

# MONA OFFSHORE WIND PROJECT

## Final Position Statement on Statutory Undertakers and Crown Land

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Image of an offshore wind farm

**MONA OFFSHORE WIND PROJECT**

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**MONA OFFSHORE WIND PROJECT**

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# 1 Final Position Statement on Statutory Undertakers and Crown Land

## 1.1 Introduction

- 1.1.1.1 This Position Statement provides the Examining Authority with an update on the Applicant's position in relation to statutory undertakers and Crown land. The position relating to statutory undertakers is set out at sections 1.2 to 1.6 and the position relating to Crown land is set out at sections 1.7 to 1.9 of this statement.
- 1.1.1.2 This statement builds upon, and should be read in conjunction with, the Applicant's response to the Examining Authority's Further Written Question 2.6.9 regarding statutory undertakers (ExQ2) (REP5-081).
- 1.1.1.3 In respect of the statutory undertakers, Parts 1-9 of Schedule 10 of the Draft DCO (C1 F08) deals with protective provisions for statutory undertakers. Schedule 10 includes protective provisions for the following entities:
- (a) Part 1 (Protection of electricity, gas, water and sewerage undertakers);
  - (b) Part 2 (Protection for operators of electronic communications code networks);
  - (c) Part 3 (For the protection of Dŵr Cymru Cyfyngedig (DC));
  - (d) Part 4 (For the protection of SP Manweb as electricity undertaker);
  - (e) Part 5 (For the protection of Wales and West Utilities);
  - (f) Part 6 (For the protection of the Welsh Ministers as Strategic Highway Authority);
  - (g) Part 7 (For the protection of National Grid Electricity Transmission Plc as electricity undertaker);
  - (h) Part 8 (For the protection of Network Rail Limited); and
  - (i) Part 9 (For the protection of Awel y Môr).
- 1.1.1.4 By way of an update to REP5-081, the Applicant is pleased to confirm that an agreed position has been reached with Network Rail Limited regarding the protective provisions included in the Draft DCO for its benefit. Further detail is provided at section 1.3 of this statement.
- 1.1.1.5 There are two statutory undertakers for whom protective provisions have not been agreed; however, the Applicant is confident that agreement can be reached soon. The relevant statutory undertakers are 1. National Grid Electricity Transmission Plc and 2. Awel y Môr. The Applicant is also seeking confirmation from Wales and West Utilities that the protective provisions in the Draft DCO are agreed. Further information is provided at sections 1.2, 1.4 and 1.5 of this statement.
- 1.1.1.6 It is important to note that the Draft DCO (C1 F08) includes powers to acquire a series of land rights and interests in land which will be required, on a permanent and temporary basis. In the event it has not been possible to acquire the land rights and interests by agreement, it will be necessary to compulsorily acquire these for the purposes of developing the Mona Offshore Wind Project. As such, the Draft DCO includes powers to compulsorily acquire land and rights in land. Pursuant to Article 31 of the draft DCO and subject to the protective provisions of Schedule 10, it is confirmed that the Applicant may (a) '*acquire compulsorily, or acquire new rights or impose restrictions over, the land belonging to statutory undertakers....*'; and (b) '*extinguish or*

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*suspend the rights of, or restrictions for the benefit of, or remove, relocate or reposition the apparatus belonging to statutory undertakers over or within the Order land*.

- 1.1.1.7 Where a statutory undertaker has made a representation about the compulsory acquisition of land or rights over land which has been acquired for the purpose of their undertaking, and this representation is not withdrawn, section 127 of the Planning Act 2008 applies.
- 1.1.1.8 Furthermore, section 138 of the PA 2008 applies to land if there subsists over the land a relevant right or there is on, under or over the land relevant apparatus. It further 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. Therefore, as the DCO includes the power for the Applicant to extinguish the rights of, remove or reposition the apparatus belonging to the statutory undertakers, section 138 of the PA 2008 is also engaged and specifically with proposed diversions.
- 1.1.1.9 Inclusion of protective provisions for each of the statutory undertakers adequately covers off the requirements of sections 127 and 138 of the Planning Act 2008. Please also see the Applicant's response to the Examining Authority's Further Written Question 2.6.9 regarding Statutory Undertakers (ExQ2) (REP5-081) for additional submissions on the legal tests. To the extent this submission differs from REP5-081, this submission should be taken as an update to that position.

## 1.2 Position with Wales and West Utilities

- 1.2.1.1 The Applicant is seeking powers of compulsory acquisition and to acquire rights in land in which Wales and West Utilities has interests for the purposes of their undertaking. Wales and West Utilities is a statutory undertaker for the purposes of section 127 of the Planning Act 2008 as they are a gas transporter. Further information on the interaction between the Mona Offshore Wind Project and Wales and West Utilities is provided at section 1.3 of REP5-081.
- 1.2.1.2 The Applicant notes that Wales and West Utilities have not made a representation into the examination and no 'serious detriment' has been alleged by Wales and West Utilities. It is therefore the Applicant's position that section 127 is not engaged. In any case, the protective provisions included at Part 5, Schedule 10 of the draft DCO (C1 F08) provide adequate protection to Wales and West Utilities and would avoid any serious detriment. It is therefore the Applicant's position that the criteria in sections 127 and 138 of the Planning Act 2008 are satisfied.
- 1.2.1.3 Since providing its update to the Examining Authority at Deadline 5 (REP5-081), the Applicant has been in regular communications with Wales and West Utilities regarding the protective provisions. Updates have been made to the protective provisions included for the benefit of Wales and West Utilities at Part 5, Schedule 10 of the draft DCO (C1 F08) in order to bring the parties closer together.
- 1.2.1.4 The Applicant has sought confirmation from Wales and West Utilities that the protective provisions (as updated for Deadline 7) are agreed, however that confirmation remains outstanding. The Applicant will continue to seek confirmation from Wales and West Utilities that the protective provisions are agreed and will provide a further update as applicable.



## 1.3 Position with Network Rail Limited

- 1.3.1.1 Further to the update provided at section 1.4 of REP5-081, the Applicant is pleased to confirm that an agreed position has been reached with Network Rail Limited. Network Rail's preferred set of protective provisions have been added to the draft Development Consent Order (C1 F08) which have been submitted at Deadline 7.
- 1.3.1.2 The parties are in the process of final completion arrangements in respect of the Network Rail Framework Agreement. It is anticipated that Network Rail will write to the Examination to confirm withdrawal of its objection to the Application soon after the completion of the Framework Agreement.
- 1.3.1.3 On the basis that the Network Rail's preferred set of protective provisions are included in the Draft DCO and there are only administrative matters left outstanding to formalise the agreed position, the Applicant does not consider that sections 138 and 127 of the Planning Act 2008 will be engaged.

