

APPLICATION FOR THE REINFORCEMENT TO NORTH SHROPSHIRE ELECTRICITY DISTRIBUTION NETWORK DEVELOPMENT CONSENT ORDER

Response to Deadline 7 – Comments on Applicant’s draft DCO

NATIONAL GRID ELECTRICITY TRANSMISSION PLC (“National Grid”)

1. Background

1.1 As previously explained in its written representations made to date, part of the proposed development in the Reinforcement to the North Shropshire Electricity Distribution Network Order (“the **proposed Order**”) is proposed to be carried out on land in which National Grid has an interest, specifically Plots 122 and 126 on the Land Plans. Part of the National Grid ZZK067 400kv Overhead Line Ironbridge to Shrewsbury (“the **Overhead Line**”) is included within Plots 122 and 126 and the proposed development is proposed to cross underneath the Overhead Line.

1.2 These representations are submitted as supplemental representations to National Grid’s initial written representations (RR-005) and supplemental representation (AS-016).

1.3 As explained further in section 4 below, National Grid is a statutory undertaker. Section 127 and section 138 of the Planning Act 2008 are therefore engaged in respect of the proposed interference with National Grid’s land interests and apparatus pursuant to the proposed Order. For the reasons explained below, it has not been possible to agree appropriate protective provisions with the Applicant that would ensure the protection of National Grid’s land interests and apparatus, and its undertaking. Accordingly, National Grid maintains its objection to the proposed interference with its interests pursuant to the proposed Order and, in the absence of agreement being reached, National Grid respectfully requests that the Examining Authority imposes protective provisions in Schedule 6 to the proposed Order, in the form annexed at Annex 1 hereto (referred to in these representations as “**National Grid’s Proposed Protective Provisions**”)

2. National Grid’s existing rights and apparatus in the Order Land

2.1 National Grid has land (as land includes interests in land) within the proposed Order limits comprising an easement within Plots 122 and 126 which contains rights for the purposes of using and maintaining the Overhead Line that crosses those plots.

3. Proposed DCO powers

3.1 Article 18 of the proposed Order would give the undertaker the power to create and acquire new rights and impose restrictions in the land in which National Grid has an interest for the purposes of the authorised development. Article 29 of the proposed Order would give the undertaker the power to suspend rights of a statutory undertaker as well as the power to extinguish rights and impose restrictions over land belonging to a statutory undertaker. National Grid is concerned that these proposed powers are wide in scope without regard to whether or not the new rights to be acquired are inconsistent with the statutory undertaker’s existing rights.

4. Relevant provisions of the Planning Act 2008

4.1 As detailed in National Grid’s supplemental representation (AS-016), section 127 of the Planning Act 2008 contains provision which provides protection where compulsory acquisition powers are proposed to be granted over statutory undertakers’ land. It requires the Secretary of State to apply a specific test before granting such powers. This section is engaged in this case in respect of National Grid’s interest in land within the proposed Order limits (Plots 122 and 126).

4.2 As set out previously, in the absence of protective provisions, in a form acceptable to National Grid, the inclusion of powers in the proposed Order for the Applicant to acquire unspecified rights would potentially have a severe detrimental impact on National Grid’s statutory undertaking for the reasons set out in paragraph 7 below. Without adequate

protection for National Grid's undertaking, including as to the scope and extent of the new rights, the exercise of the powers over Plots 122 and 126 could not be carried out without giving rise to serious detriment to the carrying on of that undertaking. Nor could that detriment be made good by the use of other land belonging to National Grid.

- 4.3 In addition, section 138 contains provision which provides protection in the case of the proposed extinguishment of rights, and removal of apparatus, of statutory undertakers. In the event that a development consent order authorises the acquisition of land in which a statutory undertaker has a relevant right and relevant apparatus required for its undertaking, as is the case here, then the order can only include provision for the extinguishment of the relevant right, or the removal of the relevant apparatus, 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 order relates."*
- 4.4 It is clear that this section is engaged in this case and National Grid submits that it is not necessary or appropriate for the proposed Order to extinguish National Grid's rights in order for the proposed development to come forward. National Grid's Proposed Protective Provisions provide an alternative means by which the proposed development could come forward, without prejudicing National Grid's existing rights and its statutory undertaking.

