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Yorkshire Green Energy Enablement (GREEN) Project

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Document 8.30.1 Proposed Protective Provisions to benefit Network Rail

**Final Issue A
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Contents

| | | |
|-----------|---------------------------------------------------------------|----------|
| 1. | About this document | 1 |
| 1.1 | Introduction | 1 |
| 1.2 | National Grid overview of position | 1 |
| 1.3 | Network Rail overview of position | 2 |
| 2. | Proposed Protective Provisions to benefit Network Rail | 4 |

| | | |
|--|------------------------------------------------------------------------------------------------|---|
| | Table 2.1 – Summary of proposed changes to the Protective Provisions in favour of Network Rail | 4 |
|--|------------------------------------------------------------------------------------------------|---|

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1. About this document

1.1 Introduction

- 1.1.1 As Action Point 22 arising from Compulsory Acquisition Hearing 2, The Examining Authority (ExA) requested that National Grid Electricity Transmission (National Grid) (the Applicant) provide precise drafting differences between its proposed protective provision drafting and the preferred wording of relevant statutory undertakers.
- 1.1.2 The Applicant has included bespoke protective provisions for the benefit of Network Rail Infrastructure Limited (NRIL) in its **draft DCO (Document 3.1(D)) [REP5-004]**, but NRIL have requested that their own standard provisions are to be used. To the extent that points of difference remain between the parties at Deadline 6, this has been set out in Table 2.1.
- 1.1.3 Table 2.1 sets out the following columns:
- Column 1 establishes the relevant paragraph number and title;
 - Column 2 shows an extract of the clean protective provisions which have been included on the face of the **draft DCO (Document 3.1(E))** at Deadline 6 and reflect National Grid's position;
 - Column 3 sets out an explanation of the justification for National Grid's approach;
 - Column 4 shows the change in drafting desired by NRIL in red track changes in the instances required; and
 - Column 5 sets out the NRIL justification for their proposed updated drafting.

1.2 National Grid overview of position

- 1.2.1 As a promoter of a nationally significant infrastructure project (NSIP), National Grid appreciates its obligation to ensure that statutory undertakers are protected through the provision of protective provisions appropriate to each statutory undertaker's undertaking. However, as a statutory undertaker in their own right, with a regulated obligation to act in the best interests of the electricity consumer, National Grid needs to ensure that the provisions entered into within Schedule 15 of the draft DCO (**Document 3.1(E)**) are fully justifiable, will not unduly inhibit delivery of this critical infrastructure and do not apply an unreasonable cost burden which will be ultimately borne by the consumer.
- 1.2.2 National Grid has, therefore, sought to take a pragmatic approach which sufficiently protects each respective statutory undertaker from serious detriment, whilst ensuring the Project is delivered in the public best interest. This is the basis upon which the more specific drafting justifications set out below are justified.
- 1.2.3 The outstanding differences between the two forms of protective provisions are the same outstanding issues which were present within The National Grid (Richborough Connection Project) Development Consent Order 2017 (Richborough Connection Project) and The National Grid (Hinkley Point C Connection Project) Order 2016

(Hinkley Point C Connection Project). Upon making the Orders for these precedent projects, the Examining Authority and Secretary of State agreed with National Grid's approach as outlined below. Therefore, the proven solution found to historical points of difference between National Grid and NRIL is reflected in the protective provisions National Grid proposes at Part 4 of Schedule 15 in the **draft DCO (Document 3.1(E))**. The protective provisions proposed by National Grid reflect the precedented position in the Richborough Connection Project, save that National Grid have provided additional concessions to NRIL in respect of provision for an Asset Protection Agreement and notices for any future transfers of benefit.

1.2.4 In the Richborough Connection Project Recommendation Report:

- *"It is stated that the panel is satisfied that the extinguishment of rights and the removal of apparatus under the rDCO would be necessary for the purpose of carrying out the proposed development"* (**paragraph 9.9.117**).
- It was noted that the DCO accords with S127 of the Planning Act 2008. It was therefore considered that there is no reason to amend the provisions of the DCO in these circumstances.

1.2.5 In the Hinkley Connection Project Recommendation Report:

- The ExA stated that *"The construction of the proposed development may require relocation of NR's apparatus. The Panel considers that the powers sought to extinguish the rights of, remove or reposition apparatus belonging to NR is necessary for the purpose of carrying out the proposed development. S138 requires the relevant Secretary of State to consider authorising such powers where there is an application by an applicant for compulsory acquisition powers, as is the case here. The Panel is satisfied that the extinguishment of rights and removal of apparatus sought by the Applicant in relation to NR's land is also necessary for the purpose of carrying out of the proposed development"* (**paragraph 8.5.239**).

