or restriction of use or diversion of a street or public right of way under the powers of article 12 (temporary stopping up of streets and public rights of way), UKAEA is at liberty at all times to take all necessary access across any such street or public right of way and to execute and do all such works and things in, upon or under any such street or public right of way as may be reasonably necessary or desirable to enable it to access the West Burton Power Station in the same way as it was able to prior to the prohibition or restriction of use or diversion of that street or public right of way.

### **Protective works to buildings**

**151.** The undertaker, in the case of the powers conferred by article 16 (protective works to buildings), must not exercise those powers so as to obstruct or render less convenient the access to any buildings without the written consent of UKAEA.

### **Acquisition of land**

**152.** 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 or entry to the West Burton Power Station; or
- (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right or apparatus of UKAEA,

otherwise than by agreement.

### **Specified works**

**153.**—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to UKAEA a plan of the works to be executed and request from UKAEA details of the underground extent of any apparatus or assets belonging to UKAEA which UKAEA must provide to the undertaker as soon as reasonably practicable and in any event within 36 days of the submission of such request.

(2) In relation to specified works the plan to be submitted to UKAEA 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 and positioning of plant;

- (d) the position of any assets and apparatus belonging to UKAEA;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus or assets; and
- (f) any intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraph (2) applies until one of the following conditions has been met:

- (a) UKAEA has given written approval of the plan so submitted; or
- (b) the plan has been approved by arbitration under paragraph 159.

(4) Any approval ~~of UKAEA~~ required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in (5) or (7);
- (b) must not be unreasonably withheld; and
- (c) must in the case of any approval by UKAEA be provided within 42 days of submission of the plan under sub-paragraph (1);

(5) In relation to any work to which sub-paragraph (2) applies, UKAEA may within 42 days of submission of the plan under sub-paragraph (1) require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing any apparatus or assets 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 the UKAEA land and where such modifications are required UKAEA must at the same time provide reasons why the modifications are necessary.

(6) Where UKAEA fails to either:

- (a) approve the plan submitted by the undertaker in accordance with the time limit set out in sub-paragraph (4)(c); or
- (b) provide details of the modifications it requires to the plan under sub-paragraph (5),

within 42 days of submission of the plan under sub-paragraph (1) then the undertaker may instead submit the plans for approval by arbitration under paragraph 159 in which case the arbitrator may approve the plans, approve the plans with modifications or refuse to approve the plans, but if they refuse to approve the plans they must give reasons. then approval shall be deemed to have been given.

~~(5)(7)~~ Works executed under sub-paragraph (2) must be executed in accordance with the plan, ~~submitted under sub-paragraph (1) or as relevant approved under~~ sub-paragraph ~~(53)~~, as approved or as amended from time to time by agreement between the undertaker and UKAEA or by arbitration and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by UKAEA or the arbitrator for the alteration or otherwise for the protection of any apparatus or assets, or for securing access to the UKAEA land, and UKAEA will be entitled to watch and inspect the execution of those works.

~~(6)(8)~~ Where UKAEA 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 UKAEA's satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required and UKAEA must 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).

~~(7)(9)~~ 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

~~(8)(10)~~ 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 UKAEA notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances.

## Expenses

**154.** Save where otherwise agreed in writing between UKAEA and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to UKAEA within 30 days of receipt of an itemised invoice or claim from UKAEA all charges, costs and expenses reasonably and properly incurred by UKAEA in consequence of the execution of the specified works including without limitation—

- (a) the approval of plans;
- (b) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works where such responsibilities fall to UKAEA; or
- (c) 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.

## Indemnity

**155.—**(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any specified works or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by them) 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 property of UKAEA or UKAEA 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 UKAEA the cost reasonably and properly incurred by UKAEA in making good such damage; and
- (b) indemnify UKAEA for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from UKAEA, by reason or in consequence of any such damage or interruption or UKAEA becoming liable to any third party other than arising from any default or negligence of UKAEA.

(2) The fact that any act or thing may have been done by UKAEA on behalf of the undertaker or in accordance with a plan approved by UKAEA or in accordance with any requirement of UKAEA 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 UKAEA 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 or as otherwise agreed between the undertaker and UKAEA.

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

(4) any damage or interruption to the extent that it is attributable to the neglect or default of UKAEA, its officers, servants, contractors or agents; or

(5) any 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.

(6) UKAEA 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.

(7) UKAEA 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.

(8) UKAEA 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 and if reasonably requested to do so by the undertaker UKAEA must provide an explanation of how the claim has been minimised, where relevant.

(9) The undertaker will not commence construction (and not permit the commencement of such construction) of any specified works unless and until UKAEA is satisfied acting reasonably (but subject to

all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and unless otherwise agreed with UKAEA (acting reasonably) provided evidence to UKAEA that it shall maintain such acceptable insurance for the construction period of specified works from the proposed date of commencement of construction of specified works) and UKAEA has confirmed the same in writing to the undertaker.

(10) In the event that the undertaker fails to comply with sub-paragraph (9), nothing in this Part of this Schedule shall prevent UKAEA from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

### **Enactments and agreements**

**156.** Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between UKAEA 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 the owner of the UKAEA land on the date on which this Order is made.

### **Co-operation**

**157.**—(1) The undertaker and UKAEA must each act in good faith and use reasonable endeavours to co-operate with and provide assistance to each other as may be required to give effect to the provisions of this Part.

