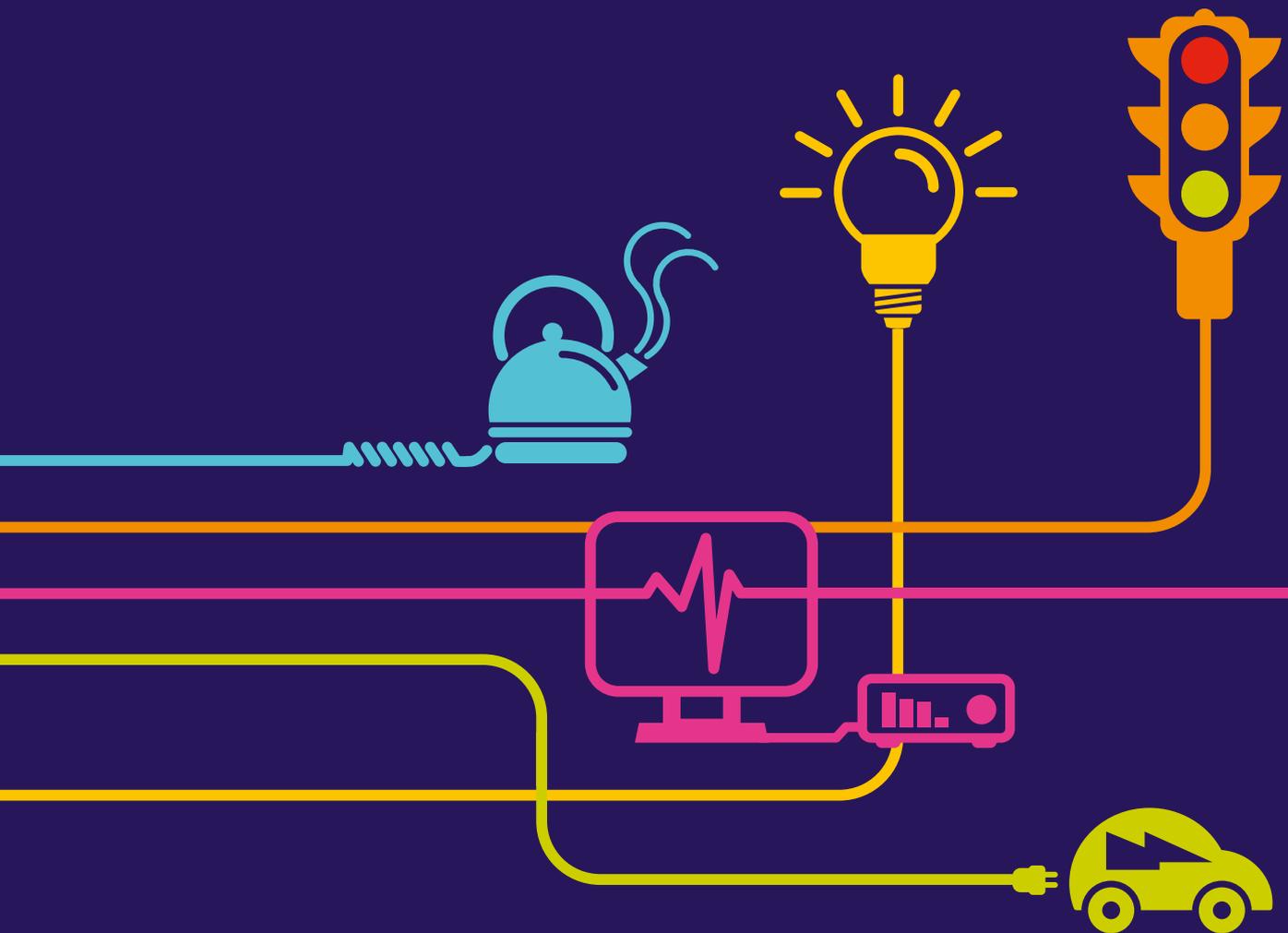


Update to Examining Authority -  
Proposed Agreement between National  
Grid and the Councils pursuant to  
section 106 of the Town and Country  
Planning Act 1990

National Grid (Richborough Connection Project) Order





## **Richborough Connection Project**

### **Volume 8**

#### **8.61 Update to Examining Authority – Proposed Agreement between National Grid and the Councils pursuant to section 106 of the Town and Country Planning Act 1990**

National Grid  
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November 2016

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## 1. UPDATE TO EXAMINING AUTHORITY

### 1.1 Proposed section 106 agreement

- 1.1.1 This document updates **Document 8.56** 'Update to Examining Authority on National Grid's proposals with regard to development consent obligations' submitted at Deadline 7.
- 1.1.2 National Grid has continued to work with the Councils and has now received confirmation from all the Councils (Dover District Council, Thanet District Council, Canterbury City Council and Kent County Council) of agreement with the section 106 agreement.
- 1.1.3 Kent County Council provided three minor amendments to the proposed agreement as submitted at Deadline 7, these changes have now been made and are reflected in the final proposed section 106 agreement as submitted at **Appendix 1 to this note**. For ease of reference, the proposed changes have been made at Clause 7.2 and Clause 10.4. No further changes have been made to the agreement.
- 1.1.4 National Grid has now issued engrossments of the section 106 agreement to be sealed by the Councils as soon as possible, and we are working towards submission of the sealed section 106 agreement before the close of the Examination on 8 December 2016.
- 1.1.5 As National Grid has now reached agreement with all four Councils on the proposed section 106 agreement, it is no longer anticipated that a unilateral undertaking will be necessary as submitted at Appendix 2 to **Document 8.56**.