## 1.4 Position with National Grid Electricity Transmission Plc

- 1.4.1.1 The Applicant responds to the submissions made to the examination by National Grid Electricity Transmission Plc at Deadline 6 (REP6-136) here.
- 1.4.1.2 Since those submissions were made, the parties have been in regular communication and have continued to engage in discussions regarding the protective provisions. At Deadline 6, a substantial update was made to the protective provisions included for the benefit of National Grid Electricity Transmission Plc at Part 7, Schedule 10 of the Draft DCO (REP6-016) in order to bring the parties closer together and further update to those provisions is made at Deadline 7. The DCO validation process had already been carried out before these updates were finalised so they are included (in clean and track) at Annex 1 and these are to be taken to replace the versions currently included in Part 7, Schedule 7 of the Draft DCO (C1 F08).
- 1.4.1.3 As can be seen from these updates, there remain only a small number of outstanding matters between the parties, which are limited to the following:
- Definition of "acceptable security"
  - Definition of "acceptable insurance"
  - Definition of "Mona project works"
  - Paragraph 3 (Interaction with the Bodelwyddan Project and the Connah's Quay Project), subparagraph (a)
  - Paragraph 14 (Retained apparatus: Protection of National Grid Electricity Transmission Plc as Electricity Undertaker), sub paragraph (4)(b)
  - Paragraph 20 (Arbitration)
- 1.4.1.4 This set of provisions has not been agreed between the parties and discussions to reach an agreed position are ongoing. The Applicant will continue to engage with NGET in the post-Examination phase and the Applicant believes that the parties are very close to reaching an agreement. The Applicant anticipates being able to confirm to the Secretary of State that matters have been agreed as soon as possible after the close of Examination.

## 1.5 Position with Awel y Môr

- 1.5.1.1 The Applicant notes the submission made to the examination by Awel y Môr Offshore Wind Farm Limited at Deadline 6 (REP6-138).
- 1.5.1.2 At Deadline 6 the draft DCO (REP6-016) was updated to include protective provisions for the benefit of Awel y Môr at Part 9 of Schedule 10. These protective provisions included a placeholder as additional drafting was to be provided in relation to access plots.
- 1.5.1.3 There has been ongoing dialogue between the parties and amendments to the protective provisions proposed by both parties seeking to agree wording relating to the access plots. However, this drafting has not yet been agreed between the Applicant and Awel y Môr.
- 1.5.1.4 This matter remains outstanding at the end of the examination despite the parties engaging in meaningful and frequent discussion since Deadline 6. The Applicant is confident that a suitable means forward will be agreed with the parties; nonetheless, the Applicant's submissions regarding sections 127 and 138 of the Planning Act 2008 are as follows:
- (a) Awel y Môr is a statutory undertaker for the purposes of section 127 of the Planning Act 2008 as they hold an electricity generation licence. Awel y Môr's consented DCO relating to the Awel y Môr Offshore Wind Farm Order 2023 overlaps in part with the order limits of the Mona Offshore Wind Project, with both intending to connect into the National Grid Bodelwyddan Substation.
  - (b) [The overlap relates to land parcels containing the mean of access from the public highway and the private road to the Bodwelyddan substation (Work Nos. 39 and 41 in the Awel y Môr Offshore Wind Farm Order 2023 and Work Nos. 30 and 38 in the draft DCO). The Applicant confirmed at Issue Specific Hearing 1 (see REP1-009) that Work No. 30 is the existing access to the National Grid Bodelwyddan Substation, which will be used for construction purposes but limited to establishing Work No. 28 and then constructing Work No. 27 northwards to the highway. Once this is completed construction traffic will use Work No. 27 for construction access. The Applicant confirmed that once construction is complete, Work No. 30 will be used for operational access. Furthermore and for clarity, Work No. 38 has been amended with the word 'construction' deleted in the draft DCO at Deadline 7]
  - (c) The Applicant acknowledges that Awel y Môr's undertaking will be affected by the Mona Offshore Wind Project but does not accept there is 'serious detriment'. Moreover, it is considered that the protective provisions included for the benefit of Awel y Môr, as per the update provided herein at Appendix 1, afford adequate protection and would avoid any serious detriment.
  - (d) As the DCO validation had already been carried out and as the updates have not been finalised, the Applicant's proposed further updates are included (in clean and track) at Annex 2 and the clean set to be taken to replace the version currently included in Part 9, Schedule 10 of the draft DCO (C1 F08).
  - (e) The Applicant will continue to work with Awel y Môr, in compliance with the protective provisions and on this basis reasonable allowance is accommodated for their statutory undertaking. The Applicant's view is that there is no risk of serious detriment being caused to Awel y Môr undertaking due to the inclusion of the protective provisions at Part 9 of Schedule 10 of the draft DCO (C1 F08), as updated herein and the criteria in section 127 and section 138 is satisfied.

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1.5.1.5 The Applicant believes that the parties are very close to reaching an agreement and anticipates being able to confirm to the Secretary of State that matters have been agreed as soon as possible after the close of examination.

### **1.6 Position in respect of all other Statutory Undertakers**

1.6.1.1 The following protective provisions have been agreed:

(a) Part 3 of Schedule 10 (For the protection of Dŵr Cymru Cyfyngedig (DC));

(b) Part 4 of Schedule 10 (For the protection of SP Manweb as electricity undertaker);  
and

(c) Part 6 of Schedule 10 (For the protection of the Welsh Ministers as Strategic Highway Authority).

1.6.1.2 The Applicant considers that each of these statutory undertakers' statutory operations will not be detrimentally impacted by Mona Offshore Wind Project and in each case the Applicant believes that the protective provisions will provide adequate protection for the statutory undertaker.

1.6.1.3 The Applicant can confirm that no other statutory undertakers (excluding those mentioned elsewhere in this statement) have made representations with regards to this application. Moreover, any other statutory undertakers will be able to rely on Part 1 (Protection of electricity, gas, water and sewerage undertakers) and Part 2 (Protection for operators of electronic communications code networks) of Schedule 10 of the draft DCO for protection.

### **1.7 Position in respect of Crown Land – The Crown Estate Commissioners**

1.7.1.1 The Applicant can confirm that it is liaising with The Crown Estate Commissioners in relation to obtaining Crown's consent to the inclusion of powers in the DCO relating to Crown land under section 135 of the Planning Act 2008. It is understood that The Crown Estate Commissioners should be in a position to issue a consent letter shortly following the close of the examination.

1.7.1.2 The above statement has been agreed between Solicitors for the Applicant and the Crown Estate Commissioners.

### **1.8 Position in respect of Crown Land – Welsh Ministers – A55 plots**

1.8.1.1 The Applicant and Welsh Ministers have resolved the outstanding points of difference and the Applicant received signed heads of terms for the voluntary rights sought on the 14th January 2025. The Applicant will instruct their respective solicitors to negotiate and settle formal agreements accordingly.