(2) For the avoidance of doubt whenever UKAEA'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**

**158.**—(1) If in consequence of the powers granted under this Order the access to the West Burton Power Station is materially obstructed, the undertaker must provide such alternative means of access to the West Burton Power Station as will enable UKAEA to access the West Burton Power Station no less effectively than was possible before such obstruction.

(2) In the event that access by the undertaker to the West Burton Power Station is materially obstructed by UKAEA, UKAEA must provide such alternative means of access to the West Burton Power Station as will enable the undertaker to access the West Burton Power Station no less effectively than was possible before such obstruction.

### **Arbitration**

**159.** Any difference or dispute arising between the undertaker and UKAEA under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and UKAEA, be determined by arbitration in accordance with article 38 (arbitration).

### **Notices and approvals**

**160.**—(1) Notwithstanding article 357 (service of notices), any plans or notice which must be submitted to UKAEA by the undertaker pursuant to paragraph 153 and any requests for consent, agreement or approval under this Part must (instead of being submitted to UKAEA) be submitted to UKFE addressed to the company secretary and copied to UKFE ~~the~~Land and eEstates ~~t~~Team ~~and sent to at~~ Culham Campus, Abingdon, Oxfordshire, OX14 3DB, or to such other address as UKAEA may from time to time appoint instead for that purpose and notify to the undertaker in writing.

(2) Where any consent, agreement or approval must be given by UKAEA under this Part that consent, agreement or approval may be given by UKAEA or UKFE but the undertaker need not obtain the consent, agreement or approval of both UKAEA or UKFE.

**Appendix 5**

**Table Requested by the Examining Authority in its Rule 17 Letter Dated 02 April 2026 [PD-010]**

**PLEASE NOTE:** The means of reporting in the below table differs between each SU.

The difference in reporting style has been determined by the level and means of engagement between the Applicant and each respective SU. Where beneficial, the Applicant has provided a short explanation at the beginning of each section to provide further detail as to how the 'SU's Position' has been determined and any further information that the Applicant deems appropriate to provide to the Examining Authority in its consideration of the parties' differing positions.

Paragraph Reference	Wording Sought by the Applicant	Wording Sought by the SUs (respectively)	The SUs' Position	The Applicant's Position
<b>Network Rail</b>				
<b>PLEASE NOTE:</b> that the SU's Position is reflective of its 'rational in respect of areas of disagreement' as provided to the Applicant by Network Rail ahead of Deadline 5 and referenced in Network Rail's Deadline 5 Submission, Response to ExQ2 [REP5-060]. Where Network Rail did not provide an explanation contrary to the Applicant's suggested protective provisions for Network Rail the Applicant has included the text 'no explanation provided'.				
129(3)	(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, article 29 (statutory undertakers), article 24 (power to override easements and other rights) or article 21 (private rights), in relation to any right of access of Network Rail to railway property, but such right of access may be <u>extinguished or</u> diverted with the consent of Network Rail.	(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, article 29 (statutory undertakers), article 24 (power to override easements and other rights) or article 21 (private rights), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.	No explanation provided.	The Applicant seeks a minor, clarificatory amendment to provide explicit reference to the right of the undertaker to divert and 'extinguish' any right of access of Network Rail to the railway property where Network Rail's consent is first obtained.  This wording is consistent with precedent and the wording of the statute that Network Rail's standard wording cites whilst ensuring that Network Rail retain discretion as to whether such consent is to be given.
130(3)	(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, <u>subject to Network Rail seeking consent from the undertaker (such matters to be in the undertaker's absolute discretion) and</u> if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.	(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.	Network Rail can not have this subject to the Undertakers absolute discretion. Should NR need to step in for matters that affect railway safety, then they must be able to do so with unfettered discretion.	The Applicant has sought an obligation for Network Rail to seek consent from the undertaker prior to carrying out those specified works. This is a reasonable addition to Network Rail's standard provisions as it should be the undertaker who (1) is able to determine whether or not to permit any such request from Network Rail or (2) to vary the design to avoid such a requirement. The Applicant's proposed amends are consistent with restrictions placed on the exercising of the powers contained within the DCO (Article 5) and wider precedent.
130(5)	<u>(5) The undertaker shall not be required to comply with sub-paragraph (1) in a case of emergency but in that case it shall give to Network Rail notice as soon as is reasonably practicable, and in addition to that notice shall provide a plan, section and description of those works as soon as reasonably practicable subsequently.</u>	N/A.	Network Rail can not accept this. There is no type of emergency in respect of the Order works that justify the Undertaker not being able to submit plans. Such plans are required by NR to assess detriment to the rail network and ensure that the works are safe to be carried out.	The Applicant's proposed wording is a reasonable and proportionate drafting measure that is consistent with precedent. The Applicant understands that the safety of the railway is paramount and considers its proposed wording to be consistent with the safeguarding of the railway by providing a means of enabling some level of operation as may be urgently required to make the Project or Network Rail's assets safe; pending a full engineering solution. Without this