## **APPENDIX 1: PROPOSED SECTION 106 AGREEMENT**

[AGREED – 18.11.2016]

**DATED** \_\_\_\_\_ [ \_\_\_\_\_ ] **2016**

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- (1) **CANTERBURY CITY COUNCIL**
- (2) **DOVER DISTRICT COUNCIL**
- (3) **THE KENT COUNTY COUNCIL**
- (4) **THANET DISTRICT COUNCIL; AND**
- (5) **NATIONAL GRID ELECTRICITY TRANSMISSION PLC**
- 

**DEED**

**Pursuant to section 106 of the  
Town and Country Planning Act 1990 and section 111 of the Local  
Government Act 1972 relating to the**

**RICHBOROUGH CONNECTION PROJECT**

---



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This agreement is dated the

day of

2016

**BETWEEN**

- (1) **CANTERBURY CITY COUNCIL** of Council Offices, Military Road, Canterbury, Kent, CT1 1YW (**CCC**);
- (2) **DOVER DISTRICT COUNCIL** of White Cliffs Business Park, Dover, CT16 3PJ (**DDC**);
- (3) **THE KENT COUNTY COUNCIL** of County Hall, Maidstone, Kent, ME14 1XQ (**KCC**);
- (4) **THANET DISTRICT COUNCIL** of Cecil Street, Margate, Kent, CT9 1XZ (**TDC**); and
- (5) **NATIONAL GRID ELECTRICITY TRANSMISSION PLC** (Company registration number 2366977) whose registered office is at 1 – 3 Strand, London WC2N 5EH (**National Grid**).

**WHEREAS**

- (A) CCC is the local planning authority for an administrative area in respect of which part of the Richborough Connection Project is situated;
- (B) DDC is the local planning authority for an administrative area in respect of which part of the Richborough Connection Project is situated;
- (C) KCC is the lead local flood authority, highway authority and the waste planning authority for an administrative area in respect of which the Richborough Connection Project is situated;
- (D) TDC is the local planning authority for an administrative area in respect of which part of the Richborough Connection Project is situated;
- (E) National Grid is the registered proprietor of freehold and long leasehold interests in the land registered at the Land Registry under the title numbers set out in **Schedule 1**;
- (F) On 14 January 2016 National Grid applied to the Secretary of State for Energy and Climate Change (c/o The Planning Inspectorate) under section 37 of the Planning Act 2008 for a Development Consent Order entitled 'The National Grid (Richborough Connection Project) Development Consent Order' (**the Development Consent Order**);
- (G) The Development Consent Order would enable National Grid to acquire rights in land, to construct various works and exercise powers for the purposes of, and in connection with, the construction of works proposed to be authorised by the Development Consent Order, namely works to the national electricity transmission system between Canterbury and Richborough; and
- (H) The Parties to this Deed have agreed to enter into this Deed in order to secure the development consent obligations contained in this Deed.

**NOW IT IS HEREBY AGREED AS FOLLOWS**

## 1 Interpretation

1.1 In this Deed the following terms and expressions have the following respective meanings unless otherwise stated:

<b>1972 Act</b>	means the Local Government Act 1972;
<b>1990 Act</b>	means the Town and Country Planning Act 1990;
<b>2008 Act</b>	means the Planning Act 2008;
<b>Application</b>	means the application submitted by National Grid to the Secretary of State on 14 January 2016, pursuant to section 37 of the 2008 Act for the Order to grant development consent for the Richborough Connection Project;
<b>Authorised Development</b>	has the meaning ascribed to that term within the Development Consent Order;
<b>Business Day</b>	means any day apart from Saturday, Sunday and any statutory bank holiday on which clearing banks are open in England for the transaction of ordinary business;
<b>CIL</b>	means the charge created pursuant to section 205 of the 2008 Act and Regulation 3 of the CIL Regulations and referred to as the Community Infrastructure Levy in those enactments;
<b>CIL Regulations</b>	means the Community Infrastructure Levy Regulations 2010;
<b>Commencement</b>	means the carrying out of a material operation as defined in section 155 of the 2008 Act comprised in the Project and the words 'Commence' and 'Commenced' and cognate expressions shall be construed accordingly;
<b>Commencement Date</b>	means the date of Commencement of the Authorised Development pursuant to the Development Consent Order;
<b>Construction Period</b>	means the period between the Commencement Date and the date when the exercise of the temporary powers in the Development Consent Order to enable the Authorised Development to be constructed has ceased;
<b>Councils</b>	means CCC, DDC, TDC and KCC or (as the context may require) any one or more of them;
<b>Development Consent Order</b>	means the development consent order entitled The National Grid (Richborough Connection Project) Development Consent Order which may be made by the Secretary of State pursuant to the Application;
<b>Dispute</b>	means any dispute, issue, difference or claim as between the Parties in respect of any matter contained in or arising from or

relating to this Deed or the Parties' obligations and rights pursuant to it (other than in respect of any matter of law);