1.2.6 In the Hinkley Connection Project Secretary of State Decision Letter:

- The ExA noted that it was *"satisfied that the rights required by the Applicant over the operational land in question could be taken without serious detriment to the carrying out of the undertaking but only if protective provisions safeguarding NR's assets are included"* (**paragraph 94**).
- The ExA concluded that *"this provision (in relation to powers of CA in relation to railway property) was not necessary or reasonable and could compromise the Applicant's ability to deliver the Development [ER 8.5.230]. The Secretary of State sees no reason to disagree with this conclusion"* (**paragraph 95**).

1.3 Network Rail overview of position

1.3.1 Network Rail is the owner and operator of Great Britain's railway infrastructure. Network Rail is a statutory undertaker in respect of its railway undertaking, with statutory and regulatory obligations in respect of it.

1.3.2 The Application includes provisions which would, if granted, authorise National Grid to carry out works in and in close proximity to operational railway land belonging to Network Rail and to use such land temporarily and to acquire permanent interests in such land. Network Rail must accordingly ensure that the

Application is granted subject to Protective Provisions which provide appropriate protection for the safe and efficient operation of the railway.

- 1.3.3 The form of Protective Provisions for the benefit of Railway Interests which National Grid has included in its Draft Development Consent Order do not reflect Network Rail's standard Protective Provisions and are not deemed by Network Rail as sufficient to afford the appropriate protections to ensure the safe and efficient operation of the railway.
- 1.3.4 Network Rail submitted its standard form of Protective Provisions to the ExA at Deadline 2. This form of Protective Provisions has been accepted by the Examining Authority and Secretary of State on numerous DCOs including but not limited to: the A47/A11 Thickthorn Junction DCO, Thurrock Flexible Generation Plant DCO, Yorkshire and Humber CCS Cross Country Pipeline DCO, Sunnica Energy Farm DCO, Longfield Solar Farm DCO and South Humber Bank Energy Centre DCO. In the determination of the Yorkshire and Humber CCS Cross Country Pipeline (where National Grid Carbon Limited was the applicant) the ExA determined that Network Rail's standard Protective Provisions should apply and its Recommendation Report stated:
- "7.5.46 However should there still be a dispute between the applicant and NR, I consider that the safety and integrity of the operational railway is paramount and therefore, in that event, I would recommend that the Part 3 as suggested by NR should be included in the DCO. With the inclusion of these protective provisions I recommend that Secretary of State can be satisfied that the grant of compulsory acquisition powers over NR's land would not cause serious detriment and that the tests under s127 of the PA2008 would be met. I have included the protective provisions in the recommended DCO."*
- 1.3.5 National Grid refers above to decisions made by the Examining Authority and Secretary of State on the Hinckley Connection Project and the Richborough Connection Project however Network Rail's position remains that the Protective Provisions which were applied to those Orders did not adequately afford the relevant protections required by Network Rail to ensure the safe and efficient operation of the railway. Further, those Orders were determined each on their own facts and merits and should not be referred to as the blueprint for what should be considered adequate protection for the railway.
- 1.3.6 Network Rail has been in discussions with National Grid to reach agreement on the form of Protective Provisions to be included on the DCO. This has included some concessions on Network Rail's part from its standard requirements in the Protective Provisions.
- 1.3.7 This document sets out Network Rail's position in respect of each outstanding matter not yet in agreement between it and National Grid and its justification for each proposed provision.

2. Proposed Protective Provisions to benefit Network Rail

Table 2.1 – Summary of proposed changes to the Protective Provisions in favour of Network Rail

| Paragraph number | Clean extract from Part 7 of Schedule 15 to the draft DCO (Document 3.1(E)) at Deadline 6 | National Grid's Justification for drafting of provision | Statutory Undertaker proposed changes shown in tracks | Statutory Undertaker's justification for proposed change |
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| 1. Application | 1. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 39 of this Part of this Schedule any other person on whom rights or obligations are conferred by that paragraph. | Provision is agreed. | No proposed changes. | Provision is agreed. |
| 2. Interpretation | 2. In this Part of this Schedule— “asset protection agreement” means an agreement to regulate the construction and maintenance of the specified work in a form reasonably prescribed from time to time by Network Rail; "construction" includes execution, placing, alteration and reconstruction and "construct" | <u>Asset Protection Agreement:</u> It is appropriate that the APA which is designated by NRIL is in a reasonably prescribed form. <u>Regulatory consents:</u> | ... “asset protection agreement” means an agreement to regulate the construction and maintenance of the specified work in a form reasonably prescribed from time to time by Network Rail save for matters concerning operational or railway safety in which case such matters shall be in Network Rail's absolute discretion; | "asset protection agreement": NR must retain absolute discretion over matters concerning the safety of the railway (and by association, safety of the network and general public) and accordingly such discretion cannot be fettered. |

