

PLANNING ACT 2008

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

**APPLICATION BY GT R4 LIMITED (TRADING AS OUTER DOWSING
OFFSHORE WIND) FOR A DEVELOPMENT CONSENT ORDER**

WRITTEN REPRESENTATION ON BEHALF OF

nationalgrid

NATIONAL GRID ELECTRICITY TRANSMISSION PLC

24 OCTOBER 2024

PLANNING ACT 2008

DEVELOPMENT CONSENT ORDER – OUTER DOWSING OFFSHORE WINDFARM

WRITTEN REPRESENTATION BY NATIONAL GRID ELECTRICITY TRANSMISSION PLC (NGET)

- 1.1 This Written Representation ("**WR**") is submitted on behalf of National Grid Electricity Transmission Plc ("**NGET**") in respect of the Development Consent Order ("**DCO**") application for the proposed Outer Dowsing Offshore Windfarm ("**Project**") made by GT R4 Limited (trading as Outer Dowsing Offshore Wind) ("**Applicant**"). This document should be read in conjunction with NGET's relevant representation, which was submitted to the Examining Authority on 13 June 2024 ("**NGET's Relevant Representation**").
- 1.2 The Project adversely affects NGET's existing infrastructure and future infrastructure projects. The Project also proposes to permanently acquire NGET's land and rights in its land, including the land shown on Drawing 51 of the Land Plans and referenced in the draft DCO as Work Number 17. The plots in which NGET has an interest are set out in the table in Appendix 1 to this Written Representation.
- 1.3 While NGET has, and will continue, to liaise with the Applicant to resolve these issues, it objects to the Project in its current form.

NGET

- 1.4 NGET owns, operates, and maintains the high-voltage electricity transmission network in England and Wales ("**NETS**"). The NETS transports vast amounts of energy across the country connecting with a wide range of energy generators such as wind farms, nuclear or combined cycle gas turbine facilities with distribution systems which take energy on to the homes and businesses.
- 1.5 NGET operates under a transmission licence issued by the Office of Gas and Electricity Markets ("**Ofgem**"). NGET is subject to regulation by Ofgem and to its duties under the Electricity Act 1989.
- 1.6 NGET is a statutory undertaker within the meaning of section 127(8) of the Planning Act 2008 ("**PA 2008**"). All the land in respect of which the Applicant proposes to secure powers of compulsory acquisition (of interests or rights) or of temporary possession was acquired by NGET for the purposes of this undertaking.
- 1.7 In these circumstances, section 127(2) and (5) provide that any order granting development consent for the Project may only include provision authorising the compulsory acquisition of NGET's land or rights therein if this can be done without serious detriment to the carrying on of NGET's undertaking (whether by the provision of replacement land or otherwise) or any detriment in consequence of the acquisition of a right can be made good.
- 1.8 The Applicant has not yet satisfactorily shown this to be the case. As matters stand, NGET is concerned that granting the powers of compulsory acquisition sought by the Applicant would cause serious detriment to NGET's undertaking.

Existing infrastructure affected by the Project

- 1.9 Two 400kV overhead lines are located within and in close proximity to the Order Limits for the Project. These assets form an essential part of the NETS. The details of the electricity assets are as follows:
- (a) 4ZM 400kV OHL – Spalding North – Walpole; Bicker Fen – Walpole – West Burton
 - (b) 2WS 400kV OHL- Bicker Fen – Spalding North – West Burton; Spalding North - Walpole
 - (c) Associated cable fibres