1.8.1.2 The land rights tracker will also be updated for today's deadline to reflect the agreement on the terms.

1.8.1.3 The Applicant also separately received on the 14<sup>th</sup> January 2025 a signed section 135 consent letter on behalf of the Transport division of the Welsh Ministers, to cover the operational and non-operational extents of the A55, relating to plots 02-026; 02-027; 02-029 and 02-030.



## **1.9 Position in respect of Crown Land – Welsh Ministers – woodland plots and Natural Resources Wales– Occupiers Consent**

- 1.9.1.1 The Applicant was advised by the Welsh Ministers on the 7<sup>th</sup> January 2025 that separate section 135 consent would need to be issued for plots 02-034 and 02-036, relating to the woodland.
- 1.9.1.2 Since that date, there has been liaison between the Applicant and the Forestry division of the Welsh Ministers as regards the requested section 135 consent letter and the Applicant has been responding to queries raised. There will continue to be ongoing liaison to close off any outstanding queries by the Welsh Ministers, so that a consent letter can be issued as soon as possible following the close of the examination.
- 1.9.1.3 The Applicant has also been separately liaising on voluntary rights and issued an occupiers consent document to Natural Resources Wales, who the Applicant understands manage the land on behalf of the Welsh Ministers, on the 15th July 2024 following the progress of the voluntary terms with the freeholder of the land.
- 1.9.1.4 Since the issue of the terms there had been ongoing dialogue and Microsoft Teams calls for the Applicant to provide further information on the Mona Offshore Wind Project's intention for the installation of the cables in this location and to provide clarity on the various trenchless methodologies that could be considered during detailed design.
- 1.9.1.5 The Applicant has agreed heads of terms with the freeholder and is also liaising with NRW as occupier.

## **1.10 Conclusion on Statutory Undertakers**

- 1.10.1.1 The Applicant confirms that an agreed position has been reached with Network Rail and it is anticipated that Network Rail will write to the examination to confirm withdrawal of its objection to the application once the Framework Agreement has been completed.
- 1.10.1.2 The Applicant also confirms that the protective provisions included at Part 3, Part 4 and Part 6 of the draft DCO (C1 F08) are agreed.
- 1.10.1.3 There are 3 statutory undertakers with whom Protective Provisions have not yet been agreed. These statutory undertakers are 1. The relevant statutory undertakers are 1. Wales and West Utilities, 2. National Grid Electricity Transmission Plc and 3. Awel y Môr:
- (a) In respect of Wales and West Utilities, the Applicant is awaiting confirmation that the protective provisions (as updated for Deadline 7) are agreed and will continue to seek this confirmation.
- (b) In respect of both National Grid Electricity Transmission Plc and Awel y Môr, the Applicant is in regular communication with these statutory undertakers and is confident that agreement can be reached shortly.

The Applicant acknowledges that the Mona Offshore Wind Project would impact upon each of these statutory undertakers but considers that these impacts would not be sufficiently significant to constitute 'serious detriment' within the meaning of section 127 of the PA 2008 and furthermore, that both section 127 and section 138 of the PA is satisfied given the inclusion of the Protective Provisions within Schedule 10 of the draft DCO.

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1.10.1.4 No additional representations have been made by other statutory undertakers with regards to this application and any other statutory undertakers will be able to rely on Part 1 and Part 2 of Schedule 10 for protection.

### 1.11 Crown Land

1.11.1.1 In respect of the Crown land:

- (a) **The Crown Estate** - It is understood that The Crown Estate Commissioners should be in a position to issue a section 135 consent letter shortly, following the close of the examination.
- (b) **Welsh Ministers – A55 plots** - The Applicant received signed heads of terms from the Welsh Ministers for the voluntary rights sought on the 14th January 2024 and a signed section 135 consent letter. The Applicant will instruct their respective solicitors to negotiate and settle formal agreements accordingly.
- (c) **Welsh Ministers – woodland plots and Natural Resources Wales– Occupiers Consent** - The Applicant is in discussions regarding the section 135 consent letter, with an update to follow as soon as possible following the close of examination and also hopes to finalise the voluntary agreement sought.

1.11.1.2 The Applicant will continue to engage with the Crown Estate, Welsh Ministers and NRW regarding the Crown land. The Applicant will provide updates to the Secretary of State as soon as possible after the close of examination.

## **2 Annex 1 – Updated Protective Provisions for the benefit of National Grid Electricity Transmission Plc**

For the protection of National Grid Electricity Transmission Plc as electricity undertaker

### **Application**

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

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid Electricity Transmission Plc, where the benefit of this Order is transferred or granted to another person under article 7 (*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 a sum to be notified to the undertaker by National Grid Electricity Transmission Plc and agreed in writing between the parties. Evidence of that insurance must be provided to National Grid Electricity Transmission on request. 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 a sum to be notified to the undertaker by National Grid Electricity Transmission Plc and agreed in writing between the parties;

“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 in an amount to be notified to the undertaker by National Grid Electricity Transmission Plc and agreed in writing between the parties (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 to be notified to the undertaker by National Grid Electricity Transmission Plc and agreed in writing between the parties (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 and 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;

(b) 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 for the purposes of the construction, operation and maintenance of the Bodelwyddan Project, 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 ("Bodelwyddan 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 for the purposes of the construction, operation and maintenance of the Connah's Quay Project, whether temporary or permanent ("Connah's Quay apparatus");

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

"Bodelwyddan Project" means the proposed extension of the Bodelwyddan substation, diversion of gas pipeline and overhead electricity line upgrade to be undertaken by National Grid and any temporary construction compound and laydown area for such works;

"Bodelwyddan Site" includes –

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

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

"Connah's Quay Project" means the proposed reconductoring works to three existing ended circuits (Bodelwyddan, Connah's Quay and Pentir 1 & 2) from towers 4ZB167 to 4ZB255 to be undertaken by National Grid, including any temporary construction compound, access and laydown area for such works;

"Connah's Quay Site" includes –

(a) land on which any Connah's Quay apparatus is situated; and

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



“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;

“Mona project works” means any part of Work Nos. 22, 22a, 23, 24, 25, 26, 27 as described in Schedule 1 of this Order (authorised development) to the extent they physically overlap with the Bodelwyddan Project or the Connah’s Quay Project;

“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 12(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 12(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 NGEESO 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 Bodelwyddan Project and the Connah's Quay Project**

3. Without limiting any other provision of this Part of this Schedule, the undertaker must use reasonable endeavours to avoid any conflict arising between the construction, maintenance and operation of the authorised development and the Bodelwyddan Project and the Connah's Quay Project. For the purposes of this paragraph, "reasonable endeavours" means –

- (a) undertaking coordination on the detailed design and programming of the Mona project works and all works associated with or ancillary to the Mona project works to ensure that the design and programme for the Mona project works does not unreasonably impede or interfere with the Bodelwyddan Project and/or the Connah's Quay Project;
- (b) having regard to the proposed programme of works for the Bodelwyddan Project and/or the Connah's Quay Project as may be made available to the undertaker by National Grid and facilitating a co-ordinated approach to the programme, land assembly, and the carrying out of the Mona project works and the Bodelwyddan Project and/or the Connah's Quay 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 informed on the programme of works for the authorised development.