5. **National Grid's Protective Provisions**

- 5.1 National Grid does not object to the principle of the proposed Order, but as a responsible statutory undertaker National Grid must first and foremost protect the integrity of the national electricity transmission network.
- 5.2 National Grid has been in negotiations with the Applicant in respect of the form of protective provisions and agreement has been reached on a number of matters. There are however a few matters on which it has not been possible to reach agreement at the date of these representations.
- 5.3 National Grid therefore appends to these representations the form of protective provisions (National Grid's Proposed Protective Provisions) which it reasonably and properly requires for the protection of its assets in light of the risks that might arise from the carrying out of the authorised development and, in particular, the powers of compulsory acquisition and interference with statutory undertakers' rights contained within the proposed Order.
- 5.4 A comparison between the version of the protective provisions in the proposed Order as submitted by the Applicant at Deadline 6 and National Grid's Proposed Protective Provisions is also annexed to these representations at Annex 2, to help indicate the areas where agreement has not been reached. An explanation is provided below of why National Grid requires the inclusion in the Order of National Grid's Proposed Protective Provisions.
- 5.5 National Grid has accepted the amendment of its standard protective provisions in a number of areas in drafting the National Grid's Proposed Protective Provisions, having sought to respond to the Applicant's requests and the nature of the proposed development. It cannot, however, agree the Applicant's proposed provisions in the areas set out below without risking serious detriment to its undertaking.
- 5.6 Please note that the paragraph numbering is taken from National Grid's Proposed Protective Provisions (which starts at 1 for ease of review) but it is recognised that the numbering may need to be amended if inserted into the DCO.

Paragraph 4 of National Grid's Proposed Protective Provisions - Acquisition of Land

- 5.7 Statutory undertakers are afforded special protection by the statutory provisions of the Planning Act 2008 as set out above, in recognition that the interests in land are held for the purposes of a statutory undertaking and the provision of a public service. Given that the continued integrity of the national transmission network is of national importance, National Grid must therefore be afforded protection against the possibility that the Applicant could exercise the powers of the proposed Order in a manner that could (whether intentionally or not) render National Grid unable to discharge its statutory undertaking.

- 5.8 As set out above, should the powers in Articles 18 and 29 be exercised in respect of Plots 122 and 126 so as to interfere with and/or extinguish National Grid's existing rights as currently proposed (without restriction) in the proposed Order, then National Grid would no longer be able to exercise its current rights, for example, to use, access and maintain that section of the Overhead Line. This has implications for the integrity of the existing national transmission network and security of electricity supply if National Grid no longer had the rights to retain and use that section of the Overhead Line. It also has implications for public safety if National Grid could not access Plots 122 and 126 to maintain or repair the existing Overhead Line or access it in an emergency. Compensation for the compulsory acquisition of the proposed rights is not an acceptable remedy in this situation. The fundamental basis of National Grid's standard protective provisions is to protect the continuing safe use of operational apparatus.
- 5.9 National Grid recognises the Applicant's position as to the need for the proposed development in order to reinforce its infrastructure, and does not intend to prevent it from being delivered. It must however require that the Applicant engage with it on the form of rights to be acquired so as to ensure that the exercise does not prejudice the existing rights of National Grid. National Grid is prepared to accept an amendment to paragraph 4 of its standard form protective provisions that its agreement to the form and exercise of the rights granted by the proposed Order should not be unreasonably withheld. This change is reflected in National Grid's Proposed Protective Provisions at Annex 1. National Grid cannot, however, accept the Applicant's position which would allow it the power to extinguish/interfere with National Grid's rights without regard to any impact on National Grid's undertaking. National Grid requires the Applicant to be obliged to actively engage with National Grid, and secure its agreement, to ensure that the exercise of the proposed Order rights does not detrimentally affect the existing rights it has for the Overhead Line.
- 5.10 This approach, and National Grid's Proposed Protective Provisions, are consistent with other development consent orders. Furthermore, in the case of the York Potash Harbour Facilities Order 2016 the Secretary of State gave express consideration to the balance between the risk to a statutory undertaker's undertaking if rights could be acquired without consent, versus the risk that it would prevent the authorised development from proceeding. In that case the Secretary of State accepted the need for the agreement of a statutory undertaker to be obtained and that such agreement should not be unreasonably withheld by the statutory undertaker. This is the same position as taken by National Grid in this case.