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- 1.10 Vehicular access tracks making up part of the Project's Work No. 20 cross the 4ZM line, and Work Nos. 23 and 24 are in close proximity to it. Both the 4ZM and 2WS lines are located within and in close proximity to the area covered by the Project's Work No. 17.
- 1.11 As a responsible statutory undertaker, NGET must meet its statutory obligations and ensure that any development does not adversely affect its ability to meet those obligations. As such, NGET has a duty to protect its position in relation to infrastructure and land which is within or in close proximity to the draft Order Limits.
- 1.12 NGET's rights to retain its apparatus in situ and rights of access to inspect, maintain, renew and repair such apparatus located within or in close proximity to the Order Limits must be maintained at all times and access to inspect and maintain such apparatus must not be restricted.
- 1.13 The NETS is itself nationally significant infrastructure and a highly valuable national resource. It is the system that transports vital electricity to homes and businesses across England and Wales. Connections to it are essential if the Government's ambition for the UK to accelerate its transition from fossil fuel generation to renewable energy is to be achieved. It is therefore vital that the NETS receives the highest degree of protection in the draft DCO. NGET requires protective provisions ("**PPs**") to ensure that the NETS is adequately protected and to ensure compliance with relevant safety standards. NGET is liaising with the Applicant in relation to such PPs, along with any supplementary agreements which may be required.
- 1.14 In addition to the existing infrastructure set out above, NGET is proposing to bring forward other projects in the area which have the potential to interact with ODOW.

Protection for future NGET projects

- 1.15 The upgrading of the electricity transmission system is crucial for the UK. It is essential for the developers of energy projects (including this Project) that there are sufficient connection opportunities to the NETS to allow the benefits of those projects to be realised.
- 1.16 Based on information currently available, NGET has identified potential interfaces between the Project and proposed NGET infrastructure projects as part of its Great Grid Upgrade. The proposed projects identified to date as being within or within close proximity to the proposed Order limits are i) Eastern Green Link ("**EGL**") 3 and 4 and ii) Grimsby to Walpole ("**G2W**") (together the "**Proposed NGET Projects**"), The details of these proposed projects, and the potential interfaces with the Project, are more fully set out in NGET's Relevant Representation. These can be summarised as follows:
- (a) EGL 3 and 4: there is a direct interaction between the Project and EGL 3 and EGL 4, with a crossing north of the river Welland in proximity to Fosdyke in South Holland where EGL 3 and 4 cables and Project cables intersect. Both projects are likely to be under construction at the same time and so mitigation to minimise potential cumulative effects must be co-ordinated as far as possible.
- (b) G2W: Weston Marsh Substation will be constructed as part of G2W. The Project seeks the ability to compulsorily acquire rights over land within which the proposed Weston Marsh Substation will be constructed and to which the Project will connect. There may also be interactions between the two projects elsewhere.
- 1.17 The Proposed NGET Projects are nationally significant infrastructure projects which will be brought forward via DCOs. The Proposed NGET Projects are projects of Critical National Priority ("**CNP**") as defined by NPS EN-1 and NPS EN-5. They are therefore vital to achieve the UK's energy objectives, together with the national security, economic, commercial, and net zero benefits.
- 1.18 It is essential to avoid as far as possible any conflict arising between the carrying out, maintenance and operation of the Project and the carrying out, maintenance and operation of the Proposed NGET Projects. NGET considers that the PPs must make provisions for this.
- 1.19 A key area of concern for NGET is the likelihood of the potential cumulative effects of the construction of ODOW and the Proposed NGET Projects (together with any other projects during the

same time period). For example, the cumulative traffic and transport impacts of the projects on the Fosdyke Bridge area are of concern and further assessment is required in order to determine likely effects and any appropriate mitigation.

- 1.20 The PPs proposed by NGET would require the Applicant to use reasonable endeavours to avoid conflict between the Project and the Proposed NGET Projects, as follows:

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

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

- 1.21 As can be seen, the wording generally requires cooperation and collaboration between the parties. The inclusion of these provisions will ensure a clear framework for managing coordination between different NSIPs and help to ensure that all projects can be brought forward in an efficient manner. NGET's proposed PPs are set out in full in Appendix 2.
- 1.22 There is clear precedent for NGET's proposed approach in the the Awel Y Mor Offshore Wind Farm DCO, which was granted development consent on 20 September 2023. Similar wording has also been proposed by NGET in relation to the Viking CCS Pipeline DCO application, which is currently at the recommendation stage.
- 1.23 Further, ensuring that there is no conflict between the Project and the Proposed NGET Projects will support the timely delivery of the Project given that it proposes to connect to the NETS at a new Weston Marsh Substation, which is to be constructed pursuant to NGET's G2W project.
- 1.24 The Parties have been co-operating since 2021 in relation to G2W, meeting regularly to discuss such matters as respective delivery programmes, connection location, consultation timelines and coordination of temporary and permanent design. Co-operation between the Applicant and NGET in relation to the EGL3 and EGL4 Projects began more recently, in May 2024. NGET's proposed PPs will ensure the continuation of such co-operation in relation to GtW, EGL3 and EGL4 NGET Projects.