<b>Expert</b>	means an independent person appointed in accordance with the provisions of Clause 9 to determine a dispute between the Parties to this Deed;
<b>Order Land</b>	has the meaning ascribed to that term within the Development Consent Order;
<b>Requirement</b>	means a requirement of the Development Consent Order;
<b>Secretary of State</b>	means the Secretary of State for Business, Energy and Industrial Strategy;
<b>Sites</b>	means the land identified in <b>Schedule 1</b> ;
<b>Stage</b>	means a stage of the Authorised Development as defined by the Development Consent Order; and
<b>UK Power Networks</b>	means UK Power Networks Operations Limited (registered company number 03870728) and / or its affiliate South Eastern Power Networks plc (registered company number 03043097) as applicable.

## 1.2 In interpreting this Deed:

- 1.2.1 words incorporating the singular shall include the plural and vice versa, words importing any gender include every gender;
- 1.2.2 words incorporating persons shall include firms, companies and corporations and vice versa;
- 1.2.3 references to the Councils shall include any successors to their relevant statutory and other functions;
- 1.2.4 references to National Grid shall include references to the successors in title to its interests in the Sites and persons deriving title therefrom (except where the contrary is expressly provided) and permitted assignees;
- 1.2.5 references to UK Power Networks shall include references to the successors in title to its interests in the Order Land and functions and persons deriving title therefrom (except where the contrary is expressly provided) and permitted assignees or successor to their functions;
- 1.2.6 references to numbered Clauses, Paragraphs or Schedules are unless otherwise stated references to the relevant Clauses of, Paragraphs of and Schedules to this Deed;
- 1.2.7 references to numbered articles are unless otherwise stated references to the numbered articles comprised within the Development Consent Order comprised

within the Application but are to be interpreted as being adjusted to the extent necessary to accord with the provisions of the Development Consent Order as made;

- 1.2.8 words denoting a requirement or an obligation on a Party to do any act, matter or thing include an obligation to procure that it can be done and words placing a party under a restriction include an obligation not to cause, permit or suffer any infringement of the restriction;
- 1.2.9 references in this Deed to statutes, by-laws, regulations, orders and delegated legislation shall include any statute, by-law, regulation, order or delegated legislation amending, re-enacting or made pursuant to the same as current and in force from time to time;
- 1.2.10 if any provision of this Deed shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be deemed thereby to be affected, impaired or called into question;
- 1.2.11 the recitals and headings in this Deed are for ease of reference only and shall not affect its construction or otherwise have any binding legal effect;
- 1.2.12 in the event of any conflict between the provisions of this Deed and of any document annexed hereto or referred to herein, the provisions of this Deed shall prevail;
- 1.2.13 references to 'the Parties' shall mean the Parties to this Deed and reference to a 'Party' shall mean any one of the Parties;
- 1.2.14 references to 'notice' shall mean notice in writing;
- 1.2.15 references to 'including' shall mean including without limitation;
- 1.2.16 terms and expressions defined in the Schedules shall have the meanings specified wherever those terms and expressions are used in this Deed;
- 1.2.17 the Interpretation Act 1978 shall apply to this Deed; and
- 1.2.18 where any payment in this Deed is expressed to be payable before an event or activity that event or activity shall not commence or continue unless and until the relevant payment has been received in full, in clear funds.

## **2 Legal Effect**

- 2.1 This Deed is made pursuant to section 106 of the 1990 Act, section 111 of the 1972 Act and all other enabling powers.
- 2.2 The covenants contained in the Schedules are planning obligations in the form of development consent obligations (to the extent that they are capable of so being and any covenants contained herein which are not planning obligations are entered into pursuant to section 111 of the 1972 Act) in relation to the land described in **Schedule 1** for the purposes

of section 106 of the 1990 Act and are enforceable by each of the Councils identified within Schedule 1 in its capacity:

2.2.1 as local planning authority or local highway authority as appropriate; and / or

2.2.2 as a party to this Deed.

2.3 If an act or omission of UK Power Networks would constitute a breach of the terms of this Deed if it had been an act or omission on the part of National Grid, then the Councils may enforce this Deed against National Grid as if that were the case.

2.4 This Deed is a local land charge and shall be registered as such in accordance with paragraph 1 of **Schedule 4**.

### **3 Conditionality**

3.1 Subject to Clauses 3.2 and 3.3, the Parties agree that the Schedules to this Deed shall have operative effect as follows:

3.1.1 the provisions of Schedule 6 (other than paragraph 3) shall have operative effect from the date of this Deed;

3.1.2 paragraph 3 of Schedule 6 and any obligations in the other Schedules that must be complied with prior to the Commencement Date shall have operative effect upon the making of the Development Consent Order; and

3.1.3 the remaining provisions of the other Schedules shall have operative effect upon the Commencement Date.