				wording the Applicant is concerned that a gap may arise where the undertaker is prevented from taking any precautionary or preventative action as may be required to avoid wider harm.
131(2)	(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of <del>or in consequence of</del> , the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction <u>but always excluding any consequential loss or indirect loss.</u>	(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of, the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.	Network Rail as statutory undertaker can not be permitted to suffer a loss because of the Works carried out under a scheme they are not promoting. The Undertaker should cover all damage, to all property as a consequence of their scheme.  NR can not accept this. They can not be put at a loss as a result of a scheme that they take no benefit from.	The Applicant does not contest the case for the inclusion of this indemnity, but has sought amendments (consistent with precedent) to clarify the scope of such an indemnity arising from those works such that the undertaker is rightly not held to be liable for any costs that are not reasonably foreseeable.
134(1)	(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction <u>of a specified work, or during a period of 24 months after the</u> completion of that specified work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker 56 days' notice (or in the event of an emergency or safety critical issue such notice as is reasonable in the circumstances) of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations or additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.	(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction or completion of that specified work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker 56 days' notice (or in the event of an emergency or safety critical issue such notice as is reasonable in the circumstances) of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations or additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.	Not accepted. NR must retain the ability to undertake such alterations and should not be limited by time to do so.	Network Rail are seeking a position whereby should they wish to alter their railway property as a consequence of the Project, at any point in time, then the undertaker must pay to Network Rail the reasonable cost of those alterations. The Applicant does not consider this to be proportionate and has provided wording that is proportionate. The Applicant's wording provides Network Rail with considerable period of two years following the completion of any specified work to identify works required following construction. The Applicant considers this to be a reasonable compromise between the parties without placing any disproportionate burden and unknown financial liability upon the undertaker.
134(2)	(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed <u>and provides its consent (such matters to be in the undertaker's absolute discretion)</u> , Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 130(3), pay to Network Rail all reasonable <u>and properly incurred</u> expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work <u>provided that at all times Network Rail will be under an obligation to take reasonably steps to mitigate its loss and always excluding any consequential or indirect loss.</u>	(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 5(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.	NR Must retain the ability to step in unconditionally for reasons of operational rail safety. NR would only be seeking to carry out the specified works necessary to address stability/safe operation of the railway and would not be seeking to construct the undertaker's infrastructure which it would not have the capacity or desire to do.  Not agreed. As a public body, NR have a duty to recover any and all expenses incurred as a result of third party schemes. The insertion of "proper" seeks to narrow the scope of fees recoverable by NR. NR should not be subject to terms which allow the undertaker to challenge incurred fees which it may not consider "proper" but which NR was required to incur. The fees are already required to be reasonable which is considered sufficient.  The exclusion of "consequential or indirect loss" seeks to narrow the scope of fees recoverable by NR. NR should not be subject to terms which allow the undertaker to exclude costs reasonably incurred by NR. The fees are already required to be reasonable which is considered sufficient.	The Applicant's proposed wording is consistent with precedent and provides reasonable clarification of the extent of Network Rail's means of exercising the powers under the DCO, such limitations, which are also acknowledged by Network Rail in this row.  The Applicant has also sought clarificatory amendments to ensure that Network Rail should not be permitted to benefit, at the expense of the undertaker, where such costs are claimed, whilst also requiring Network Rail to take reasonable steps to mitigate its losses; such steps being consistent with precedent and Network Rail's existing statutory functions.

134(2), 135 and 140(1)	The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably <u>and properly</u> incurred by Network Rail—	The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—	Not agreed. As a public body, NR have a duty to recover any and all expenses incurred as a result of third party schemes. The insertion of “proper” seeks to narrow the scope of fees recoverable by NR. NR should not be subject to terms which allow the undertaker to challenge incurred fees which it may not consider ‘proper’ but which NR was required to incur. The fees are already required to be reasonable which is considered sufficient.	As above, the Applicant has sought clarificatory amendments to ensure that Network Rail should not be permitted to benefit at the expense of the undertaker where costs are claimed. The Applicant also seeks that Network Rail take reasonable steps to mitigate its losses; such steps which the Applicant understands to be consistent with precedent and Network Rail’s existing statutory functions.
140(1) and 140(1)(c)	<p>(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses <u>(but always excluding any consequential or indirect loss)</u> not otherwise provided for in this Part of this Schedule (subject to article 44 (no double recovery)) which may be occasioned to or reasonably <u>and properly</u> incurred by Network Rail—</p> <p>(a) by reason of the construction, maintenance or operation of a specified work or the failure thereof; or</p> <p>(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;</p> <p>(c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others acting on behalf of or authorised by the undertaker whilst accessing to or egressing from the authorised development <u>otherwise than by virtue of a public right of way;</u></p> <p>(d) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others;</p> <p>(e) in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the carrying out or operation of the authorised development;</p> <p>and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission, <u>provided Network Rail will be under an obligation to take reasonable steps to mitigate its loss and always excluding any consequential loss or indirect loss;</u> and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer’s supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.</p>	<p>(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule (subject to article 44 (no double recovery)) which may be occasioned to or reasonably incurred by Network Rail—</p> <p>(a) by reason of the construction, maintenance or operation of a specified work or the failure thereof; or</p> <p>(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;</p> <p>(c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others acting on behalf of or authorised by the undertaker whilst accessing to or egressing from the authorised development;</p> <p>(d) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others;</p> <p>(e) in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the carrying out or operation of the authorised development;</p> <p>and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer’s supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.</p>	<p>Not agreed. As a public body, NR have a duty to recover any and all expenses incurred as a result of third party schemes. The exclusion of “consequential or indirect loss” seeks to narrow the scope of fees recoverable by NR. NR should not be subject to terms which allow the undertaker to exclude costs reasonably incurred by NR. The fees are already required to be reasonable which is considered sufficient.</p> <p>The scope of fees should not be narrowed further - they are already required to be reasonable.</p> <p>Regardless of where the Undertaker enters from, damage to NR property, if caused by them or others under their control, should be under an obligation to put this right.</p> <p>Not agreed. As a public body, NR have a duty to recover any and all expenses incurred as a result of third party schemes. The exclusion of “consequential or indirect loss” seeks to narrow the scope of fees recoverable by NR. NR should not be subject to terms which allow the undertaker to exclude costs reasonably incurred by NR. The fees are already required to be reasonable which is considered sufficient.</p>	<p>The Applicant does not contest the principal of the indemnity in question and is content to provide it, however, the Applicant seeks a clarificatory amendment to make clear that this indemnity does not include an obligation for the undertaker to indemnify Network Rail where it takes its access by virtue of a public right. The DCO does not alter this existing public right of which the Applicant, its agents and persons in its employ enjoy despite the proposed development or any DCO. There is no justification for Network Rail seeking to impose an additional indemnity relating to the use of this bridleway.</p> <p>Further, and as above, the Applicant has also sought clarificatory amendments to ensure that Network Rail should not be permitted to benefit at the expense of the undertaker where costs are claimed, whilst also requiring Network Rail to take reasonable steps to mitigate its losses; such steps being consistent with precedent and Network Rail’s existing statutory functions.</p>