Policy Support

- 1.25 The co-operation and co-ordinations requirements sought by NGET in its proposed PPs reflect national policy, as set out in the National Policy Statements for Energy.
- 1.26 Overarching National Policy Statement ("**NPS**") for Energy EN-1 states that "[t]o support the achievement of the transition to net zero, government is accelerating the co-ordination of the

development of the grid network to facilitate the UK's net zero energy generation development" (para 4.11.3).

- 1.27 This is reflected in the NPS for Renewable Energy Infrastructure EN-3 which states at paragraph 2.8.34 that *"a more co-ordinated approach to offshore-onshore transmission is required"* and EN-5, at paragraph 2.14.2, which states that applicants should demonstrate that *"the construction planning for the proposals has been co-ordinated with that for other similar projects in the area on a similar timeline"*.
- 1.28 The Energy NPSs are therefore strongly supportive of NGET's proposed approach.

Restriction on compulsory acquisition

- 1.29 NGET welcomes the Applicant's response in its 'Responses to Written Questions' document that it *"does not intend to exercise powers of compulsory acquisition over the entire Connection Area"* and that this will be refined.
- 1.30 However, in order to prevent serious detriment to the carrying on of NGET's undertaking, protective provisions in the DCO must prevent the exercise of compulsory powers by the Applicant without NGET's consent. Allowing NGET to exercise control over the use of powers of compulsory acquisition will enable it to ensure that serious detriment does not occur. The restriction proposed by NGET is well-precedented and appears in NGET's protective provisions in almost all DCOs, as well as protective provisions in favour of other statutory undertakers such as Network Rail.
- 1.31 NGET's proposed PPs provide that whenever NGET's consent, agreement or approval is required for the taking of any action by the Applicant, this must not be unreasonably withheld or delayed. To the extent that the Applicant considers a refusal by NGET to agree to the use of powers of compulsory acquisition to be unreasonable (which NGET considers to be extremely unlikely), it would be able to use the arbitration procedure in the DCO to resolve the dispute. NGET submits that this represents a reasonable balance between the interest of the Applicant and the protection of NGET's undertaking.

Further representations

- 1.32 NGET continues to reserve the right to make further representations as part of the Examination process in relation to specific interactions with the Proposed NGET Projects, or any NGET projects identified during the Examination process.

APPENDIX 1 – NGET LAND AND INTERESTS AFFECTED BY THE PROJECT

NGET			
Book of Reference – Part 1			
Land which is proposed to be subject to: (i) powers of compulsory acquisition, (ii) right to use the land, and/or (iii) rights to carry out protective works (Regulation 7(1)(a))			
County of Lincolnshire			
Plot Number	Extent of acquisition or use	Description of land	Category 2 Qualifying persons under Regulation 7(1)(a) of the Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009
46-018	J.L	Permanent Rights over 2630 square metres of agricultural land, hedgerow and access track (east of The Reservoir, A16) (excluding all interests of the Crown)	In respect of overhead electricity apparatus
46-019	J	Permanent Rights over 296 square metres of agricultural land, hedgerow and access track (east of The Reservoir, A16) (excluding all interests of the Crown)	In respect of overhead electricity apparatus
46-020	J	Permanent Rights over 2607 square metres of agricultural land, hedgerow and access track (east of The Reservoir, A16) (excluding all interests of the Crown)	In respect of overhead electricity apparatus