3.2 In the event that the Development Consent Order becomes the subject of any judicial review proceedings:

3.2.1 until such time as such proceedings including any appeal have been finally determined, the terms and provisions of this Deed will remain without operational effect unless the Authorised Development has been Commenced;

3.2.2 if following the final determination of such proceedings the Development Consent Order is quashed and, in the event that the court orders the Application to be remitted to the Secretary of State, the Application is subsequently refused, this Deed will cease to have any further effect and any money paid to the Councils pursuant to the Schedules and not spent or committed by the Councils shall be repaid in full within 56 days of the final determination of such proceedings; and

3.2.3 if following the final determination of such proceedings the Authorised Development is capable of being Commenced, then this Deed will take effect in accordance with its terms.

3.3 For the purposes of this Deed, proceedings by way of judicial review are finally determined:

3.3.1 when permission to bring a claim for judicial review has been refused and no further application may be made;

- 3.3.2 when the court has given judgment in the matter and the time for making an appeal expires without an appeal having been made or permission to appeal is refused; or
- 3.3.3 when any appeal is finally determined and no further appeal may be made.

#### **4 Development Consent Obligations**

- 4.1 National Grid covenants with the Councils to perform:
  - 4.1.1 the development consent obligations contained within the Schedules; and
  - 4.1.2 any other obligations which are not development consent obligations contained in the Schedules pursuant to section 111 of the 1972 Act and all other powers so enabling, in each case so far as they relate to National Grid's land interests in the Order Land from time to time.
- 4.2 CCC, DDC, KCC and TDC each covenants with National Grid to perform the obligations on their respective parts contained within the Schedules.
- 4.3 The Parties agree that the development consent obligations contained in this Deed will not be enforceable against UK Power Networks or any owner of any land interest in the Sites or the Order Land who is not a party to this Deed nor against any successors in title to or permitted assignees or any person claiming through or under UK Power Network's or other such owner's interest in the Sites or the Order Land (save for National Grid) unless that person itself undertakes any part of the Authorised Development.

#### **5 Release**

- 5.1 Subject to Clause 5.2 National Grid and its successors in title and those deriving title from them shall, upon disposing of the whole or any part of their respective interests in the Sites, be released from all obligations in this Deed in relation to that interest or the relevant part thereof (as the case may be) but without prejudice to the rights of the parties in relation to any antecedent breach of those obligations.
- 5.2 In the event that National Grid no longer enjoys an interest in the Sites but is still the undertaker for the purposes of the Development Consent Order, this Deed shall remain enforceable against it by the Councils.
- 5.3 National Grid shall not, pursuant to article 7, transfer the benefit of the Development Consent Order unless the party to which it proposes to effect the transfer has first entered into a Deed with the Councils on terms equivalent to this Deed.

#### **6 Further Planning Permissions and Development Consent Orders**

- 6.1 Nothing in this Deed shall be construed as prohibiting or limiting the rights of National Grid to use or develop any part of the Sites or the Order Land in accordance with and to the extent permitted by a certificate of lawfulness of existing use or development, permitted development rights, planning permission, development consent or other statutory authority other than the Development Consent Order.

## **7 Expiry or Revocation**

- 7.1 If the Development Consent Order expires or is revoked prior to the Commencement Date then this Deed shall forthwith determine and cease to have effect and CCC, DDC and TDC will forthwith cancel all entries made in their respective registers of local land charges in respect of this Deed.
- 7.2 Any monies paid to the Councils pursuant to the Schedules and not spent or contractually committed at the time of termination of this Deed under this Clause shall be repaid in full within 56 days of termination.

## **8 Certificates of Compliance**

- 8.1 CCC, DDC, KCC and TDC (as appropriate) will upon request by National Grid certify compliance or partial compliance with the provisions of this Deed.
- 8.2 If so requested by National Grid each relevant Council will (subject to National Grid reimbursing legal costs properly and reasonably incurred by each relevant Council in connection thereto (in each case up to but not exceeding the sum of £500 (Five Hundred Pounds Sterling) together with any irrecoverable VAT and subject to the provisions of Clauses 20.2 and 20.3) execute a deed of release or partial release from the relevant provisions of this Deed and promptly register the same in the register of local land charges maintained by CCC, DDC, and TDC (as appropriate).
- 8.3 Where CCC, DDC, KCC and TDC (as appropriate) is obliged to execute a deed of release or partial release pursuant to Clause 8.2, the other parties to this Deed shall (subject to National Grid reimbursing legal costs properly and reasonably incurred by the relevant Council(s) in connection thereto) enter into such deed to the extent necessary to effect such release or partial release.

## **9 Resolution of Disputes**

- 9.1 In the event of any Dispute arising between the Parties, the Parties will attempt to resolve that Dispute amicably including holding a meeting attended by at least one representative from each Party.
- 9.2 If the Parties are unable to resolve the Dispute amicably pursuant to Clause 9.1, one Party may by serving notice on all other Parties ('the Notice') refer the Dispute to an Expert for determination.
- 9.3 The Notice must specify:
- 9.3.1 the nature, basis and brief description of the Dispute;
  - 9.3.2 the Clause or Paragraph of this Deed pursuant to which the Dispute has arisen; and
  - 9.3.3 the proposed Expert.
- 9.4 In the event that the disputant Parties are unable to agree whom should be appointed as the Expert within 10 Business Days after the date of the Notice then any disputant Party may

request the President of the Law Society to nominate the Expert at the joint expense of the Parties in Dispute, and the Party making the request shall further request that such a nomination should be made within 10 Business Days of the request, and any failure for such nomination to be made within 10 Business Days shall entitle any Party to withdraw from the process of appointing an Expert and to refer the Dispute to the courts of England and Wales instead.