Paragraph 5 of National Grid's Proposed Protective Provisions – Removal of apparatus

- 5.11 National Grid requires the inclusion of an obligation on the undertaker to secure any necessary consents for alternative apparatus and for the necessary rights to use such apparatus (see also paragraph 5.18 of these Representations below).
- 5.12 The principle must be that if there is a need on the part of the undertaker or National Grid to remove the existing Overhead Line because of the proposed development (albeit such a need has not been established here) then the undertaker must be required to try and secure any necessary consents and provide sufficient replacement rights for National Grid to construct and then use replacement apparatus. It is not accepted that National Grid should be required to do so itself if the removal is occasioned by the proposed development.
- 5.13 It is within the undertaker's control to design the proposed development in such a way as to avoid the need for the removal of National Grid's existing apparatus. National Grid and the Applicant have already been in discussions on elements of the proposed development design and construction methodology, such as building proximity distances and discussions on proposed outages (not needed) to facilitate works under the current Overhead Line. The provisions must nonetheless remain to ensure the protection of the integrity of the network. National Grid does not consider that this places an onerous burden on the undertaker.

Paragraph 7 of National Grid's Proposed Protective Provisions - Retained apparatus: Protection of National Grid as Electricity Undertaker

Sub-paragraph (6)

- 5.14 Given the potential safety implications of the carrying out of works in the vicinity of operational overhead electricity lines it is important that a sufficient timeframe is allowed for National Grid to properly consider and assess the Applicant's plans. National Grid submits that 56 days is an appropriate time frame. This is considered to be a reasonable timeframe and has some regard to the possibility that the Applicant may not pro-actively engage ahead of time. If details are submitted for approval without previous discussion then National Grid must still be afforded sufficient time to properly review the submissions; 28 days would be completely insufficient in this regard.
- 5.15 National Grid recommends that any applicant engage early on a proposed development, and its design and construction methodology so as to reduce the time it may take to secure the necessary approval(s). The timescales in the protective provisions are intended to encourage this.

Sub-paragraph (8)

- 5.16 The insertion of wording into this paragraph by the Applicant to the effect that any protective works must be on land which is held or controlled by National Grid and within the scope of an existing planning consent is not acceptable to National Grid.
- 5.17 National Grid does not own the land in which the Overhead Line is located; it only has rights in that land. The existing rights are for particular purposes in connection with the Overhead Line, and, in light of the lack of detail as to what works may be required and/or what land or rights in land would be needed, there is no certainty that this could be done within the scope of National Grid's existing rights. It cannot therefore accept that potential protective works can only be carried out in land held or controlled by National Grid.
- 5.18 Furthermore, it is not agreed that the protective works should only be carried out if the subject of an existing authorisation or consent. This paragraph relates to works with National Grid reasonably requires to be carried out for the protection of existing apparatus. There cannot be any certainty that the required works would be covered by an existing consent at this stage. Therefore if the protective works are reasonably required, National Grid considers the undertaker should be responsible for securing any necessary further rights and/or consents.

Paragraph 8 of National Grid's Proposed Protective Provisions – Expenses

- 5.19 The wording in sub-paragraph (1) of paragraph 8 of National Grid's Proposed Protective Provisions is required for clarity to reflect that the list below is not a closed list and should cover any costs incurred by National Grid as a consequence of the carrying out of the proposed development.
- 5.20 The Applicant's insertion of a process for the submission of estimates by National Grid is not agreed.
- 5.21 National Grid is concerned that it should not be limited in its ability to recover the costs it incurs from the Applicant, when such costs are occasioned by the proposed development and the requirement to manage its interaction with an existing operational National Grid asset.
- 5.22 National Grid is also concerned that the inclusion of such a process would have greater consequences than for this one project. In the region of 20-30 applications for development consent orders per year have potential interactions with National Grid's assets and National Grid must respond to and assess each project. A large proportion of those projects will have interactions with National Grid assets requiring the submission and approval (by National Grid) of plans and construction method statements pursuant to agreed protective provisions. National Grid must properly review each submission in order to manage or respond to the potential risks of any interactions. In addition, there are similar procedures for the submission of plans by developers of other types of project such as planning applications, Transport and Works Act Orders or compulsory purchase orders.
- 5.23 The time it would take to produce estimates for costs to be incurred would be different for each project and depend on the scope of interaction with National Grid's assets. In some