46-031	J	Permanent Rights over 5236 square metres of agricultural land (west of A16) and banks (Risegate Eau)	In respect of electricity apparatus
46-034	J	Permanent Rights over 6284 square metres of drain and banks (west of A16)	In respect of electricity apparatus
46-036	J	Permanent Rights over 1029 square metres of drain and copse (east of Gosberton Bank)	In respect of electricity apparatus
46-038	J	Permanent Rights over 26 square metres of agricultural land and access track (east of Gosberton Road)	In respect of rights granted by the deed dated 13 August 1963
46-039	J, L	Permanent Rights over 1018 square metres of agricultural land and access track (east of Gosberton Road)	in respect of rights granted by the deed dated 13 August 1963)
46-040	J	Permanent Rights over 1696 square metres of agricultural land and access track (east of Gosberton Road)	in respect of rights granted by the deed dated 13 August 1963)
46-041	L	Permanent Rights over 172 square metres of agricultural land and access track (east of Gosberton Road)	in respect of rights granted by the deed dated 13 August 1963)
46-042	J	Permanent Rights over 31 square metres of agricultural land and access track (east of Gosberton Road)	in respect of rights granted by the deed dated 13 August 1963)
46-045	J, L	Permanent Rights over 2027 square metres of agricultural land and access track (east of Gosberton Road)	in respect of rights granted by the deed dated 13 August 1963
46-046	J	Permanent Rights over 2762 square metres of agricultural land and access track (east of Gosberton Road)	in respect of rights granted by the deed dated 13 August 1963

47-009	L	Permanent Rights over 4252 square metres of access track and verge (east of A16)	in respect of overhead electricity apparatus
47-014	L	Permanent Rights over 9109 square metres of agricultural land, access track and drain (east of A16)	in respect of overhead electricity apparatus
47-037	J	Permanent Rights over 1793 square metres of agricultural land, hedgerow and drain (north of Marsh Drove)	in respect of overhead electricity apparatus
48-003	J	Permanent Rights over 1047 square metres of agricultural land, access track and hedgerow (north of Marsh Drove)	in respect of overhead electricity apparatus
49-009	E	Permanent Rights over 151 square metres of verge (south of Marsh Road)	in respect of rights stated in Deed dated 29 November 2002
49-010	E	Permanent Rights over 38389 square metres of agricultural land and private road (Wragg Marsh Farm)	in respect of rights stated in Deed dated 29 November 2002
49-011	K	Temporary Rights over 1194 square metres of agricultural land (Wragg Marsh Farm)	in respect of rights stated in Deed dated 29 November 2002
50-002	E	Permanent Rights over 506159 square metres of building and hardstanding (Crowtree Farm), agricultural land and access track (east of Marsh Road), electricity cables and pylons and public footpath (LL Wstn 7/1)	in respect of overhead electricity apparatus
50-003	E	Permanent Rights over 203228 square metres of agricultural land and access track (east of Marsh Road), electricity cable, pylons and public footpath (LL Wstn 7/1)	in respect of rights stated in Deed dated 29 November 2002
50-004	E	Permanent Rights over 1958 square metres of agricultural land and drain (east of Marsh Road)	in respect of rights stated in Deed dated 29 November 2002

50-005	E	Permanent Rights over 216275 square metres of agricultural land, access track, electricity cable and pylons (east of Marsh Road)	in respect of rights stated in Deed dated 29 November 2002
51-007	E	Permanent Rights over 159921 square metres of agricultural land, drain and access track (east of Marsh Road), electricity cables and pylons	in respect of rights and restrictive covenants listed in a Deed dated 08 May 2003
51-008	E	Permanent Rights over 2157 square metres of agricultural land and drain (east of Marsh Road)	in respect of rights and restrictive covenants listed in a Deed dated 08 May 2003)
51-009	E	Permanent Rights over 189781 square metres of agricultural land, drain and access track (east of Marsh Road), electricity cables and pylons	in respect of rights and restrictive covenants listed in a Deed dated 08 May 2003
51-015	E	Permanent Rights over 22693 square metres of agricultural land (east of Marsh Road), electricity cables and pylons	in respect of rights relating to electricity lines and pylons listed in a Deed of Grant dated 16 April 2003
BOOK OF REFERENCE - PART 2			
County of Lincolnshire			
Potential claims under S10 Compulsory Purchase Act 1965, Part 1 Land Compensation Act 1973 or 152 (3) of the Planning Act 2008			
46-038		26 square metres of agricultural land and access track (east of Gosberton Road)	in respect of rights granted by the deed dated 13 August 1963
46-039		1018 square metres of agricultural land and access track (east of Gosberton Road)	in respect of rights granted by the deed dated 13 August 1963
46-040		1696 square metres of agricultural land and access track (east of Gosberton Road)	in respect of rights granted by the deed dated 13 August 1963
46-041		172 square metres of agricultural land and access track (east of Gosberton Road)	in respect of rights granted by the deed dated 13 August 1963
46-042		31 square metres of agricultural land and access track (east of Gosberton Road)	in respect of rights granted by the deed dated 13 August 1963