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| | <p>and "constructed" have corresponding meanings;</p> <p>"the engineer" means an engineer appointed by Network Rail for the purposes of this Order;</p> <p>"network licence" means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of their powers under section 8 (licences) of the Railways Act 1993;</p> <p>"Network Rail" means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at Waterloo General Office, London, SE1 8SW) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition "associated company" means any company which is (within the meaning of section 1159 of the Companies Act 2006) the holding company</p> | <p>Because National Grid has not included the related text within its version of the protective provisions, this definition is redundant.</p> | <p>...</p> <p>"regulatory consents " means any consent or approval required under:</p> <p>(a) the Railways Act 1993;</p> <p>(b) the network licence; and/or</p> <p>(c) any other relevant statutory or regulatory provisions; by either the Office of Rail and Road or the Secretary of State for Transport or any other competent body including change procedures and any other consents, approvals of any access or beneficiary that may be required in relation to the authorised development;</p> | <p>"regulatory consents": the related drafting at paragraph 15(1)(e) which includes this term must be included (see below).</p> |

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| | <p>of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited and any successor to Network Rail Infrastructure Limited's railway undertaking;</p> <p>"plans" includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;</p> <p>"railway operational procedures" means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;</p> <p>"railway property" means any railway belonging to Network Rail and-</p> <p>(a) any station, land, works, apparatus and equipment belonging to Network Rail or</p> | | | |

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| | <p>connected with any such railway; and</p> <p>(b) any easement or other property interest held or used by Network Rail or a tenant or licensee of Network Rail for the purposes of such railway or works, apparatus or equipment; "specified work" means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property and, for the avoidance of doubt, includes the maintenance of such works under the powers conferred by article 39 (temporary use of land for maintaining the authorised development) in respect of such works.</p> | | | |
| 3. | 3. (1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational | National Grid has omitted paragraph (4) of Network Rail's preferred form of the Railway Protection Provisions (which would require | ... (2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational | Network Rail's prior consent to exercising powers under these articles on railway property must be sought in order to maintain the safe operation of the railway. The timescales for |

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| | <p>procedures and any obligations under its network licence or under statute.</p> <p>(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—</p> <p>(a) co-operate with the undertaker in good faith with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and</p> <p>(b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.</p> <p>(3) The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work.</p> | <p>National Grid to secure Network Rail's consent before exercising a number of the powers proposed to be granted by the draft DCO to facilitate the construction, operation and maintenance of the authorised development).</p> <p>National Grid fully recognises and supports the proposition that it ought to seek voluntary agreements with all third parties affected by the Proposed Development before seeking to exercise Order powers to acquire land and interests in land. National</p> | <p>procedures, Network Rail must—</p> <p>(a) co-operate with the undertaker in good faith with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and</p> <p>(b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.</p> <p>4. (1) Subject to paragraph (3) the undertaker must not exercise the powers conferred by this Order in—</p> <p>(a) article 3 (development consent granted by the Order);</p> <p>(b) article 4 (maintenance of authorised development);</p> <p>(c) article 19 (discharge of water);</p> | <p>obtaining such consent are set out within Network Rail's protective provisions and should already be familiar to National Grid from its interface with other Network Rail assets on projects elsewhere. Network Rail is of course willing to engage with National Grid and will be under a duty to act reasonably. However, NRIL is under an overarching duty not to compromise the safe operation of the rail network and its consent must be sought by National Grid in this respect. National Grid should factor this into its development programme and ensure early engagement. Works which may potentially affect the safe operation of the railway cannot be undertaken without NRIL's prior consent. NRIL will endeavour to work</p> |

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| | | <p>Grid has sought to enter into voluntary agreements with all persons with an interest in land, including statutory undertakers like Network Rail. However, despite this it will not prove possible to reach agreement with all affected parties. It is on this basis that National Grid is seeking Order powers to ensure it is able to compulsory acquire land and interests in land where it has not been possible to reach agreements.</p> <p>In the case of Network Rail, National Grid has sought to reach voluntary</p> | <p>(d)article 21 (authority to survey and investigate the land); (e)article 22 (compulsory acquisition of land); (f)article 25 (compulsory acquisition of rights); (g)article 34 (acquisition of subsoil or airspace only); (h)article 28 (power to override easements and other rights); (i)articles 36 37 and 38 (temporary use of land for by National Grid, NPG and NGN for carrying out the authorised development); (j)article 39, (temporary use of land for maintaining the authorised development); (k)article 40 (statutory undertakers); (l)article 26 (extinguishment and suspension of private rights of way); (m)article 46 (felling or lopping of trees and removal of hedgerows or shrubs); or article 55 (trees subject to tree preservation orders).</p> | <p>cooperatively with National Grid in the context of granting consents, but ultimately its protective provisions must ensure its consent is required to preserve the safety and integrity of the railway.</p> <p>NR cannot permit the exercise of compulsory purchase powers over its land unless prior consent is obtained without potentially compromising its ability to comply with its railway undertaking and network licence. National Grid's proposed wording at paragraph 3 of its preferred Protective Provisions allows it to exercise compulsory purchase powers over NR's land without prior consent provided that it obtained consent before commencing a 'specified work'. The issue with this is that whilst Network Rail would have approval over</p> |