145	The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 5 (consent to transfer of benefit of the Order) of this Order and any such notice must be given no later than <del>7</del> <b>28</b> days before any such application is made and must describe or give (as appropriate)—	The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 5 (consent to transfer of benefit of the Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—	No explanation provided.	The Applicant seeks a reduction from 28 days to 7 days so as to more closely align with the notice period outlined in Article 5(6) of the DCO and the wording of precedent protective provisions for the benefit of Network Rail.
<p><b>UKAEA and UKFE</b></p> <p><b>PLEASE NOTE:</b> that the summary of the SU's Position set out below, is provided by the Applicant for the assistance of the Examining Authority and has not been provided by UKAEA or UKFE. It is based on the Applicant's understanding of the SU's current position based on the current state of negotiations and the following documents: the relevant representation of UK Industrial Fusion Limited (UKIFS) [RR-046], UKIFS' Response to ExQ1 [REP2-071] and UKIFS' Comments on Deadline 2 Submissions [REP3-056] and attached protective provisions [REP3-057]</p>				
149	"UKFE" means UK Fusion Energy Limited (company number 14620804) whose registered office is at <del>C7 Culham Science Centre</del> Campus, Abingdon, Oxfordshire, United Kingdom, OX14 3DB or <del>any successor in its functions such other company as may be substituted, by written notice from UKAEA to the undertaker, as being the successor to UKFE's functions to deliver the STEP project;</del>	"UKFE" means UK Fusion Energy Limited (company number 14620804) whose registered office is at Culham Science Centre Campus, Abingdon, Oxfordshire, United Kingdom, OX14 3DB or any successor in its functions; and	<p>The SU has not responded on the proposed (factual) change to its registered office.</p> <p>The SU desires that the protection should extend not just to UKFE but also to successors to its functions. Those functions are not statutory functions.</p> <p>The SU has not yet responded to the Applicant's proposed wording and it is not known if it is acceptable.</p>	<p>The amendment to the registered address reflects the record on the gov.uk website.</p> <p>The Applicant is concerned that it is not clear from the SU's wording what is meant by "functions" and that it is therefore unclear who may be entitled to protection. It has therefore suggested some drafting which allows UKAEA to nominate a different company. This drafting provides certainty for the Applicant as to who has the "functions" and is therefore entitled to the benefit of the protections.</p>
149	"West Burton Power Station" means land shown <del>edged red</del> on the plan of that named <del>"the West Burton Power Station plan"</del> identified in the table at Schedule 12 (documents to be certified) and which is certified by the Secretary of State as the West Burton Power Station plan for the purposes of this Order.	N/A	The SU has asked for a certified plan to be included in the DCO, and has set out where the red line should be drawn, but has not confirmed that the plan is approved.	The Applicant has provided a plan as requested and has included reference to this plan with the protective provisions and as a certified document in Schedule 12 of the DCO. The Applicant has submitted this plan into the examination at Deadline 6.
153	<p>(3) The undertaker must not commence any works to which sub-paragraph (2) applies until <del>one of the following conditions has been met:</del></p> <p>(a) UKAEA has given written approval of the plan so submitted; <del>or</del></p> <p><del>(b) the plan has been approved by arbitration under paragraph 159.</del></p> <p>(4) Any approval <del>of UKAEA</del> required under sub-paragraph (3)—</p> <p>(a) may be given subject to reasonable conditions for any purpose mentioned in (5) or (7);</p> <p>(b) must not be unreasonably withheld; and</p> <p>(c) must <del>in the case of any approval by UKAEA</del> be provided within 42 days of submission of the plan under sub-paragraph (1);</p> <p>(5) In relation to any work to which sub- paragraph (2) applies, UKAEA may within 42 days of submission of the plan under sub- paragraph (1) require such modifications to be made to the plans as may be</p>	<p>(3) The undertaker must not commence any works to which sub-paragraph (2) applies until one of the following conditions has been met:</p> <p>(a) UKAEA has given written approval of the plan so submitted; or</p> <p>(b) the plan has been approved by arbitration under paragraph 159.</p> <p>(4) Any approval required under sub-paragraph (3)—</p> <p>(a) may be given subject to reasonable conditions for any purpose mentioned in (5) or (7);</p> <p>(b) must not be unreasonably withheld; and</p> <p>(c) must in the case of any approval by UKAEA be provided within 42 days of submission of the plan under sub-paragraph (1);</p> <p>(5) In relation to any work to which sub- paragraph (2) applies, UKAEA may within 42 days of submission of the plan under sub- paragraph (1) require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing any apparatus or assets against</p>	<p>The SU asked for deeming provisions to be deleted.</p> <p>The Applicant has agreed to this and deleted deeming provisions, but has sought to set out instead how disputes on the plan would be determined. The SU has rejected this additional wording.</p>	The Applicant needs PPs which avoid an impasse from arising between the parties. It has therefore included drafting which sets out the differences between the parties and how this would be resolved and an impasse avoided.