46-045		2027 square metres of agricultural land and access track (east of Gosberton Road)	n respect of rights granted by the deed dated 13 August 1963
46-046		2762 square metres of agricultural land and access track (east of Gosberton Road)	in respect of rights granted by the deed dated 13 August 1963
49-009		151 square metres of verge (south of Marsh Road)	in respect of rights stated in Deed dated 29 November 2002
49-010		38389 square metres of agricultural land and private road (Wragg Marsh Farm)	in respect of rights stated in Deed dated 29 November 2002
49-011		1194 square metres of agricultural land (Wragg Marsh Farm)	in respect of rights stated in Deed dated 29 November 2002
50-003		203228 square metres of agricultural land and access track (east of Marsh Road), electricity cable, pylons and public footpath (LL Wstn 7/1)	in respect of rights stated in Deed dated 29 November 2002
50-004		1958 square metres of agricultural land and drain (east of Marsh Road)	in respect of rights stated in Deed dated 29 November 2002
50-005		16275 square metres of agricultural land, access track, electricity cable and pylons (east of Marsh Road)	in respect of rights stated in Deed dated 29 November 2002
51-007		159921 square metres of agricultural land, drain and access track (east of Marsh Road), electricity cables and pylons	in respect of rights and restrictive covenants listed in a Deed dated 08 May 2003
51-008		2157 square metres of agricultural land and drain (east of Marsh Road)	in respect of rights and restrictive covenants listed in a Deed dated 08 May 2003
51-009		189781 square metres of agricultural land, drain and access track (east of Marsh Road), electricity cables and pylons	in respect of rights and restrictive covenants listed in a Deed dated 08 May 2003
51-015		22693 square metres of agricultural land (east of Marsh Road), electricity cables and pylons	in respect of rights relating to electricity lines and pylons listed in a Deed of Grant dated 16 April 2003

BOOK OF REFERENCE - PART 3

County of Lincolnshire

Names of all those entitled to enjoy easements or other private rights over land (including private rights of navigation over water) which it is proposed shall be extinguished, suspended or interfered with under Regulation 7(1)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009

46-018		2630 square metres of agricultural land, hedgerow and access track (east of The Reservoir, A16) (excluding all interests of the Crown)	(in respect of overhead electricity apparatus
46-019		296 square metres of agricultural land, hedgerow and access track (east of The Reservoir, A16) (excluding all interests of the Crown)	in respect of overhead electricity apparatus
46-020		2607 square metres of agricultural land, hedgerow and access track (east of The Reservoir, A16) (excluding all interests of the Crown)	in respect of overhead electricity apparatus
46-031		5236 square metres of agricultural land (west of A16) and banks (Risegate Eau)	in respect of electricity apparatus
46-034		6284 square metres of drain and banks (west of A16)	in respect of electricity apparatus
46-036		1029 square metres of drain and copse (east of Gosberton Bank)	in respect of electricity apparatus
46-038		1029 square metres of drain and copse (east of Gosberton Bank)	in respect of rights granted by the deed dated 13 August 1963
46-039		1018 square metres of agricultural land and access track (east of Gosberton Road)	in respect of rights granted by the deed dated 13 August 1963
46-040		1696 square metres of agricultural land and access track (east of Gosberton Road)	in respect of rights granted by the deed dated 13 August 1963