9.5 The Expert shall act as an expert and not as an arbitrator and the Expert's decision will (in the absence of manifest error) be final and binding on the Parties and the Parties in Dispute shall bear the costs associated with the Expert's determination of the Dispute:

9.5.1 in such manner as the Expert may determine and in doing so the Expert shall take into account the reasonableness of the Parties' respective positions leading to the Dispute arising between them and thereafter before its determination; or

9.5.2 in the event that the Expert makes no determination as to costs, such costs will be borne by the Parties in Dispute in equal shares.

9.6 The Expert will be appointed subject to an express requirement that he or she reaches a decision and communicates it to the Parties within the minimum practicable timescale allowing for the nature and complexity of the Dispute and in any event not more than 28 Business Days from the date of the Expert's appointment to act.

9.7 The Expert will be required to give notice to each of the Parties inviting each of them to submit to the Expert within 10 Business Days written submissions and supporting material and will afford to each of the Parties an opportunity to make counter submissions within a further 5 Business Days in respect of any such submission and material.

## **10 Notices**

10.1 Any notice, consent or approval required to be given under this Deed shall be in writing (in each case annotated with the reference 'Richborough Connection Project') and shall be sent to the address and marked for the attention of the persons identified below or instead to such other persons or address as may be notified by the Parties from time to time.

10.2 Any such notice must be delivered by hand or sent by first class post, registered delivery or courier service and shall conclusively be deemed, in the absence of evidence of earlier receipt, to have been received:

10.2.1 if delivered by hand, on the next Business Day after the day of delivery; and

10.2.2 if sent by first class post, registered delivery or courier service within the United Kingdom, on the day falling 2 Business Days after the day posting or dispatch, exclusive of the day of posting or dispatch.

10.3 The address for service of any such notice, consent or approval as aforesaid is:

10.3.1 in the case of service upon CCC, the address provided at the front of this Deed or such other address for service as CCC may from time to time designate by written notice to the other Parties and any such notice shall be marked for the attention of the Head of Planning;

- 10.3.2 in the case of service upon DDC, the address provided at the front of this Deed or such other address for service as DDC may from time to time designate by written notice to the other Parties and any such notice shall be marked for the attention of the Head of Regeneration and Development;
  - 10.3.3 in the case of service upon KCC, the address provided at the front of this Deed or such other address for service as KCC may from time to time designate by written notice to the other Parties and any such notice shall be marked for the attention of the Head of Planning Applications;
  - 10.3.4 in the case of service upon TDC, the address provided at the front of this Deed or such other address for service as TDC may from time to time designate by written notice to the other Parties and any such notice shall be marked for the attention of the Planning Applications Manager;
  - 10.3.5 in the case of service upon National Grid, the address provided at the front of this Deed or such other address for service as National Grid may from time to time designate by written notice to the other Parties and any such notice shall be marked for the attention of the Company Secretary.
- 10.4 A Party or its successor may from time to time expressly give notice that it will accept service of notices, consents or approvals by electronic means, as specified in the notice and if it has done so, service upon that Party may (but need not) be affected in the manner so specified in the last such notice in addition to, or instead of, service by hand or by any other means set out in Clause 10.2 and a document served by electronic means shall be deemed served on the next Business Day after sending.

## **11 Notice of Authorised Development**

11.1 National Grid shall provide notice to each of the other Parties to this Deed:

11.1.1 not later than 10 Business Days prior to:

- (a) the intended Commencement Date; and
- (b) in respect of each Stage of the Authorised Development, the intended date of Commencement of that Stage

and the obligations in this Clause 11.1.1 shall re-apply in the event that Commencement does not occur on the intended date.

11.1.2 within 10 Business Days of the occurrence of each of the following:

- (a) the Commencement Date;
- (b) each Stage;
- (c) the day on which the Construction Period ends; and
- (d) the day on which the Authorised Development is energised.

## **12 Community Infrastructure Levy**

- 12.1 The Parties hereby acknowledge and agree that this Deed has been negotiated and agreed on the assumption that liability to CIL does not arise in respect of the Authorised Development because it does not include anything done by way of or for the purpose of the creation of a new building or anything done to or in respect of an existing building.

## **13 VAT**

- 13.1 If this Deed or anything contained in it gives rise to a taxable supply for VAT purposes by the Councils to National Grid then the Councils shall use all reasonable endeavours to recover VAT in the first instance.
- 13.2 If this Deed or anything contained in it gives rise to a taxable supply for VAT purposes by the Councils to National Grid then, subject to the Councils complying with Clause 13.1 National Grid shall pay to the relevant Council or third party an amount equal to the VAT chargeable in addition to and at the same time as any payment or the provision of any other consideration for such supply upon provision of a valid VAT invoice addressed to National Grid.

## **14 Approvals**

Where any approval, agreement, consent, confirmation or an expression of satisfaction is required under the terms of this Deed such approval, agreement, consent, confirmation or expression of satisfaction shall be given in writing and shall not be unreasonably withheld or delayed.