	<p>reasonably necessary for the purpose of securing any apparatus or assets 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 the UKAEA land <u>and where such modifications are required UKAEA must at the same time provide reasons why the modifications are necessary.</u></p> <p><u>(6) Where UKAEA fails to either:</u></p> <p><u>(a) approve the plan submitted by the undertaker in accordance with the time limit set out in sub-paragraph (4)(c); or</u></p> <p><u>(b) provide details of the modifications it requires to the plan under sub-paragraph (5).</u></p> <p><u>within 42 days of submission of the plan under sub-paragraph (1) then the undertaker may instead submit the plans for approval by arbitration under paragraph 159 in which case the arbitrator may approve the plans, approve the plans with modifications or refuse to approve the plans, but if they refuse to approve the plans they must give reasons. Then approval shall be deemed to have been given.</u></p> <p>(7) Works executed under sub-paragraph (2) must be executed in accordance with the plan, <del>submitted under sub-paragraph (1) or as relevant</del> approved under sub-paragraph (3), as approved or as amended from time to time by agreement between the undertaker and UKAEA <u>or by arbitration</u> and in accordance with such reasonable requirements as may be made in accordance with sub- paragraphs (5) or (7) by UKAEA or the arbitrator for the alteration or otherwise for the protection of any apparatus or assets, or for securing access to the UKAEA land, and UKAEA will be entitled to watch and inspect the execution of those works.</p>	<p>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 the UKAEA land and where such modifications are required UKAEA must at the same time provide reasons why the modifications are necessary.</p> <p>(6) Where UKAEA fails to either:</p> <p>(a) approve the plan submitted by the undertaker in accordance with the time limit set out in sub-paragraph (4)(c); or</p> <p>(b) provide details of the modifications it requires to the plan under sub-paragraph (5),</p> <p>within 42 days of submission of the plan under sub-paragraph (1) then the undertaker may instead submit the plans for approval by arbitration under paragraph 159 in which case the arbitrator may approve the plans, approve the plans with modifications or refuse to approve the plans, but if they refuse to approve the plans they must give reasons.</p> <p>(7) Works executed under sub-paragraph (2) must be executed in accordance with the plan, approved under sub-paragraph (3), as approved or as amended from time to time by agreement between the undertaker and UKAEA or by arbitration and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by UKAEA or the arbitrator for the alteration or otherwise for the protection of any apparatus or assets, or for securing access to the UKAEA land, and UKAEA will be entitled to watch and inspect the execution of those works.</p>		
160	<p>Notices <u>and approvals</u></p> <p>160.—(1) Notwithstanding article 37 (service of notices), any plans <u>or notice which must be</u> submitted to UKAEA by the undertaker pursuant to paragraph 153 <u>and any requests for consent, agreement or approval under this Part must (instead of being submitted to UKAEA)</u> be submitted to <del>UKAEA</del><u>UKFE</u> addressed to the company secretary and copied to <del>UKFE, the Land and Estates Team and sent to</del> <u>Culham Campus, Abingdon, Oxfordshire, OX14 3DB,</u> or to such other address as UKAEA may from time to time appoint instead for that purpose and notify to the undertaker in writing.</p> <p><u>(2) Where any consent, agreement or approval must be given by UKAEA under this Part that consent, agreement or approval may be given by UKAEA or UKFE but the undertaker need not obtain the consent, agreement or approval of both UKAEA or UKFE.</u></p>	<p>Notices</p> <p>160.—(1) Notwithstanding article 37 (service of notices), any plan submitted to UKAEA by the undertaker pursuant to paragraph 153 must be submitted to UKAEA addressed to the company secretary and copied to the land and estates team and sent to Culham Campus, Abingdon, Oxfordshire, OX14 3DB, or to such other address as UKAEA may from time to time appoint instead for that purpose and notify to the undertaker in writing.</p>	The SU has neither accepted not objected to this wording.	The Applicant is seeking to avoid duplicative approval processes, and the possibility of contradictory conditions being attached to approvals should approval need to be sought from both UKAEA and UKFE. The Applicant appreciates the need to engage with the STEP Project, but considers that it should only be required to engage either UKAEA or UKFE, who should liaise and provide one point of contact.

**NGET**

**PLEASE NOTE:** that unless stated otherwise, the following summaries below of the SU's Position, in this case (NGET), are provided by the Applicant for the assistance of the Examining Authority and are not supplied by NGET itself. Reference should be made to NGET's ISH3 [REP4-005], [REP4-006], [REP4-007] and D5 submissions [REP5-057] for its full position on the protective provisions that it seeks. NGET has since provided commentary of the Applicant's WP protective provisions, and the Applicant has sought to provide a summary of that position below. To assist with the Examining Authority's request, the extracted wording below has been taken from **Appendix 3 of this Report** (with respect of the Applicant's without prejudice wording – in column 2) and from **Appendix 1 of NGET's 'Response to ExQ2' [REP5-057]** (with respect of NGET's sought wording – in column 3).