### **Mona project works**

4. The undertaker must not except with the agreement of National Grid carry out the Mona project works, or any part of it.

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

(2) Any Mona project works must not be constructed except in accordance with such plans as may be approved in writing by National Grid.

6.—(1) Any approval of National Grid required under this Schedule—

- (a) must not be unreasonably withheld or delayed;
- (b) in the case of a refusal must be accompanied by a statement of grounds or refusal; and
- (c) may be given subject to such reasonable requirements as National Grid may have in connection with the safe, economic and efficient construction, commissioning, operation, maintenance and future decommissioning of the Bodelwyddan Project and/or the Connah's Quay Project or otherwise for the protection of Bodelwyddan apparatus and/or the Connah's Quay apparatus,

provided always that in relation to a refusal under sub-paragraph (b) or any requirements requested pursuant to sub-paragraph (c) the undertaker shall be permitted to refer such matters to dispute resolution pursuant to paragraph 21.

(2) National Grid must employ reasonable endeavours to respond to the submission of any plans within a period of 56 days from the date of submission of the plans. If National Grid require further particulars, such particulars must be requested by National Grid no later than 21 days from the submission of plans and thereafter National Grid must employ reasonable endeavours to respond to the submission within 56 days from receipt of the further particulars.

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

(2) If any part of the Mona project works is constructed otherwise than in accordance with paragraph 6(2) above National Grid may by notice in writing identify the extent to which the Mona project works do not comply with the approved details and request the undertaker at the undertaker's own expense carry out remedial works so as to comply with the requirements of paragraph 6(2) of this Schedule or such alternative works as may be agreed with National Grid or as otherwise may be agreed between the parties.

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

(4) In the event of any dispute as to whether sub-paragraph (2) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, National Grid will not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 21.

### **On Street Apparatus**

8. Except for paragraphs 9 (apparatus *in stopped up streets*), 14 (retained apparatus: protection), 15 (expenses) and 16 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid Electricity Transmission Plc, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid Electricity Transmission Plc are regulated by the provisions of Part 3 of the 1991 Act.

### **Apparatus of National Grid Electricity Transmission Plc in stopped up streets**

9.—(1) Where any street is stopped up under article 12 (temporary *restriction of use of streets*), if National Grid Electricity Transmission Plc has any apparatus in the street or accessed via that street National Grid Electricity Transmission Plc has the same rights in respect of that apparatus as it enjoyed immediately before the 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 7 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 9.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 12 (temporary *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**

**10.** The undertaker, in the case of the powers conferred by article 18 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus, the Bodelwyddan Site and/or the Connah's Quay Site without the written consent of National Grid Electricity Transmission Plc which will not unreasonably be withheld.

### **Acquisition of land**

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

(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 Bodelwyddan Site and/or the Connah's Quay Site (such agreement not to be unreasonably withheld or delayed).

(3) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid Electricity Transmission Plc and the undertaker) that is subject to the requirements of this Part of this Schedule that will

- (a) cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid Electricity Transmission Plc or
- (b) 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 unless otherwise agreed by National Grid Electricity Transmission Plc, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

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

(5) Any agreement or consent granted by National Grid Electricity Transmission Plc under paragraph 9 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

### **Removal of apparatus**

**12.—**(1) If, in the exercise of the powers conferred by this Order the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be

removed under this Part of this Schedule and any right of National Grid Electricity Transmission Plc to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of National Grid Electricity Transmission Plc in accordance with sub-paragraph (2) to (5).

(2) If, for the purpose of executing any works comprised in the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid Electricity Transmission Plc a minimum of 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid Electricity Transmission Plc reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Grid Electricity Transmission Plc to its satisfaction (taking into account paragraph 8(1) 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 any necessary legal agreements having been entered into between the parties and the grant to National Grid Electricity Transmission Plc of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

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

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

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid Electricity Transmission Plc under sub-paragraph (1) 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. In respect of the appointment of an arbitrator under this sub-paragraph, article 46 (arbitration) applies.

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

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

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

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes;
- (g) an assessment of risks of rise of earth issues; and
- (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;
- (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 construction of the Bodelwyddan Project and/or the Connah's Quay Project; and
- (c) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid Electricity Transmission Plc may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

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

(8) Where National Grid Electricity Transmission Plc requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid Electricity Transmission Plc's satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required and National Grid Electricity Transmission Plc shall give 56 days' notice of its requirement for such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

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

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

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in 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—

- (a) comply with sub-paragraphs (6), (7) and (8) in so far as is reasonably practicable in the circumstances and
- (b) 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 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

## **Expenses**

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

- (a) any costs reasonably incurred by or compensation properly paid by National Grid Electricity Transmission Plc in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid Electricity Transmission Plc as a consequence of National Grid Electricity Transmission Plc:
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 7(3); or

- (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid Electricity Transmission Plc.
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no legal 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 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 article 46 (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**

**16.**—(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 7 (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 subsection 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 11; and/or
- (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

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

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

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

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

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

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

### **Enactments and agreements**

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

### **Co-operation**

18.—(1) Where in consequence of the proposed construction of any part of the authorised works the undertaker or National Grid Electricity Transmission Plc requires the removal of apparatus under paragraph 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.

### **Access**

19. 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**

20.—(1) Save for differences or disputes arising under paragraphs 12(2), 12(4), 13(1) and 14 any difference or dispute arising between the undertaker and National Grid Electricity Transmission Plc under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid Electricity Transmission Plc, be determined by arbitration in accordance with article 46 (arbitration).

(2) In respect of disputes arising under paragraphs 12(2), 12(4), 13(1) and 14 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 46 (arbitration) and in accordance with the following:

- (a) the Parties agree the arbitrator will be directed to have regard to the requirements of National Grid Electricity Transmission Plc in respect of safety (as notified by National Grid Electricity Transmission Plc); and
- (b) the arbitrator will either be agreed between the parties, or failing agreement will be appointed on the application of either party (after giving notice in writing to the other) to the President of the Institute of Civil Engineers.

### **Notices**

**21.** Notwithstanding article 43 (service of notices), any plans submitted to National Grid Electricity Transmission Plc by the undertaker pursuant to paragraph 9 must be submitted using the LSBUD system (<https://lsbud.co.uk/>) or to such other address as National Grid Electricity Transmission Plc may from time to time appoint instead for that purpose and notify to the undertaker in writing.