## **15 Councils' Powers**

Nothing in this Deed shall fetter the statutory rights, powers or duties of the Councils and in particular, advice given for the purposes of Schedule 3 on or in relation to a Draft Submission shall not predetermine any decision made by the Councils on or in relation to a Final Submission.

## **16 Good Faith**

The parties agree with each other to act reasonably and in good faith in the discharge of the obligations contained in this Deed.

## **17 Rights of Third Parties**

It is not intended that any person who is not a party to this Deed shall have any right under the Contracts (Third Parties) Act 1999 to enforce any term of this Deed.

## **18 Jurisdiction**

- 18.1 This Deed including its construction, validity, performance and enforcement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-

contractual disputes or claims) shall be governed by and construed in accordance with English law.

- 18.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims).

## **19 Variations**

- 19.1 No variation of this Deed shall be effective unless it is in writing and duly executed on behalf of each of the Parties.

## **20 Costs**

- 20.1 National Grid shall, on completion of this Deed and subject to the provisions of Clause 20.2 and 20.3, pay the proper and reasonable legal costs incurred by the Councils (in each case up to but not exceeding the sum of £1500 (Fifteen Hundred Pounds Sterling) together with any irrecoverable VAT) in the negotiation and completion of this Deed.

- 20.2 Each Council shall:

20.2.1 submit to National Grid estimates of the legal costs that it expects to recover from National Grid under any provision of this Agreement in advance of incurring such costs;

20.2.2 use reasonable endeavours not to incur costs in exceedance of any estimate given to National Grid; and

20.2.3 advise National Grid of any proposed change to a cost estimate previously provided before incurring costs in exceedance of that estimate.

- 20.3 National Grid shall reimburse costs following receipt of an invoice together with appropriate evidence of the costs incurred.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

**SCHEDULE 1****SITES**

<b>County Council</b>	<b>District Council</b>	<b>Title Number</b>	<b>Estate held by National Grid</b>
Kent County Council	Canterbury City Council	K272017	Freehold
		K80540	Freehold
		K116535	Freehold
		K84411	Freehold
	Dover District Council	TT49032	Leasehold
	Thanet District Council	TT49032	Leasehold

## SCHEDULE 2

### LANDSCAPE AND HABITAT ENHANCEMENT SCHEME

#### 1 Interpretation

1.1 In this Schedule the following terms and expressions have the following respective meanings unless otherwise stated:

**Completion Report** means a report produced by National Grid detailing the steps taken to implement the Original Landscape and Habitat Enhancement Scheme and / or any Replacement Landscape and Habitat Enhancement Scheme;

**Landscape and Habitat Enhancement Delivery Scheme** means a written programme for the timing of the delivery of the Original Landscape and Habitat Enhancement Scheme (or any Replacement Landscape and Habitat Enhancement Scheme) for each Stage of the Authorised Development which programme shall not take effect until it has been submitted to the relevant Councils;

**Original Landscape and Habitat Enhancement Scheme** means **Document 5.8** of the Application (as the same may be amended by National Grid during the examination of the Application and / or by the Secretary of State in reaching a decision on whether to make the Development Consent Order); and

**Replacement Landscape and Habitat Enhancement Scheme** means any replacement to the Original Landscape and Habitat Enhancement Scheme.

#### 2 Delivery of Landscape and Habitat Enhancement Scheme

2.1 No Stage of the Authorised Development (other than any division that the Parties may agree in writing) shall commence until a Landscape and Habitat Enhancement Delivery Scheme for that Stage has been submitted to and approved in writing by the relevant Councils.

2.2 Not later than the date falling 25 Business Days after the date on which it receives a submission from National Grid in accordance with paragraph 2.1, each relevant Council shall notify National Grid in writing as to whether or not it approves the Landscape and Habitat Enhancement Delivery Scheme submitted.

2.3 National Grid shall use reasonable endeavours to deliver the Original Landscape and Habitat Enhancement Scheme in accordance with the relevant approved Landscape and Habitat Enhancement Delivery Scheme(s).

- 2.4 In the event that the Original Landscape and Habitat Enhancement Scheme (or any part of it) cannot be delivered in accordance with the Landscape and Habitat Enhancement Delivery Scheme National Grid shall:
- 2.4.1 prepare a Replacement Landscape and Habitat Enhancement Scheme;
  - 2.4.2 consult the relevant Councils on the Replacement Landscape and Habitat Enhancement Scheme and the timing for its delivery and have regard to any reasonable representations made within 25 Business Days of the consultation; and
  - 2.4.3 having done so, National Grid shall use reasonable endeavours to deliver the Replacement Landscape and Habitat Enhancement Scheme in accordance with the timescales consulted upon in accordance with paragraph 2.4.2.
- 2.5 National Grid will reimburse reasonable costs incurred by the relevant Councils in considering and making representations in relation to any Replacement Landscape and Habitat Enhancement Scheme consultation undertaken by National Grid in accordance with paragraph 2.4.2.
- 2.6 Upon completion of the Original Landscape and Habitat Enhancement Scheme or any Replacement Landscape and Habitat Enhancement Scheme National Grid will submit the Completion Report to the relevant Councils.
- 2.7 National Grid will manage and maintain for a period of not less than five years from the date of planting all of the landscape and habitat enhancements delivered under the Original Landscape and Habitat Enhancement Scheme or any Replacement Landscape and Habitat Enhancement Scheme and shall replace any planting lost within that five year period.