Taken together, NGET's proposed protective provisions (as found in Appendix 1 of [REP5-057]) would prevent the undertaker, without NGET's consent, from acquiring any land which may be needed for a future project, the final routing and design of which are uncertain or from carrying out any works which may be within a certain distance of or adversely affect future apparatus, the location of which is unknown. They would require the undertaker to take positive steps to ensure that its design and programme do not impede that future project, the construction programme for which remains uncertain, and to ensure access to that project, whenever it may come forward.

If NGET were to be afforded that level of protection, the certain effect is that at a minimum, the Applicant would only be able to commit to a final design and commence construction in an as-yet undefined overlap area, with NGET's approval. The obligation on NGET not to unreasonably withhold consent affords it ample opportunity to require the Applicant to defer detailed design and construction of a significant part of its Project until NGET has secured its own DCO and completed its detailed design.

As to the issue of compensation, NGET's Deadline 3 submissions suggest that it would be willing to pay compensation. However, the protective provisions submitted by NGET at Deadline 5 (Appendix 1 to [REP5-057]) contain no provision for the payment of compensation.

This means the Secretary of State is being asked to impose protective provisions that give NGET rights over land it does not own and in respect of which its public interest justification, including route selection and assessment of alternatives has not been properly interrogated; rights that would indisputably sterilize parts of the Steeple development and its generating capacity without securing any right to compensation. That would be an extremely draconian and unprecedented step to countenance.

<p>2</p>	<p>"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 –</p> <p>(a) land on which any North Humber to High Marnham apparatus is situated; and</p> <p>(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)</p> <p><u>Provided always that any land, interests or apparatus to which these protective provisions apply shall be limited to land, interests or apparatus physically within the Order limits of the North Humber to High Marnham development consent order that is submitted to the Secretary of State for confirmation and which is contained within the area delineated by shaded for that purpose on the plan attached hereto reference [xxx];</u></p>	<p>"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 –</p> <p>(a) land on which any North Humber to High Marnham apparatus is situated; and</p> <p>(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)</p>	<p>NGET's position is that its D5 preferred protective provisions in respect of NHHM should not be limited to any specific route to allow for future design changes in that proposal.</p> <p>NGET has stated in respect of the Applicant's WP protective provisions that the addition of this wording sought by the Applicant <u>Provided always that any land, interests or apparatus to which these protective provisions apply shall be limited to land, interests or apparatus physically within the Order limits of the North Humber to High Marnham development consent order that is submitted to the Secretary of State for confirmation</u> would be acceptable to NGET, however the Applicant notes that NGET still does not agree this area being limited to an area defined on a plan attached to the protective provisions.</p>	<p>The Applicant opposes the NGET preferred wording because Paragraph 2 defines:</p> <p><b>"apparatus"</b> to include any electrical lines, mains, pipes, plant or other apparatus owned or operated by NGET for the purposes of the construction, operation and maintenance of the NHHM project</p> <p><b>"North Humber to High Marnham Project"</b> is defined simply as a new high voltage transmission line and associated works between Creyke Beck in Yorkshire and High Marnham in Nottinghamshire. The precise route is not specified or defined in the proposed protective provisions but the NHHM project is defined to include land on which NHHM apparatus is situated and land on which such apparatus is anticipated to be situated for the construction, use or maintenance of the project. The scope of the definition is extremely broad and would encompass any future design changes to the project. In its response to 2WQ 7.2.7 [REP5-057], NGET has rejected the suggestion that the protective provisions should be accompanied by a plan that identifies the NHHM project on the basis that the project route is yet to be fixed. This underlines the uncertainty that NGET's proposed provisions would cause to the Project. Instead, NGET suggests that the precise area should be fixed at the point at which the NHHM DCO is submitted but even that is not secured by NGET's proposed protective provisions.</p> <p><b>"Specified works"</b> are defined as any of the works authorised by the DCO which will or may be situated over, or within 15 metres of any apparatus [remembering that</p>
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				<p>apparatus includes proposed apparatus associated with the NHHM project] or which may, in any way, adversely affect any apparatus.</p> <p>The Applicant contends in its WP formulation that limiting the effect of the protective provisions to a specified route delineated on a plan reduces the area of uncertainty of design for the undertaker of the proposed development.</p>
3	<p>3. —Interaction with the North Humber to High Marnham Project</p> <p>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 development and the North Humber to High Marnham Project. For the purposes of this paragraph, “reasonable endeavours” means—</p> <p>(a) undertaking consultation on the detailed design and programming of the National Grid Electricity Transmission Plc connection works and all works associated with or ancillary to the National Grid connection works to ensure that the design and programme for the National Grid Electricity Transmission Plc connection works does not unreasonably impede or interfere with the North Humber to High Marnham Project;</p> <p>(b) having regard to the proposed programme of works for the North Humber to High Marnham 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 National Grid Electricity Transmission Plc connection works and the North Humber to High Marnham Project;</p> <p>(c) providing a point of contact for continuing liaison and co-ordination throughout the construction and operation of the authorised development; and</p> <p>(d) keeping National Grid Electricity Transmission Plc informed on the programme of works for the authorised development;</p> <p><u>(e) the undertaker having exclusive access to the North Humber to High Marnham land to carry out its development up to and including the date agreed with NESO for energisation of the undertaker’s grid connection;</u></p> <p><u>(f) the undertaker being able during that exclusive access period to carry out all or any part its development that does not conflict with North Humber to High Marnham Project including but not limited to underground cables, access tracks and fencing;</u></p>	<p>3. —Interaction with the North Humber to High Marnham Project</p> <p>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 development and the North Humber to High Marnham Project. For the purposes of this paragraph, “reasonable endeavours” means—</p> <p>(a) undertaking consultation on the detailed design and programming of the National Grid Electricity Transmission Plc connection works and all works associated with or ancillary to the National Grid connection works to ensure that the design and programme for the National Grid Electricity Transmission Plc connection works does not unreasonably impede or interfere with the North Humber to High Marnham Project;</p> <p>(b) having regard to the proposed programme of works for the North Humber to High Marnham 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 National Grid Electricity Transmission Plc connection works and the North Humber to High Marnham Project;</p> <p>(c) providing a point of contact for continuing liaison and co-ordination throughout the construction and operation of the authorised development; and</p> <p>(d) keeping National Grid Electricity Transmission Plc informed on the programme of works for the authorised development.</p>	<p>NGET has not included any drafting in its D5 preferred protective provisions that would provide any defined period within which the undertaker of the proposed development could have exclusive access to the land required for NHHM to carry out its development in time to meet its connection offer.</p> <p>NGET has stated in respect of the Applicant’s WP protective provisions that it does not agree with the wording suggested by the Applicant at paragraph 3(e), but proposes the following alternative:</p> <p><u>the undertaker having exclusive access to the North Humber to High Marnham Site to carry out its development during a period to be agreed between the undertaker and National Grid Electricity Transmission Plc save that during such period National Grid Electricity Transmission Plc shall be permitted to carry out pre-construction surveys, geotechnical investigations, ecological surveys, topographical surveys, site investigations and other non-construction preparatory activities within the North Humber to High Marnham Site.</u></p> <p>NGET states that the inclusion of a fixed date as suggested by the Applicant is not appropriate, as neither the Applicant or NGET have a sufficiently detailed construction programme at this stage to determine what that date should be. It would be better for both parties if they worked together to agree suitable dates for the Applicant’s construction access. Any disagreement (which is not anticipated) can be resolved by the process in Paragraph 16.</p> <p>NGET has, however, confirmed stated in respect of the Applicant’s WP protective provisions that the wording suggested by the Applicant at paragraph 3(f) would be acceptable to NGET.</p>	<p>The Applicant opposes the NGET preferred wording because paragraph 3 requires the undertaker to use reasonable endeavours to avoid any conflict with the NHHM project. That includes ensuring that the design and programme for connection works do not unreasonably impede or interfere with the NHHM Project and facilitating a coordinated approach to the programme, land assembly and carrying out of the projects. Notably, there is no obligation on NGET to use reasonable endeavours to avoid conflict with the Project. The obligations all rest on the Applicant to accommodate the NHHM project with no reciprocal protection in favour of the Project.</p> <p>The Applicant’s WP wording seeks a protected period within which it can use the land needed by NGET for NHHM to carry out its development outside of that land, necessarily taking access through and across that land in doing so in order that it can meet its grid connection offer date. This is not agreed by NGET and without that wording agreement by NGET of the Applicant’s proposed wording at paragraph 3(f) provides no protection on its own as it does not secure an access period for the Undertaker.</p>