For the protection of National Grid Electricity Transmission Plc as electricity undertaker

### Application

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

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid Electricity Transmission Plc, where the benefit of this Order is transferred or granted to another person under article 7 (*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 a sum to be notified to the undertaker by National Grid Electricity Transmission Plc and agreed in writing between the parties. Evidence of that insurance must be provided to National Grid Electricity Transmission on request. 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 a sum to be notified to the undertaker by National Grid Electricity Transmission Plc and agreed in writing between the parties;

“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 in an amount to be notified to the undertaker by National Grid Electricity Transmission Plc and agreed in writing between the parties (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 to be notified to the undertaker by National Grid Electricity Transmission Plc and agreed in writing between the parties (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 and 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;

(b) 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 for the purposes of the construction, operation and maintenance of the Bodelwyddan Project, 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 ("Bodelwyddan 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 for the purposes of the construction, operation and maintenance of the Connah's Quay Project, whether temporary or permanent ("Connah's Quay apparatus");

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

"Bodelwyddan Project" means the proposed extension of the Bodelwyddan substation, diversion of gas pipeline and overhead electricity line upgrade to be undertaken by National Grid and any temporary construction compound and laydown area for such works;

"Bodelwyddan Site" includes –

(a) land on which any Bodelwyddan apparatus is situated ~~and land which is required for use or maintenance of the Bodelwyddan apparatus~~; and

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

"Connah's Quay Project" means the proposed reductoring works to three existing ended circuits (Bodelwyddan, Connah's Quay and Pentir 1 & 2) from towers 4ZB167 to 4ZB255 to be undertaken by National Grid, including any temporary construction compound, access and laydown area for such works;

"Connah's Quay Site" includes –

(a) land on which any Connah's Quay apparatus is situated ~~and land which is required for use or maintenance of the Connah's Quay apparatus~~; and

(b) land on which ~~Connah's~~ Connah's Quay apparatus is anticipated to be situated which is necessary for the construction, use or maintenance of the Connah's Quay Project (in so far as the same has been notified by National Grid in writing to the undertaker);

“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;

“Mona project works” means any part of Work Nos. 22, 22a, 23, 24, 25, 26, 27 as described in Schedule 1 of this Order (authorised development) to the extent they physically overlap with the Bodelwyddan Project or the Connah’s Quay Project;

“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 ~~7(2)~~12(2) or otherwise; and/or

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 7(2)12(2) or otherwise; and/or

(b)(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 NGEESO 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 Bodelwyddan Project and the Connah's Quay Project**

3. Without limiting any other provision of this Part of this Schedule, the undertaker must use reasonable endeavours to avoid any conflict arising between the construction, maintenance and operation of the authorised development and the Bodelwyddan Project and the Connah's Quay Project. For the purposes of this paragraph, "reasonable endeavours" means –

(a) undertaking coordination on the detailed design and programming of the Mona project works and all works associated with or ancillary to the Mona project works to ensure that the design and programme for the Mona project works does not unreasonably impede or interfere with the Bodelwyddan Project and/or the Connah's Quay Project;

(b) having regard to the proposed programme of works for the Bodelwyddan Project and/or the Connah's Quay Project as may be made available to the undertaker by National Grid and facilitating a co-ordinated approach to the programme, land assembly, and the carrying out of the Mona project works and the Bodelwyddan Project and/or the Connah's Quay 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 informed on the programme of works for the authorised development.

### **Mona project works**

4. The undertaker must not except with the agreement of National Grid carry out the Mona project works, or any part of it.

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

(2) Any Mona project works must not be constructed except in accordance with such plans as may be approved in writing by National Grid.

6.—(1) Any approval of National Grid required under this Schedule—

(a) must not be unreasonably withheld or delayed;

(b) in the case of a refusal must be accompanied by a statement of grounds or refusal; and

(c) may be given subject to such reasonable requirements as National Grid may have in connection with the safe, economic and efficient construction, commissioning, operation, maintenance and future decommissioning of the Bodelwyddan Project and/or the Connah's

Quay Project or otherwise for the protection of Bodelwyddan apparatus and/or the Connah's Quay apparatus,

provided always that in relation to a refusal under sub-paragraph (b) or any requirements requested pursuant to sub-paragraph (c) the undertaker shall be permitted to refer such matters to dispute resolution pursuant to paragraph 21.

(2) National Grid must employ reasonable endeavours to respond to the submission of any plans within a period of 56 days from the date of submission of the plans. If National Grid require further particulars, such particulars must be requested by National Grid no later than 21 days from the submission of plans and thereafter National Grid must employ reasonable endeavours to respond to the submission within 56 days from receipt of the further particulars.

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

(2) If any part of the Mona project works is constructed otherwise than in accordance with paragraph 6(2) above National Grid may by notice in writing identify the extent to which the Mona project works do not comply with the approved details and request the undertaker at the undertaker's own expense carry out remedial works so as to comply with the requirements of paragraph 6(2) of this Schedule or such alternative works as may be agreed with National Grid or as otherwise may be agreed between the parties.

~~(1)~~(3) Subject to sub-paragraph (4), if within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (2) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, National Grid may execute the works specified in the notice and any reasonable expenditure incurred by National Grid in so doing will be recoverable from the undertaker.

~~(2)~~(4) In the event of any dispute as to whether sub-paragraph (2) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, National Grid will not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 21.

### **On Street Apparatus**

8. Except for paragraphs 9 (apparatus *in stopped up streets*), 14 (retained apparatus: protection), 15 (expenses) and 16 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid Electricity Transmission Plc, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid Electricity Transmission Plc are regulated by the provisions of Part 3 of the 1991 Act.

### **Apparatus of National Grid Electricity Transmission Plc in stopped up streets**

9.—(1) Where any street is stopped up under article 12 (*temporary restriction of use of streets*), if National Grid Electricity Transmission Plc has any apparatus in the street or accessed via that street National Grid Electricity Transmission Plc has the same rights in respect of that apparatus as it enjoyed immediately before the 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 7 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 9.

~~(1)~~(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 12 (*temporary 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**

**10.** The undertaker, in the case of the powers conferred by article 18 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus, the Bodelwyddan Site and/or the Connah's Quay Site without the written consent of National Grid Electricity Transmission Plc which will not unreasonably be withheld.

### **Acquisition of land**

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

(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 Bodelwyddan Site and/or the Connah's Quay Site (such agreement not to be unreasonably withheld or delayed).

(3) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid Electricity Transmission Plc and the undertaker) that is subject to the requirements of this Part of this Schedule that will

- (a) cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid Electricity Transmission Plc or
- (b) 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 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)~~(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.

~~(4)~~(5) Any agreement or consent granted by National Grid Electricity Transmission Plc under paragraph 9 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).