**SCHEDULE 3**  
**SERVICE LEVEL AGREEMENT**

**1 Interpretation**

1.1 In this Schedule the following terms and expressions have the following respective meanings unless otherwise stated:

**Discharged in Principle** means written advice from a suitably qualified officer or external advisor of the relevant Council(s) in respect of any Draft Submission that, in his or her opinion, a Final Submission (in the same form as the Draft Submission) would be sufficient to discharge a Requirement;

**Draft Submission** means a draft version of information designed to achieve the discharge of one or more Requirement;

**Requirement** means any one of the Requirements contained within Schedule 3 to the Development Consent Order in the form they take following a decision by the Secretary of State to make the Development Consent Order;

**Final Submission** means an application (including any documents, materials or information, whether submitted contemporaneously or otherwise, relied upon in support of the application) to discharge one or more Requirements;

**Post-Decision Period** means the period which begins on the date the Secretary of State issues a decision to grant the Development Consent Order and ends on the date on which the final Requirement is discharged; and

**Reasonable Costs** means reasonable additional costs incurred by each Council in compliance with its obligations under paragraph 3 of this Schedule.

**2 Application**

2.1 For the purposes of this Deed only, this Schedule shall apply to the Councils in the exercise of their role as local planning authorities, or, in the case of KCC, as the relevant highway, drainage or waste authority as the case may be.

**3 Post-Decision Period**

3.1 The Parties hereby agree that discussions and engagement relating to the discharge of Requirements shall continue between National Grid and the relevant Council(s) during the Post-Decision Period and in particular that monthly meetings shall continue to take place,

either in person or by telephone, as appropriate, in accordance with the provisions of this Schedule.

3.2 The Parties hereby agree that National Grid may provide Draft Submissions to the relevant Council(s) during the Post-Decision Period.

3.3 Upon receipt of a Draft Submission from National Grid, the relevant Council(s) shall:

3.3.1 review the information provided within the Draft Submission and advise National Grid whether further information or clarification would be required in order to determine the relevant Requirement, were a Final Submission to be made on the same terms;

3.3.2 undertake such consultation with internal and external consultees as it would ordinarily have undertaken had the Draft Submission been a Final Submission; and

3.3.3 issue a letter in writing to National Grid advising whether or not the Draft Submission has been Discharged in Principle and if the relevant Council(s) advise that the Draft Submission has not been Discharged in Principle to provide reasons for this opinion.

3.4 Upon receipt of a letter from the relevant Council(s) pursuant to paragraph 3.3.3 above in respect of any Draft Submission, National Grid shall consider the advice received and, should it consider it beneficial to do so, National Grid may prepare and submit a further Draft Submission which the relevant Council(s) shall further consider in accordance with its obligations under paragraph 3.3 above.

#### **4 Costs**

4.1 National Grid shall reimburse each Council in respect of its Reasonable Costs:

4.1.1 following receipt of an invoice together with appropriate evidence of the Reasonable Costs incurred by that Council; and

4.1.2 provided always that each Council shall firstly submit a draft of any invoice to National Grid for consideration and approval in accordance with paragraph 4.2 below.

4.2 Draft invoices must be submitted to National Grid for consideration and approval on or before the fifth day of each calendar month and include any Reasonable Costs incurred by the relevant Council during the preceding month.

**SCHEDULE 4**  
**COUNCILS' OBLIGATIONS**

**1 Registration**

- 1.1 This Deed shall be registered by each of CCC, DDC and TDC promptly after the date of this Deed as a local land charge in the relevant local land charges registers.
- 1.2 Following the performance and satisfaction of all the obligations contained in this Deed, the relevant Councils shall forthwith effect the cancellation of all entries made in the register of local land charges in respect of this Deed.

## SCHEDULE 5

### PUBLIC RIGHTS OF WAY

#### 1 Interpretation

- 1.1 In this Schedule the following terms and expressions have the following respective meanings unless otherwise stated:

<b>Public Rights of Way Contribution</b>	means a contribution of £27,991.92 (Twenty Seven Thousand, Nine Hundred and Ninety-One pounds sterling and Ninety-Two pence) to enable KCC to facilitate the provision of accurate, up to date and publicly accessible information within the KCC and Explore Kent websites regarding the timing and extent of any temporary stopping up of public rights of way in Kent by National Grid during each Relevant Stage of the Authorised Development; and
<b>Relevant Stage</b>	means a Stage of the Authorised Development which will necessitate the temporary stopping up of a public right of way in Kent.

#### 2 Public Rights of Way

- 2.1 National Grid shall not exercise any powers under the Development Consent Order to temporarily stop up a public right of way in Kent until it has paid the Public Rights of Way Contribution to KCC.
- 2.2 National Grid shall notify KCC in writing as soon as reasonably practicable following the completion of the final Relevant Stage of the Authorised Development.