46-041		172 square metres of agricultural land and access track (east of Gosberton Road)	in respect of rights granted by the deed dated 13 August 1963
46-042		1 square metres of agricultural land and access track (east of Gosberton Road)	in respect of rights granted by the deed dated 13 August 1963
46-045		2027 square metres of agricultural land and access track (east of Gosberton Road)	in respect of rights granted by the deed dated 13 August 1963
46-046		2762 square metres of agricultural land and access track (east of Gosberton Road)	in respect of rights granted by the deed dated 13 August 1963
47-009		4252 square metres of access track and verge (east of A16)	in respect of a rights stated in Conveyance dated 05 October 1984
47-014		9109 square metres of agricultural land, access track and drain (east of A16)	in respect of overhead electricity apparatus
47-037		1793 square metres of agricultural land, hedgerow and drain (north of Marsh Drove)	in respect of overhead electricity apparatus
48-003		1047 square metres of agricultural land, access track and hedgerow (north of Marsh Drove)	in respect of overhead electricity apparatus
49-009		151 square metres of verge (south of Marsh Road)	in respect of rights stated in Deed dated 29 November 2002
49-010		38389 square metres of agricultural land and private road (Wragg Marsh Farm)	in respect of rights stated in Deed dated 29 November 2002
49-011		1194 square metres of agricultural land (Wragg Marsh Farm)	in respect of rights stated in Deed dated 29 November 2002
50-002		506159 square metres of building and hardstanding (Crowtree Farm), agricultural land and access track (east of Marsh Road), electricity cables and pylons and public footpath(LL Wstn 7/1)	in respect of overhead electricity apparatus

50-003		203228 square metres of agricultural land and access track (east of Marsh Road), electricity cable, pylons and public footpath (LL Wstn 7/1)	in respect of rights stated in Deed dated 29 November 2002
50-004		1958 square metres of agricultural land and drain (east of Marsh Road)	in respect of rights stated in Deed dated 29 November 2002
50-005		216275 square metres of agricultural land, access track, electricity cable and pylons (east of Marsh Road)	in respect of rights stated in Deed dated 29 November 2002
51-007		159921 square metres of agricultural land, drain and access track (east of Marsh Road), electricity cables and pylons	in respect of rights and restrictive covenants listed in a Deed dated 08 May 2003
51-008		157 square metres of agricultural land and drain (east of Marsh Road)	in respect of rights and restrictive covenants listed in a Deed dated 08 May 2003
51-009		189781 square metres of agricultural land, drain and access track (east of Marsh Road), electricity cables and pylons	in respect of rights and restrictive covenants listed in a Deed dated 08 May 2003
51-015		22693 square metres of agricultural land (east of Marsh Road), electricity cables and pylons	in respect of rights relating to electricity lines and pylons listed in a Deed of Grant dated 16 April 2003

APPENDIX 2 – NGET PROPOSED PROTECTIVE PROVISIONS

NATIONAL GRID ELECTRICITY TRANSMISSION PLC

SCHEDULE 1

PROTECTIVE PROVISIONS

PART 1

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

Application

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

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid Electricity Transmission Plc, where the benefit of this Order is transferred or granted to another person under article [6] (*benefit of the 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) in all cases where the transfer of the benefit relates to any specified works; 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(4)b).

Interpretation

2. In this Part of this Schedule—

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

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

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

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

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

“acceptable security” means either:

(a) a parent company guarantee from a parent company in favour of National Grid Electricity Transmission Plc to cover the undertaker’s liability to National Grid Electricity Transmission Plc to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Grid Electricity Transmission Plc and where required by National Grid Electricity Transmission Plc, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or

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

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

“apparatus” means:

- (a) any electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid Electricity Transmission Plc together with any replacement apparatus;
- (b) such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid Electricity Transmission Plc for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus; and
- (c) any electrical lines or electrical plant as defined in the Electricity Act 1989, any mains, pipes, plant or other apparatus belonging to, operated or maintained by National Grid for the purposes of the construction, operation and maintenance of the Proposed NGET Projects, 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 ("Proposed NGET Projects apparatus");

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

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

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

“EGL3” means the Eastern Greenlink 3 Project;

“EGL4” means the Eastern Greenlink 4 Project;

“functions” includes powers and duties;

“Grimsby to Walpole” means the Grimsby to Walpole Project;

“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 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 6(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 6(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”.