## Removal of apparatus

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

~~(1)~~(2) If, for the purpose of executing any works comprised in the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid Electricity Transmission Plc a minimum of 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid Electricity Transmission Plc reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Grid Electricity Transmission Plc to its satisfaction (taking into account paragraph 8(1) 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.

~~(2)~~(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.

~~(3)~~(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.

~~(4)~~(5) National Grid Electricity Transmission Plc must, after the alternative apparatus to be provided or constructed has been agreed, and subject to any necessary legal agreements having been entered into between the parties and the grant to National Grid Electricity Transmission Plc of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

## Facilities and rights for alternative apparatus

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

~~(1)~~(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid Electricity Transmission Plc under sub-paragraph (1) 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. In respect of the appointment of an arbitrator under this sub-paragraph, article 46 (arbitration) applies.

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

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

~~(1)~~(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; and
- (h) a ground monitoring scheme, where required.

~~(2)~~(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;
- (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)~~(g) \_\_\_\_\_ assessment of earth rise potential if reasonably required by National Grid Electricity Transmission Plc's engineers; and

~~(e)~~(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.

~~(3)~~(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.

~~(2)~~(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 construction of the Bodelwyddan Project and/or the Connah's Quay Project; and

~~(b)~~(c) must not be unreasonably withheld.

~~(5)~~(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.

~~(6)~~(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.

~~(3)~~(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 56 days' notice of its requirement for such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

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

~~(8)~~(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.

~~(9)~~(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—

- (a) comply with sub-paragraphs (6), (7) and (8) in so far as is reasonably practicable in the circumstances and
- (b) comply with sub-paragraph (12) at all times.

~~(4)~~(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

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

- (a) any costs reasonably incurred by or compensation properly paid by National Grid Electricity Transmission Plc in connection with the acquisition of rights or the exercise of statutory

powers for such apparatus including without limitation all costs incurred by National Grid Electricity Transmission Plc as a consequence of National Grid Electricity Transmission Plc:

- (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 7(3); or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid Electricity Transmission Plc.
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no legal 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 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 article 46 (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**

**16.**—(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 7 (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-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 11; and/or
- (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

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

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

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

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

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

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

### **Enactments and agreements**

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

### **Co-operation**

18.—(1) Where in consequence of the proposed construction of any part of the authorised works the undertaker or National Grid Electricity Transmission Plc requires the removal of apparatus under paragraph 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.

~~(1)~~(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**

19. 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**

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

under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid Electricity Transmission Plc, be determined by arbitration in accordance with article 46 (arbitration).

(2) In respect of disputes arising under paragraphs 12(2), 12(4), 13(1) and 14 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 46 (arbitration) and in accordance with the following:

- (a) the Parties agree the arbitrator will be directed to have regard to the requirements of National Grid Electricity Transmission Plc in respect of safety (as notified by National Grid Electricity Transmission Plc); and
- (b) the arbitrator will either be agreed between the parties, or failing agreement will be appointed on the application of either party (after giving notice in writing to the other) to the President of the Institute of Civil Engineers.

### **Notices**

**21.** Notwithstanding article 43 (service of notices), any plans submitted to National Grid Electricity Transmission Plc by the undertaker pursuant to paragraph 9 must be submitted using the LSBUD system (<https://lsbud.co.uk/>) or to such other address as National Grid Electricity Transmission Plc may from time to time appoint instead for that purpose and notify to the undertaker in writing.



### **3 Annex 2 – Updated Protective Provisions for the benefit of Awel y Môr Offshore Wind Farm Limited**



## PART 9

### For the protection of Awel y Môr

**1.** The provisions of this Part apply for the protection of Awel y Môr unless otherwise agreed in writing between the undertaker and Awel y Môr.

**2.** In this Part—

“access plots” means those parts of the Order limits that includes such parts of the Awel y Môr Order land comprising the land within plots 11-221, 11-222, 11-223, 11-224, 11-225, 11-226, 11-227, 11-231, 11-232, 11-234 and 11-235 shown on the land plans and described in the book of reference, which covers private road, verges, agricultural land, private road off Glascoed road, B5381 and public bridleway (BR 208/32) and access splay;

“apparatus” means the cables, switchgear, structures or other infrastructure owned, occupied or maintained by Awel y Môr or its successor in title within the Awel y Môr Order Land;

“Awel y Môr” means an undertaker with the benefit of all or part of the Awel y Môr Order for the time being;

“Awel y Môr Onshore Works” means the proposed location within the Awel y Môr Order land for any electrical circuit(s), electrical substation infrastructure, construction compound(s) and other onshore infrastructure and works (whether temporary or permanent in nature) authorised by the Awel y Môr Order or by any planning permission intended to operate in conjunction with the Awel y Môr Order

“Awel y Môr Order” means the development consent order made by the Secretary of State in relation to the Awel y Môr Offshore Wind Farm on 19th September 2023;

“Awel y Môr Order land” means Order land as defined in the Awel y Môr Order;

“construction” includes execution, placing, altering, replacing, reconstruction, relaying, maintenance, extensions, enlargement and removal; and “construct” and “constructed” must be construed accordingly;

“Overlap area” means those parts of the Order limits that includes such parts of the Awel y Môr Order land comprising the land within plots 11-200, 11-201, 11-202, 11-203, 11-204, 11-205, 11-206, 11-207 shown on the land plans and described in the book of reference;

“plans” includes sections, drawings, specifications, designs, design data, software, 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 the Awel y Môr Order land;

“specified works” means so much of any works or operations authorised by this Order (or authorised by any planning permission intended to operate in conjunction with this Order) as is—

- (a) within the Overlap area;
- (b) in, on, under, over or within 15 metres of the Awel y Môr Onshore Works or any apparatus;  
or
- (c) may in any way adversely affect any apparatus; and

“temporary works” so much of the specified works which are temporary works as set out within the Order.

**3.** The consent of Awel y Môr under this Part is not required where the Awel y Môr Order has expired without the authorised development having been commenced pursuant to any requirement of Schedule 2 to the Awel y Môr Order.

**4.** Where conditions are included in any consent granted by Awel y Môr pursuant to this Part, the undertaker must comply with the conditions if it chooses to implement or rely on the consent, unless the conditions are waived or varied in writing by Awel y Môr.

**5. The undertaker must not under the powers of this Order—**

- (a) acquire, extinguish, suspend, override or interfere with any rights that Awel y Môr has in respect of any apparatus or the Awel y Môr Onshore Works;
- (b) acquire, extinguish, suspend or override any rights that Awel y Môr has in respect of the access plots pursuant to the Awel y Môr Order;
- (c) acquire the Awel y Môr Order land or acquire any new rights or impose restrictive covenants or exercise any powers of temporary use over or in relation to the Awel y Môr Order land, without the consent of Awel y Môr, which must not be unreasonably withheld or delayed but which may be made subject to reasonable conditions.