#### 3 Public Rights of Way Contribution

- 3.1 KCC covenants to National Grid that it shall:
- 3.1.1 deposit the Public Rights of Way Contribution in an interest-bearing account and promptly notify the account details to National Grid; and
  - 3.1.2 on receipt of the Public Rights of Way Contribution place the received sums of money in that account.
- 3.2 Interest accruing to the account in which the Public Rights of Way Contribution is held shall be retained in that account and shall only be applied in accordance with the provisions of this Deed for the same purpose as for the Public Rights of Way Contribution.

#### **4 Application of Contribution**

- 4.1 KCC covenants with National Grid that it will not spend the Public Rights of Way Contribution other than for the purposes specified in this Schedule.
- 4.2 KCC covenants with National Grid that it will, within 6 months of payment by National Grid of the Public Rights of Way Contribution and annually thereafter until all monies comprised within that contribution have been spent or repaid to National Grid, provide National Grid with a statement setting out details of the purposes to which the monies have been applied.
- 4.3 Notwithstanding the provisions of paragraph 4.2 of this Schedule National Grid shall in any event have the right (at its own expense) to audit all expenditure funded from the Public Rights of Way Contribution and KCC covenants with National Grid to provide access to all such information and evidence as may reasonably be necessary to enable National Grid to carry out any such audit.

#### **5 Unspent Contribution**

- 5.1 If any monies comprised within the Public Rights of Way Contribution are not spent or contractually committed to be spent on the day on which National Grid gives written notice to KCC pursuant to paragraph 2.2 of this Schedule, KCC shall repay any such unspent monies to National Grid, together with any accrued interest on those unspent monies.

## SCHEDULE 6

### HISTORIC ENVIRONMENT

#### 1 Interpretation

1.1 In this Schedule the following terms and expressions have the following respective meanings unless otherwise stated:

<b>Archaeological Investigations</b>	means the archaeological investigations proposed to be undertaken as part of the Authorised Development pursuant to the scope of work contained within section 4 of the Archaeological Mitigation Written Scheme of Investigation;
<b>Archaeological Mitigation Written Scheme of Investigation</b>	means <b>Document 5.4.3F</b> of the Application (as the same may be amended by National Grid during the examination of the Application and / or by the Secretary of State in reaching a decision on whether to make the Development Consent Order);
<b>Heritage Outreach Scheme</b>	means a scheme setting out proposals for public outreach and, where suitable and relevant, the sharing of the findings of Archaeological Investigations;
<b>Interpretation Board Scheme</b>	means a scheme setting out proposals for the provision within one or more Suitable Location(s) of information relating to Archaeological Investigations relating to the Wantsum Sea Channel and their context including the installation of up to but not exceeding four interpretation boards; and
<b>Suitable Location</b>	means a publicly accessible location, ideally situated close to a public footpath, and which could (subject always to the agreement of any relevant landowner(s) being readily provided) include land belonging to a third party but failing which, would be on land owned or within the control of KCC.

#### 2 Heritage Outreach Scheme

2.1 Prior to the Commencement Date National Grid shall prepare and submit to KCC for its approval an Heritage Outreach Scheme.

2.2 Not later than the date falling 25 Business Days after the date on which it receives a submission from National Grid in accordance with paragraph 2.1, KCC shall notify National Grid in writing as to whether or not it approves the Heritage Outreach Scheme submitted.

- 2.3 National Grid shall use reasonable endeavours to implement the proposals contained within the approved Heritage Outreach Scheme.

### **3 Interpretation Board Scheme**

- 3.1 On completion of any Archaeological Investigations relating to the Wantsum Sea Channel, National Grid shall prepare and submit to KCC for its approval an Interpretation Board Scheme.
- 3.2 Not later than the date falling 25 Business Days after the date on which it receives a submission from National Grid in accordance with paragraph 3.1, KCC shall notify National Grid in writing as to whether or not it approves the Interpretation Board Scheme submitted.
- 3.3 National Grid shall use reasonable endeavours to implement the proposals contained within the approved Interpretation Board Scheme.

### **4 Costs**

- 4.1 National Grid will reimburse costs properly and reasonably incurred by KCC in considering any submission made by National Grid pursuant to this Schedule within 56 days of receiving an invoice.

Executed as a deed by affixing the  
common seal of **CANTERBURY CITY COUNCIL**  
in the presence of

)  
)  
)

[COMMON SEAL]

.....  
Authorised Signatory

Executed as a deed by affixing the  
common seal of **DOVER DISTRICT COUNCIL**  
in the presence of

)  
)  
)

[COMMON SEAL]

.....  
Authorised Signatory

THE COMMON SEAL  
of **THE KENT COUNTY COUNCIL**  
was hereinto affixed in the presence of

)  
)  
)

[COMMON SEAL]

.....  
Authorised Signatory

Executed as a deed by affixing the  
common seal of **THANET DISTRICT COUNCIL**  
in the presence of

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[COMMON SEAL]

.....  
Authorised Signatory

Executed as a deed by affixing the common seal of  
**NATIONAL GRID ELECTRICITY TRANSMISSION PLC**  
in the presence of

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[COMMON SEAL]

.....  
Director

.....  
Director or Secretary