“Proposed NGET Projects” means together: EGL3, EGL4 and Grimsby to Walpole;

"Proposed NGET Projects Sites" include –

(a) land on which any Proposed NGET Projects apparatus is situated; and

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

“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;

Interaction with the Proposed NGET Projects

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

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

On Street Apparatus

4. Except for paragraphs 5 (*apparatus of National Grid Electricity Transmission Plc in stopped up streets*), 9 (*retained apparatus: protection*), 10 (*expenses*) and 11 (*indemnity*) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid Electricity Transmission Plc, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid Electricity Transmission Plc are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of National Grid Electricity Transmission Plc in stopped up streets

5.—Notwithstanding the temporary stopping up or diversion of any streets under the powers of article 11 [*temporary stopping up of public rights of way*] and Article 12 [*temporary stopping up of streets*], National Grid Electricity Transmission Plc is at liberty at all times to take all necessary access across any such stopped up street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that street.

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 of National Grid Electricity Transmission Plc; 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 acquire any land forming part of the Proposed NGET Projects Sites.

- (3) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed

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

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

(5) Any agreement or consent granted by National Grid Electricity Transmission Plc under paragraph 8 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

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

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid Electricity Transmission Plc advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid Electricity Transmission Plc reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Grid Electricity Transmission Plc to its satisfaction (taking into account paragraph 8(1) below) the necessary facilities and rights

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

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid Electricity Transmission Plc may in its sole discretion, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to assist the undertaker to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid Electricity Transmission Plc to use its compulsory purchase powers to this end unless it elects to 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 Grid Electricity Transmission Plc and must be no less favourable on the whole to National Grid Electricity Transmission Plc than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid Electricity Transmission Plc.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid Electricity Transmission Plc than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 15 (*Arbitration*) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid Electricity Transmission Plc as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

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

(2) In relation to specified works

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

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

(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 by the specified works prior to, during and post construction;
- (c) details of load bearing capacities of the trenches;
- (d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;
- (f) written details of the operations and maintenance regime for any cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid Electricity Transmission Plc's engineers; and
- (h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of up to and including 26 tonnes in weight.

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

(5) Any approval of National Grid Electricity Transmission Plc required under sub-paragraph (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 works (or any relevant part thereof) for which protective works are required and National Grid Electricity Transmission Plc shall give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

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

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

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid

Electricity Transmission Plc notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (12) at all times.

(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, HSE's guidance note 6 "Avoidance of Danger from Overhead Lines" and National Grid's Technical Guidance Note 287 "Third-party guidance for working near National Grid Electricity Transmission Equipment".

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 6(3); or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid Electricity Transmission Plc;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 15 (*Arbitration*) to be necessary, then, if such placing involves cost in the construction of works under this Part of this

Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid Electricity Transmission Plc by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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

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

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

Indemnity

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

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

(2) If as a result of the authorised development National Grid's access to the Proposed NGET Projects or to any Proposed NGET Projects Sites are materially obstructed, the undertaker must provide such alternative means of access that will allow National Grid to maintain apparatus or use apparatus no less efficiently than was possible before the obstruction

(3) 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 carries out the works in a manner that does not accord with the approved plan.

(4) 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 6 (*benefit of the 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-paragraph 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 11; and/or
- (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable;

(5) 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.

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

(7) 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.

(8) 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.

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

Enactments and agreements

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

Co-operation

13.(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid Electricity Transmission Plc requires the removal of apparatus under paragraph 7(2) or National Grid Electricity Transmission Plc makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid Electricity Transmission Plc's undertaking and National Grid Electricity Transmission Plc shall use its best endeavours to co-operate with the undertaker for that purpose.

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

(3) National Grid shall supply the undertaker with regular updates in relation to the Proposed NGET Projects and the Proposed NGET Project Sites including providing plans for the Proposed NGET Projects.

Access

14. If in consequence of the agreement reached in accordance with paragraph 6(1) or the powers granted under this Order the access to any apparatus 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 6(2), 6(4) 7(1) and 8 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 [38] (*arbitration*).

Notices

16. Notwithstanding article 46 (service of notices), any plans submitted to National Grid Electricity Transmission Plc by the undertaker pursuant to paragraph 8 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.