7(2)	<p>(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 North Humber to High Marnham Project (such agreement not to be unreasonably withheld or delayed <u>having regard to the undertaker's rights of access to the North Humber to High Marnham land in the definition of "reasonable endeavours" in paragraph 3 hereof</u>)</p>	<p>(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 acquire any land forming part of the North Humber to High Marnham Site (such agreement not to be unreasonably withheld or delayed)</p>	<p>NGET's D5 preferred protective provisions seek to ensure the NHHM development will not be inhibited by acquisition of land by the Undertaker for the Proposed Development where NGET needs that land or rights in land for the NHHM development.</p> <p>NGET has stated in respect of the Applicant's WP protective provisions that the addition of this wording <u>having regard to the undertaker's rights of access to the North Humber to High Marnham land in the definition of "reasonable endeavours" in paragraph 3 hereof</u> sought by the Applicant would be acceptable to NGET.</p>	<p>The Applicant opposes the NGET preferred wording because Paragraph 7(2)<sup>1</sup> prevents the undertaker from acquiring any land forming part of the NHHM project without NGET's consent. The extent of that land is not specified or defined by reference to any plan because NGET does not yet know how much land it will require and is yet to undertake its detailed design.</p> <p>The Applicant's WP formulation offers protection to NHHM against land acquisition without NGET consent but preserves within that the Undertaker's ability to take access across the land needed for NHHM to construct and operate the Proposed Development.</p> <p>NGET's agreement to this wording in the Applicant's WP protective provisions is noted but without the extent of the NHHM land being limited and a defined working period provided for this wording does not of itself provide adequate protection to the Undertaker to obtain this access.</p>
10	<p>10.— (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.</p> <p>(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.</p> <p>(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;</p> <p>(d) details of any cable installation methodology including access arrangements, jointing bays and</p>	<p>10. — 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.</p> <p>(1) 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.</p> <p>(2) 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</p>	<p>NGET preferred protective provisions lists within the issues upon which it can exercise control over consent to works affecting existing NGET assets the protection of the NHHM development.</p>	<p>The Applicant opposes the NGET preferred wording because Paragraph 10 prevents the undertaker from carrying out any specified works – which includes those that may be within 15 m or adversely affect future apparatus associated with the NHHM project, without NGET's written approval. Any approval may itself be subject to conditions imposed by NGET, including conditions to facilitate the construction, commissioning, operation and maintenance of the NHHM project (Paragraph 10(4)(b)).<sup>2</sup> Again, it is not possible for NGET to say at this stage where any relevant apparatus will be located.</p> <p>The Applicant's WP formulation, however, subordinates this protection to the land identified in the protective provisions for the NHHM project and within that limited area of protection there is recognition of the right of the Undertaker to take access to the land needed for the NHHM project for construction and operation of the Proposed Development.</p>

<sup>1</sup> Please note that the numbering in NGET's proposed protective provisions at Appendix 1 of [REP5-057] appears to have gone awry as there are two clause 3s, such that the tracked changes suggest this may be clause 6 or 7.