**6.—**

(1) The undertaker must for the period of use of the access plots for the purposes of construction of the authorised project coordinate its traffic movements with Awel y Môr, so as to prevent against restricting or impeding Awel y Môr's use of the same..

(2) At least 21 days prior to the submission to the local highway authority of the design of temporary construction access AC-R1 (as identified on the street works and access plan) pursuant to requirement 10, the undertaker will share the proposed access designs and the details of any associated traffic management measures with Awel y Môr and take into account any reasonable representations made by Awel y Môr.

**7.—**(1) The undertaker must not under the powers of this Order carry out any specified works without the consent of Awel y Môr, which must not be unreasonably withheld or delayed but which may be made subject to reasonable conditions and if Awel y Môr does not respond within 56 days then consent is deemed to be given.

(2) Subject to obtaining consent pursuant to sub-paragraph (1) and not less than 56 days before beginning to construct any specified works, the undertaker must submit plans of the specified works to Awel y Môr and must submit such further particulars available to it that Awel y Môr may reasonably require.

(3) Any specified works must be constructed without unreasonable delay in accordance with the plans approved in writing by Awel y Môr.

(4) Any approval of Awel y Môr required under this paragraph may be made subject to such reasonable conditions as may be required for the protection or alteration of any apparatus within the Overlap area or the Awel y Môr Onshore Works or for securing access to any apparatus within the Overlap area or the Awel y Môr Onshore Works.

(5) Where Awel y Môr requires any protective works to be carried out either by themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to Awel y Môr's reasonable satisfaction.

(6) 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 any specified works, new plans instead of the plans previously submitted, and the provisions of this paragraph shall apply to and in respect of the new plans.

**8.—**(1) The undertaker must give to Awel y Môr written notice of completion not more than 14 days after the completion of any specified works.

(2) The undertaker is not required to comply with paragraph 7 or sub-paragraph (1) of this paragraph in a case of emergency, but in that case it must give to Awel y Môr notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonable practicable subsequently and must comply with paragraph 7 in so far as is reasonably practicable in the circumstances.

**9.** The undertaker must at all reasonable times during construction of the specified works allow Awel y Môr and its servants and agents access to the specified works and all reasonable facilities for inspection of the specified works.

**10.**—(1) After the purpose of any temporary works has been accomplished, the undertaker must with all reasonable dispatch, or after a reasonable period of notice in writing from Awel y Môr requiring the undertaker to do so, remove the temporary works, in, on, under, over, or within the Overlap area.

(2) If the undertaker fails to remove the temporary works within a reasonable period of receipt of a notice pursuant to sub-paragraph (1), Awel y Môr may remove the temporary works and may recover the reasonable costs of doing so from the undertaker.

**11.** If in consequence of the exercise of the powers conferred by this Order the access to any apparatus or the Awel y Môr Onshore Works is materially obstructed, the undertaker must provide such alternative means of access to such apparatus or the Awel y Môr Onshore Works as will enable Awel y Môr to maintain or use the apparatus or access the Awel y Môr Onshore Works no less effectively than was possible before the obstruction.

**12.** Subject to paragraph 11, the undertaker must not exercise the powers conferred by this Order to prevent or interfere with the access by Awel y Môr to the Awel y Môr Onshore Works.

**13.** To ensure its compliance with this Part, the undertaker must before carrying out any works or operations pursuant to this Order within the Overlap area request up-to-date written confirmation from Awel y Môr of the location of any apparatus or the Awel y Môr Onshore Works.

**14.** The undertaker and Awel y Môr 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.

**15.** The undertaker must pay to Awel y Môr the reasonable expenses incurred by Awel y Môr in connection with the approval of plans, inspection of any specified works or the alteration or protection of any apparatus or the Awel y Môr Onshore Works.

**16.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction, use, maintenance or failure of any specified works, any damage is caused to any apparatus or there is any interruption in any service provided, or in the supply of any goods, by Awel y Môr, or Awel y Môr becomes liable to pay any amount to any third party, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Awel y Môr in making good such damage or restoring the service or supply; and
- (b) indemnify Awel y Môr for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Awel y Môr, by reason or in consequence of any such damage or interruption or Awel y Môr becoming liable to any third party as aforesaid.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of Awel y Môr, its officers, servants, contractors or agents.

(3) Awel y Môr must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made, unless payment is required in connection with a statutory compensation scheme without first consulting the undertaker and considering its representations.

(4) Awel y Môr must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 16 applies. If requested to do so by the undertaker, Awel y Môr shall provide an explanation of how the claim has been minimised. The undertaker shall only be liable under this paragraph 16 for claims reasonably incurred by Awel y Môr

(5) The fact that any work or thing has been executed or done with the consent of Awel y Môr and in accordance with any conditions or restrictions prescribed by Awel y Môr or in accordance with any plans approved by Awel y Môr or to its satisfaction or in accordance with any directions or award of any arbitrator does not relieve the undertaker from any liability under this Part.

**17.** Any dispute arising between the undertaker and Awel y Môr under this Part must be determined by arbitration under article 46 (arbitration).

## PART 9

### For the protection of Awel y Môr

**1.** The provisions of this Part apply for the protection of Awel y Môr unless otherwise agreed in writing between the undertaker and Awel y Môr.

**2.** In this Part—

“access plots” means those parts of the Order limits that includes such parts of the Awel y Môr Order land comprising the land within plots 11-221, 11-222, 11-223, 11-224, 11-225, 11-226, 11-227, 11-231, 11-232, 11-234 and 11-235 shown on the land plans and described in the book of reference, which covers private road, verges, agricultural land, private road off Glascoed road, B5381 and public bridleway (BR 208/32) and access splay;

“apparatus” means the cables, switchgear, structures or other infrastructure owned, occupied or maintained by Awel y Môr or its successor in title within the Awel y Môr Order Land;

“Awel y Môr” means an undertaker with the benefit of all or part of the Awel y Môr Order for the time being;

“Awel y Môr Onshore Works” means the proposed location within the Awel y Môr Order land for any electrical circuit(s), electrical substation infrastructure, construction compound(s) and other onshore infrastructure and works (whether temporary or permanent in nature) authorised by the Awel y Môr Order or by any planning permission intended to operate in conjunction with the Awel y Môr Order

“Awel y Môr Order” means the development consent order made by the Secretary of State in relation to the Awel y Môr Offshore Wind Farm on 19th September 2023;

“Awel y Môr Order land” means Order land as defined in the Awel y Môr Order;

“construction” includes execution, placing, altering, replacing, reconstruction, relaying, maintenance, extensions, enlargement and removal; and “construct” and “constructed” must be construed accordingly;

“Overlap area” means those parts of the Order limits that includes such parts of the Awel y Môr Order land comprising the land within plots 11-200, 11-201, 11-202, 11-203, 11-204, 11-205, 11-206, 11-207 shown on the land plans and described in the book of reference;

“plans” includes sections, drawings, specifications, designs, design data, software, 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 the Awel y Môr Order land;

“specified works” means so much of any works or operations authorised by this Order (or authorised by any planning permission intended to operate in conjunction with this Order) as is—

- (a) within the Overlap area;
- (b) in, on, under, over or within 15 metres of the Awel y Môr Onshore Works or any apparatus;  
or
- (c) may in any way adversely affect any apparatus; and

“temporary works” so much of the specified works which are temporary works as set out within the Order.