cases it may be disproportionate. The inclusion of these provisions would increase the administrative burden on National Grid occasioned by the Applicant's proposed development. More particularly, given the precedent it would set, it has the potential to cause an unreasonable administrative burden to be placed on National Grid which deals with a high volume of interactions across a range of types of project.

Paragraph 9 of National Grid's Proposed Protective Provisions – Indemnity

Sub-paragraph (1)

- 5.24 The Applicant has sought to exclude third party claims for an interruption of transmission from the drafting of the indemnity. This is in National Grid's standard form protective provisions to manage, and mitigate against, its financial exposure to situations where new development (whether small or large) will interact with its existing apparatus. National Grid is required under its transmission licence to operate in an economic and efficient manner.
- 5.25 If the carrying out of the proposed development causes the Overhead Line to be damaged or otherwise causes an interruption of transmission on the National Grid network and this, in turn, leads to a claim from a third party (for example, a customer) then any cost or compensation that National Grid incurs or becomes liable for should be repayable by the undertaker, for it will have been the undertaker's works which caused the outage and the claim. It is within the undertaker's control to mitigate against such a situation occurring in the way in which it carries out the proposed development.
- 5.26 It is not accepted that National Grid should have to bear the financial risk or cost of interrupted transmission when it is not carrying out the authorised development and its existing apparatus precedes the proposed development. National Grid has a responsibility under its licence to operate in an efficient and cost effective way in discharging its statutory undertaking and its standard form indemnity included in sub-paragraph (1) must therefore be retained in relation to the proposed development.

Sub-paragraph (7)

- 5.27 National Grid has accepted some amendment to its standard form provisions here in recognition of the circumstances of the Applicant and the proposed development, however the requirement for the Applicant to obtain acceptable insurance (as per sub-paragraphs (7) and (8)) must be retained for National Grid's financial protection.

6. Conclusion

- 6.1 National Grid continues to negotiate a form of protective provisions with the Applicant. As agreement has not been reached with the Applicant on the form of protective provisions, National Grid maintains its objection to the proposed Order given the proposed interference with its interests.
- 6.2 The position taken by National Grid is entirely reasonable and consistent with other applications for development consent orders and National Grid therefore respectfully requests that the Examining Authority imposes protective provisions for the protection of National Grid, in Schedule 6 to the proposed Order, in the form annexed at Annex 1 hereto (being National Grid's Proposed Protective Provisions).
- 6.3 National Grid is aware that another statutory undertaker has written to the Examining Authority requesting an issue specific hearing and it reserves its position as to whether it would seek to make submissions on any remaining matters at such a hearing, if held.

31 JULY 2019

ANNEX 1

NATIONAL GRID'S PROPOSED PROTECTIVE PROVISIONS

FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICITY UNDERTAKER

Application

1. The following provisions have effect for the protection of National Grid unless otherwise agreed in writing between the undertaker and National Grid.

Interpretation

2. In this Part of this Schedule—

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

“acceptable insurance” means a third party liability insurance effected and maintained by the undertaker with a limit of indemnity of not less than £25,000,000.00 (twenty five million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained for the construction period of the authorised development which constitute specified works and arranged with an internationally recognised insurer of repute operating in the London and worldwide insurance market underwriters whose security/credit rating meets the requirements of an “acceptable provider”, such policy shall include (but without limitation):

(a) National Grid Electricity Transmission Plc as a Co-Insured;

(b) a cross liabilities clause; and

(c) contractors' pollution liability for third party property damage and third party bodily damage arising from a pollution/contamination event with cover of £10,000,000.00 (ten million pounds) per event or £20,000,000.00 (twenty million pounds) in aggregate;

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

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

“apparatus” means electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid 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;