<sup>2</sup> As above, this reference to paragraph 10(4)(b) is within this Report, due to the issues arising from the formatting in NGET's proposed protective provisions at Appendix 1 of [REP5-057] to be directed to paragraph 10(5)(4)(b) within column 2 in the above table.

<p>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.</p> <p>(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.</p> <p>(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); and, (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 North Humber to High Marnham Project (c) and must not be unreasonably withheld.</p> <p>(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.</p> <p>(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.</p> <p>(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 authorised development (or any relevant part thereof) for which protective works are required and National Grid Electricity Transmission</p>	<p>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.</p> <p>(3) 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.</p> <p>(4) 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); and, (b) 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 (b) (c) or (8); and must not be unreasonably withheld.</p> <p>(5) 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.</p> <p>(6) 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 (5) (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.</p> <p>(7) 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 authorised development (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).</p> <p>(8) If National Grid Electricity Transmission Plc in accordance with sub-paragraphs (6) or (8) and in</p>		
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	<p>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).</p> <p>(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 8(2).</p> <p>(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 development, 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.</p> <p>(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.</p> <p>(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".</p>	<p>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 8(2).</p> <p>(9) 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 development, 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.</p> <p>(10) 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.</p> <p>(11) 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".</p>		
11	<p>(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.</p> <p><u>(6) In consideration of relying upon the benefit of any of these Protective Provisions National Grid Electricity Transmission Plc accepts that it will pay the undertaker compensation for any loss suffered by the undertaker in observing the provisions of paragraph 3 hereof including but not by way of limitation permanent loss in development area as a result of not carrying out surface development within the North Humber to High Marnham land such sum to be subject to arbitration under paragraph 16 hereof if not agreed.</u></p>	<p>(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.</p>	<p>NGET D5 preferred protective provisions have no mechanism for compensating the Undertaker for losses arising from inhibition of the Proposed Development to support the construction of NHHM.</p> <p>NGET has since confirmed in relation to the Applicant's WP protective provisions that the addition of this wording sought by the Applicant would be acceptable to NGET subject to the following amendment shown in red text:</p> <p><i>In consideration of relying upon the benefit of any of these Protective Provisions National Grid Electricity Transmission Plc accepts that it will pay the undertaker compensation for any loss suffered by the undertaker in observing the provisions of paragraph 3 hereof including but not by way of limitation permanent loss in development area as a result of not carrying out surface development within the North Humber to High Marnham land as if such loss had been caused by the exercise of powers of compulsory acquisition by National Grid Electricity</i></p>	<p>The Applicant opposes the NGET D5 preferred wording because it has no mechanism for compensating the Undertaker for losses arising from inhibition of the Proposed Development to support the construction of NHHM. The Applicant's WP formulation offers a right to seek compensation for loss by the Undertaker that NGET will be aware of before invoking the protections it seeks that would cause the loss.</p> <p>The Applicant notes the acceptance by NGET subject to this additional wording. Whilst the Applicant considers the compulsory purchase compensation code may be an appropriate metric by which compensation may be assessed it does not accept that the drafting so far proposed by NGET is adequate to secure that outcome. In the absence of agreed wording, subject to the Applicant's stated position on the Without Prejudice status off its drafting, the Applicant maintains its wording proposed for paragraph 11(6)</p>

			<p><i>Transmission Plc such sum to be subject to arbitration under paragraph 16 hereof if not agreed</i></p> <p>NGET states that the suggested amendment makes clear the basis upon which compensation should be assessed.</p>	
15	<p>15. If in consequence of the agreement reached in accordance with paragraph 7(1) or the powers granted under this Order the access to any apparatus or the North Humber to High Marnham Project is materially obstructed, the undertaker must provide such alternative means of access to such apparatus or to the North Humber to High Marnham Project as will enable National Grid Electricity Transmission Plc to maintain or use the apparatus no less effectively than was possible before such obstruction.</p>	<p>15. If in consequence of the agreement reached in accordance with paragraph 7(1) or the powers granted under this Order the access to any apparatus or the North Humber to High Marnham Project is materially obstructed, the undertaker must provide such alternative means of access to such apparatus or to the North Humber to High Marnham Project as will enable National Grid Electricity Transmission Plc to maintain or use the apparatus no less effectively than was possible before such obstruction.</p>	<p>NGET D5 preferred protective provision wording seeks to protect access to the land needed for the NHHM project or the works themselves.</p>	<p>The Applicant opposes the NGET D5 preferred protective wording because Paragraph 15 requires the undertaker not to impede access to the NHHM project or to provide alternative access, without reference to the effects upon the Proposed Development.</p> <p>The Applicant's WP formulation subordinates the protection of access to the land needed for the NHHM project or the NHHM development itself to the Undertaker's right of access to that land to carry out and operate the Proposed Development.</p>