**3.** The consent of Awel y Môr under this Part is not required where the Awel y Môr Order has expired without the authorised development having been commenced pursuant to any requirement of Schedule 2 to the Awel y Môr Order.

**4.** Where conditions are included in any consent granted by Awel y Môr pursuant to this Part, the undertaker must comply with the conditions if it chooses to implement or rely on the consent, unless the conditions are waived or varied in writing by Awel y Môr.

5. The undertaker must not under the powers of this Order—

(a) acquire, extinguish, suspend, override or interfere with any rights that Awel y Môr has in respect of any apparatus or the Awel y Môr Onshore Works;

(b) acquire, extinguish, suspend or override any rights that Awel y Môr has in respect of the access plots pursuant to the Awel y Môr Order;

~~(b)~~(c) acquire the Awel y Môr Order land or acquire any new rights or impose restrictive covenants or exercise any powers of temporary use over or in relation to the Awel y Môr Order land, without the consent of Awel y Môr, which must not be unreasonably withheld or delayed but which may be made subject to reasonable conditions.

6.—(1) The undertaker must for the period of use of the access plots for the purposes of construction of the authorised project coordinate its traffic movements with Awel y Môr, so as to prevent against restricting or impeding Awel y Môr’s use of the same..

(2) At least 21 days prior to the submission to the local highway authority of the design of temporary construction access AC-R1 (as identified on the street works and access plan) pursuant to requirement 10, the undertaker will share the proposed access designs and the details of any associated traffic management measures with Awel y Môr and take into account any reasonable representations made by Awel y Môr.

~~6.7.~~—(1) The undertaker must not under the powers of this Order carry out any specified works without the consent of Awel y Môr, which must not be unreasonably withheld or delayed but which may be made subject to reasonable conditions and if Awel y Môr does not respond within 56 days then consent is deemed to be given.

(2) Subject to obtaining consent pursuant to sub-paragraph (1) and not less than 56 days before beginning to construct any specified works, the undertaker must submit plans of the specified works to Awel y Môr and must submit such further particulars available to it that Awel y Môr may reasonably require.

(3) Any specified works must be constructed without unreasonable delay in accordance with the plans approved in writing by Awel y Môr.

(4) Any approval of Awel y Môr required under this paragraph may be made subject to such reasonable conditions as may be required for the protection or alteration of any apparatus within the Overlap area or the Awel y Môr Onshore Works or for securing access to any apparatus within the Overlap area or the Awel y Môr Onshore Works.

(5) Where Awel y Môr requires any protective works to be carried out either by themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to Awel y Môr’s reasonable satisfaction.

(6) 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 any specified works, new plans instead of the plans previously submitted, and the provisions of this paragraph shall apply to and in respect of the new plans.

~~7.8.~~—(1) The undertaker must give to Awel y Môr written notice of completion not more than 14 days after the completion of any specified works.

(2) The undertaker is not required to comply with paragraph 7 or sub-paragraph (1) of this paragraph in a case of emergency, but in that case it must give to Awel y Môr notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonable practicable subsequently and must comply with paragraph 7 in so far as is reasonably practicable in the circumstances.

~~8.9.~~ The undertaker must at all reasonable times during construction of the specified works allow Awel y Môr and its servants and agents access to the specified works and all reasonable facilities for inspection of the specified works.

~~9.10.~~—(1) After the purpose of any temporary works has been accomplished, the undertaker must with all reasonable dispatch, or after a reasonable period of notice in writing from Awel y Môr

requiring the undertaker to do so, remove the temporary works, in, on, under, over, or within the Overlap area.

(2) If the undertaker fails to remove the temporary works within a reasonable period of receipt of a notice pursuant to sub-paragraph (1), Awel y Môr may remove the temporary works and may recover the reasonable costs of doing so from the undertaker.

~~10.11.~~ If in consequence of the exercise of the powers conferred by this Order the access to any apparatus or the Awel y Môr Onshore Works is materially obstructed, the undertaker must provide such alternative means of access to such apparatus or the Awel y Môr Onshore Works as will enable Awel y Môr to maintain or use the apparatus or access the Awel y Môr Onshore Works no less effectively than was possible before the obstruction.

~~11.12.~~ Subject to paragraph 11, the undertaker must not exercise the powers conferred by this Order to prevent or interfere with the access by Awel y Môr to the Awel y Môr Onshore Works.

~~12.13.~~ To ensure its compliance with this Part, the undertaker must before carrying out any works or operations pursuant to this Order within the Overlap area request up-to-date written confirmation from Awel y Môr of the location of any apparatus or the Awel y Môr Onshore Works.

~~13.14.~~ The undertaker and Awel y Môr 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.

~~14.15.~~ The undertaker must pay to Awel y Môr the reasonable expenses incurred by Awel y Môr in connection with the approval of plans, inspection of any specified works or the alteration or protection of any apparatus or the Awel y Môr Onshore Works.

~~15.16.~~—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction, use, maintenance or failure of any specified works, any damage is caused to any apparatus or there is any interruption in any service provided, or in the supply of any goods, by Awel y Môr, or Awel y Môr becomes liable to pay any amount to any third party, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Awel y Môr in making good such damage or restoring the service or supply; and
- (b) indemnify Awel y Môr for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Awel y Môr, by reason or in consequence of any such damage or interruption or Awel y Môr becoming liable to any third party as aforesaid.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of Awel y Môr, its officers, servants, contractors or agents.

(3) Awel y Môr must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made, unless payment is required in connection with a statutory compensation scheme without first consulting the undertaker and considering its representations.

(4) Awel y Môr must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 16 applies. If requested to do so by the undertaker, Awel y Môr shall provide an explanation of how the claim has been minimised. The undertaker shall only be liable under this paragraph 16 for claims reasonably incurred by Awel y Môr

(5) The fact that any work or thing has been executed or done with the consent of Awel y Môr and in accordance with any conditions or restrictions prescribed by Awel y Môr or in accordance with any plans approved by Awel y Môr or to its satisfaction or in accordance with any directions or award of any arbitrator does not relieve the undertaker from any liability under this Part.

~~16.17.~~ Any dispute arising between the undertaker and Awel y Môr under this Part must be determined by arbitration under article 46 (arbitration).