“authorised development” has the same meaning as is given to the term "authorised development" in article 2 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 development and construction of any works authorised by this Schedule;

“commencement” has the same meaning as in paragraph 1 of Schedule 2 (requirements) to the Order and commence shall be construed to have the same meaning save that for the purposes of this part only the term commence and commencement shall include any below ground surveys, monitoring or operations or receipt and erection of construction plant and equipment within 15 metres of any apparatus;

“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 and/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;

“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;

“maintain” and “maintenance” includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid including construct, use, repair, alter, inspect, renew or remove the apparatus;

“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;

“National Grid” means National Grid Electricity Transmission PLC (Company No. 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH or any of its entities or successor entities;

"specified works" means any of the authorised development or activities undertaken in association with the authorised development which:

(a) will or may be situated over, or within 15 metres (measured in any direction) of any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise;

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

(c) include any of the activities that are referred to in National Grid’s policies for development near overhead lines EN43-8 and HSE’s guidance note 6 “Avoidance of Danger from Overhead Lines”.

On Street Apparatus

3. Except for paragraphs 7 (*retained apparatus: protection*), 8 (*expenses*) and 9 (*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, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

Acquisition of land

4. (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 appropriate or acquire or take temporary possession of any land interest or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Grid otherwise than by agreement (not to be unreasonably withheld).

(2) As a condition of agreement between the parties in paragraph (1), prior to the carrying out of any part of the authorised development (or in such other timeframe as may be agreed between National Grid and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of National Grid and/or affects the provisions of any enactment or agreement regulating the relations between National Grid 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 reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, 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 development.

(3) 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 and/or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) No agreement or consent granted by National Grid under any other paragraph of this Part of this Schedule constitutes agreement under sub-paragraph (1).

Removal of apparatus

5.—(1) If, in the exercise of the agreement reached in accordance with paragraph 4 or in any other authorised manner, the undertaker acquires any interest in 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 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 in accordance with sub-paragraph (2) to (5) inclusive.

(2) If, for the purpose of executing any specified works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid at least 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 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 to its satisfaction (taking into account paragraph 6(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 use and 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 must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation does not extend to the requirement for the National Grid to seek or use any compulsory purchase powers to this end unless it elects to do so.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to National Grid 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.

(6) 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 and/or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

Facilities and rights for alternative apparatus

6.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid 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 and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid under sub-paragraph (1) above 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 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 in the matter will be referred to arbitration in accordance with paragraph 13 (*Arbitration*) of this Part of this Schedule and the arbitrator shall make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: Protection of National Grid as Electricity Undertaker

7.—(1) Not less than 56 days before the commencement of any specified work that is near to or will or may affect any apparatus, the removal of which has not been required by the undertaker under paragraph 5(2) (removal of apparatus), the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) In relation to specified works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and show and describe—

- (a) the exact position of the specified works;
- (b) the level at which the specified works 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.

(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, include a method statement which, in addition to the matters set out in sub-paragraph (2), must; -

- (a) describe details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstrate that pylon foundations will not be affected prior to, during and post construction;
- (c) describe details of load bearing capacities of trenches;
- (d) describe details of cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) provide a written management plan for high voltage hazard during construction and ongoing maintenance of the cable route;
- (f) provide written details of the operations and maintenance regime for the cable, including frequency and method of access;
- (g) provide an assessment of earth rise potential if reasonably required by National Grid's engineers;
- (h) provide evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of overhead line construction traffic;

(4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until National Grid has given written approval of the plan so submitted provided that National Grid will not unreasonably delay notification of its approval or disapproval.

(5) Any approval of the National Grid required under sub-paragraphs (2) or (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and,
- (b) must not be unreasonably withheld or delayed.

(6) In relation to any work requiring the submission of a plan under sub-paragraph (1), National Grid 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 or for the purpose of providing or securing proper and convenient means of access to any apparatus and National Grid must notify the undertaker of such

modifications within a period of 56 days beginning with the date on which the plan required under sub-paragraph (1) has been submitted to National Grid.

(7) Works requiring the submission of a plan under sub-paragraph (1) must only be executed in accordance with the plan as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5), (6), (8) or (9) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(8) Where National Grid reasonably 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's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and National Grid shall give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs (1) to (3) and (5) to (7) apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

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

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to the National Grid notice as soon as is reasonably practicable and a plan of those works and must—

- (a) comply with sub-paragraphs (6), (7) and (8) insofar 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's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

8.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to National Grid on demand all charges, costs and expenses reasonably anticipated or incurred by National Grid in consequence of the execution of any authorised development including without limitation in respect of: —

- (a) any costs reasonably incurred by or compensation properly paid by National Grid 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 as a consequence of National Grid;
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 5(3); and/or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 38 (*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 by virtue of sub-paragraph (1) will be reduced by the amount of that excess.

(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) An amount which apart from this sub-paragraph would be payable to National Grid 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 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

9.— (1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by 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 development) or property of National Grid the undertaker is liable for the cost reasonably incurred by National Grid in making good such damage, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

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

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid or under its supervision does not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not

accord with the approved plan (or as otherwise agreed between the undertaker and National Grid pursuant to paragraph 8) .

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of-

- (c) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents; and
- (d) any authorised development and/or any other works authorised by this Part of this Schedule carried out by National Grid as an assignee, transferee or lessee of National Grid with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 8 (*consent to transfer benefit of order*) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised development 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 9.

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

(5) Not to commence construction (and not to permit the commencement of such construction) of the authorised development on any land in respect of which National Grid has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Grid's apparatus unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Grid that it shall maintain such acceptable insurance for the construction period of the authorised development from the proposed date of commencement of construction of the authorised development) and National Grid has confirmed the same in writing to the undertaker.

(6) In the event that the undertaker fails to comply with 9(5) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent National Grid from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

10. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid and the undertaker, nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid 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

11.(1) Where in consequence of the proposed construction of any of the authorised development, the undertaker or National Grid requires the removal of apparatus under paragraph 6(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 8, 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 development and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Grid's consent, agreement or approval to 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

12. If in consequence of the agreement reached in accordance with paragraph 5(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 to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

13. Save for differences or disputes arising under paragraph 5(2), 5(4), 6(1), 7 any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 38 (*arbitration*).

Notices

14. The plans submitted to National Grid by the undertaker pursuant to paragraph 7(1) must be sent to National Grid Plant Protection at **plantprotection@nationalgrid.com** or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

ANNEX 2

COMPARISON BETWEEN THE PROTECTIVE PROVISIONS INCLUDED IN THE DRAFT ORDER SUBMITTED BY THE APPLICANT AT DEADLINE 6 AND NATIONAL GRID'S PROPOSED PROTECTIVE PROVISIONS IN ANNEX 1.

FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICITY UNDERTAKER

Application

~~1.52.~~ The following provisions have effect for the protection of National Grid unless otherwise agreed in writing between the undertaker and National Grid.

Interpretation

~~2.53.~~ In this Part of this Schedule—

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

“acceptable insurance” means a third party liability insurance effected and maintained by the undertaker with a limit of indemnity of not less than £25,000,000.00 (twenty five million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained for the construction period of the authorised development which constitute specified works and arranged with an internationally recognised insurer of repute operating in the London and worldwide insurance market underwriters whose security/credit rating meets the requirements of an “acceptable provider”, such policy shall include (but without limitation):

(a) National Grid Electricity Transmission Plc as a Co-Insured;

(b) a cross liabilities clause; and

(c) contractors’ pollution liability for third party property damage and third party bodily damage arising from a pollution/contamination event with cover of £10,000,000.00 (ten million pounds) per event or £20,000,000.00 (twenty million pounds) in aggregate;

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

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

“apparatus” means electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by ~~that~~ National Grid together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of ~~the~~ National Grid 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;

“authorised development” has the same meaning as is given to the term “authorised development” in article 2 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 development and construction of any works authorised by this Schedule;

“commencement” has the same meaning as in paragraph 1 of Schedule 2 (requirements) to the Order and commence shall be construed to have the same meaning save that for the purposes of this part only the term commence and commencement shall include any below ground surveys, monitoring or operations or receipt and erection of construction plant and equipment within 15 metres of any apparatus;

“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 and/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;

“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;

“maintain” and “maintenance” includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid including construct, use, repair, alter, inspect, renew or remove the apparatus;

“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;

“National Grid” means National Grid Electricity Transmission PLC (Company No. 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH or any of its entities or successor entities;

“specified works” means any of the authorised development or activities undertaken in association with the authorised development 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 557(2) or otherwise;

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 557(2) or otherwise; and/or

(c) include any of the activities that are referred to in National Grid’s policies for development near overhead lines EN43-8 and HSE’s guidance note 6 “Avoidance of Danger from Overhead Lines”.

On Street Apparatus

3.54. Except for paragraphs 577 (*retained apparatus: protection*), 588 (*expenses*) and 599 (*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, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

Acquisition of land

4. (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 appropriate or acquire or take temporary possession of any land interest or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Grid otherwise than by agreement (not to be unreasonably withheld).

(2) As a condition of agreement between the parties in paragraph (1), prior to the carrying out of any part of the authorised development (or in such other timeframe as may be agreed between National Grid and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of National Grid and/or affects the provisions of any enactment or agreement regulating the relations between National Grid 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 reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, 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 development.

(3) 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 and/or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) No agreement or consent granted by National Grid under any other paragraph of this Part of this Schedule constitutes agreement under sub-paragraph (1).

Removal of apparatus

4.5.55.— (1) If, in the exercise of the agreement reached in accordance with paragraph 4 or in any other authorised manner, the undertaker acquires any interest in 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 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 in accordance with sub-paragraph (2) to (5) inclusive.

(2) If, for the purpose of executing any specified works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid at least 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 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 to its satisfaction (taking into account paragraph ~~57~~6(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 use and 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 must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation does not extend to the requirement for the National Grid to seek or use ~~its~~any 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 and the undertaker.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to National Grid 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.

(6) 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 and/or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

Facilities and rights for alternative apparatus

5.6.56.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid 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 and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid under sub-paragraph (1) above 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 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 in the matter will be referred to arbitration in accordance with paragraph ~~63~~13 (*Arbitration*) of this Part of this Schedule and the arbitrator shall make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: Protection of National Grid as Electricity Undertaker

~~67.57.~~67.57.—(1) Not less than 56 days before the commencement of any specified work that is near to or will or may affect any apparatus, the removal of which has not been required by the undertaker under paragraph ~~55~~55(2) (removal of apparatus), the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) In relation to specified works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and show and describe—

- (a) the exact position of the specified works;
- (b) the level at which the specified works 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.~~

(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, include a method statement which, in addition to the matters set out in sub-paragraph (2), must; -

- (a) describe details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstrate that pylon foundations will not be affected prior to, during and post construction;
- (c) describe details of load bearing capacities of trenches;
- (d) describe details of cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) provide a written management plan for high voltage hazard during construction and ongoing maintenance of the cable route;
- (f) provide written details of the operations and maintenance regime for the cable, including frequency and method of access;
- (g) provide an assessment of earth rise potential if reasonably required by National Grid's engineers;
- (h) provide evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of overhead line construction traffic;

(4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until National Grid has given written approval of the plan so submitted provided that National Grid will not unreasonably delay notification of its approval or disapproval.

(5) Any approval of the National Grid required under sub-paragraphs (2) or (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and,
- (b) must not be unreasonably withheld or delayed.

(6) In relation to any work requiring the submission of a plan under sub-paragraph (1), National Grid 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 or for the purpose of providing or securing proper and convenient means of access to any apparatus ~~declaring that any such reasonable requirements~~ and National Grid must ~~be made~~ notify the undertaker of such modifications within a period of ~~28~~56 days beginning with the date on which the plan required under sub-paragraph (1) has been submitted to National Grid.

(7) Works requiring the submission of a plan under sub-paragraph (1) must only be executed in accordance with the plan as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5), (6), (8) or (9) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(8) Where National Grid reasonably requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) ~~(declaring that such protective works must be on land held or controlled by National Grid and subject to such works being authorised by the order or being development permitted by an Act of Parliament or general development order made under the 1990 Act)~~ 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's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and National Grid shall give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs (1) to (3) and (5) to (7) apply as if the removal of the apparatus had been required by the undertaker under paragraph ~~55~~56(2).

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

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to the National Grid notice as soon as is reasonably practicable and a plan of those works and must—

- (a) comply with sub-paragraphs (6), (7) and (8) insofar 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's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

~~8.58.~~—(1) Subject to the following provisions of this paragraph, the undertaker must pay to National Grid on ~~reasonable~~ demand all charges, costs and expenses reasonably anticipated or incurred by National Grid in in consequence of the execution of any authorised development including without limitation in respect of: — ~~(a)~~

- (a) any costs reasonably incurred by or compensation properly paid by National Grid 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 as a consequence of National Grid;
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph ~~50~~50(3); and/or

- (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (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) If National Grid considers that a charge, cost or expense will be payable by the undertaker pursuant to sub-paragraph (1), National Grid will first provide an estimate of that charge, cost or expense and supporting information in relation to the estimate to the undertaker along with a proposed timescale for payment for consideration and the undertaker may, within a period of 21 days— (a) provide confirmation to National Grid that the estimate is agreed and pay to National Grid, by the date stipulated, that charge, cost or expense; or~~

~~(b) provide confirmation to National Grid that the estimate is not accepted along with a revised estimate and a proposal as to how or why the undertaker considers that the estimate can be reduced or paid at a later date.~~

~~(3) National Grid must take into account any representations made by the undertaker in accordance with sub-paragraph (2) and must, within 21 days of receipt of the information pursuant to sub-paragraph (2) confirm the amount of the charge, cost or expense to be paid by the undertaker (if any) and the date when it is to be paid.~~

~~(4) National Grid must, when estimating and incurring any charge, cost or expense pursuant to this paragraph 58, do so with a view to being reasonably economic and acting as if National Grid were itself to fund the relevant fee, charge, cost or expense.~~

~~(13)(2) (5) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.~~

~~(3) (6) 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 38 (*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 by virtue of sub-paragraph (1) will be reduced by the amount of that excess.

~~(14)(4) (7) 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.

~~(15)(5) (8) An amount which apart from this sub-paragraph would be payable to National Grid 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 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

~~9.59.~~— (1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by 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 development) or property of National Grid the undertaker is liable for the cost reasonably incurred by National Grid in making good such damage, ~~(2)~~ or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and

(b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid other than arising from any default of National Grid.

~~(16)~~(3) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid or under its supervision does not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Grid fails to carry out and execute the works properly with due care and attention and in a ~~skillful~~skilful and workman like manner or in a manner that does not accord with the approved plan (or as otherwise agreed between the undertaker and National Grid pursuant to paragraph ~~608~~).

~~(17)~~(4) Nothing in sub-paragraph (1) imposes 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, its officers, servants, contractors or agents; and

(b) any authorised development and/or any other works authorised by this Part of this Schedule carried out by National Grid as an assignee, transferee or lessee of National Grid with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 8 (*consent to transfer benefit of order*) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised development 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 ~~59.9~~.

~~(18)~~(5) National Grid must give the undertaker reasonable notice of any such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering its representations.

(6) Not to commence construction (and not to permit the commencement of such construction) of the authorised development on any land in respect of which National Grid has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Grid's apparatus unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Grid that it shall maintain such acceptable insurance for the construction period of the authorised development from the proposed date of commencement of construction of the authorised development) and National Grid has confirmed the same in writing to the undertaker.

(6) In the event that the undertaker fails to comply with 9(5) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent National Grid from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

~~7.10.60.~~ Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid and the undertaker, nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid 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

~~11.61.~~ (1) Where in consequence of the proposed construction of any of the authorised development, the undertaker or National Grid requires the removal of apparatus under paragraph ~~556~~(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph ~~578~~, 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 development and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Grid's consent, agreement or approval to 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

~~8.12.62.~~ If in consequence of the agreement reached in accordance with paragraph ~~565~~(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 to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

~~9.13.63.~~ Save for differences or disputes arising under paragraph ~~555~~(2), ~~555~~(4), ~~576~~(1), ~~587~~ any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 38 (*arbitration*).

Notices

~~10.14.64.~~ The plans submitted to National Grid by the undertaker pursuant to paragraph ~~577~~(1) must be sent to National Grid Plant Protection at plantprotection@nationalgrid.com or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.