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| | | <p>agreement for the grant of the interests in land it requires. Discussions between the parties have been taking place however, the parties have been unable to reach agreement due to conflicting positions in respect of so called 'lift and shift' provisions which National grid is unable to accept and Network Rail is insisting be included within the land agreements.</p> <p>Therefore, in the absence of foreseeable agreement, this provision has the potential to hinder progress of the</p> | <p>(2) Subject to paragraph (3) the undertaker must also not exercise: (n)the powers conferred by section 11(3) (power of entry) of the 1965 Act; (o)the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016; (p)the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016; or (q)any powers under in respect of the temporary possession of land under the Neighbourhood Planning Act 2017; in respect of any railway property unless the exercise of such powers is with the consent of Network Rail. (3)The powers in paragraphs (1) and (2) shall not be exercised in respect of any railway property unless the exercise of such powers is with the consent of Network Rail (such consent not to be</p> | <p>the carrying out of works the drafting takes no account of the fact that National Grid would not need NR consent to acquire or interfere with a whole host of rights that could compromise the railway if NR is not notified or its consent sought.</p> |

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| | | <p>Project and fetters rights under the DCO. In the context of ongoing discussions relating to the land rights heads of terms and in line with the approach taken on other National Grid DCO Projects.</p> <p>Under the National Grid proposed protective provisions, the undertaker needs to secure Network Rail's approval before carrying out any 'specified work' (being so much of the authorised development as is situated upon, across, under, over or within 15 metres, of, or may in any way</p> | <p>unreasonably withheld and if no response to a request for consent is provided within 28 days such consent is deemed to be given).</p> <p>(4) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.</p> <p>(5) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, article 40 (statutory undertakers), article 28 (power to override easements and other rights or private rights of way) or article 26 (Extinguishment and suspension of private rights), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.</p> <p>(6) The undertaker must not under the powers of this Order acquire or use or acquire new</p> | |

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| | | <p>adversely affect, railway property) (see paragraph 4). As such, Network Rail would still retain a right of approval over such works and National Grid does not agree that paragraph (4), which relates to the exercise of compulsory acquisition powers in particular, can be justified on this basis. Therefore, a further approval requirement which inhibits powers provided under the DCO would be duplicative and risks National Grid's ability to deliver the Project.</p> <p>Within the Richborough Connection</p> | <p>rights over, or seek to impose any restrictive covenants over, any railway property, or extinguish any existing rights of Network Rail in respect of any third party property, except with the consent of Network Rail.</p> <p>(7) The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.</p> <p>(8) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions but it shall never be unreasonable to withhold consent for reasons of operational or railway safety (such matters to be in Network Rail's absolute discretion).</p> <p>(9) The undertaker must enter into an asset protection</p> | |

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| | | <p>Project Panel Report, paragraph 9.9.116 (Notification to NRIL of any application to transfer the benefit of the Order), it was stated <i>"In our view, apart from the matter set out below, these amendments would appear to duplicate elements of the Applicant's provisions already in place or restrict the powers of the undertaker under the rDCO without adequate justification. In relation to the notification to NRIL of any application to transfer the benefit of the Order, we consider that it would be for the</i></p> | <p>agreement prior to the carrying out of any specified work.</p> | |

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| | | <p><i>Secretary of State to decide on any appropriate consultation in this regard at the time of the application. This amendment therefore would be unnecessary. We therefore consider that it would not be appropriate or necessary to incorporate these other amendments in the rDCO."</i></p> <p>National Grid maintains that the same position is applicable in this instance.</p> | | |
| 4. | 4. The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in | Network Rail's standard wording provides for a 28-day approval period (consistent with National Grid's approach) However, this then | ... (2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 21-days beginning with the date on which such plans have been | Network Rail's Asset Protection engineers require a minimum initial period of 28 days to consider a request for consent due to the amount of work processed by this team. If approval is not |

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| | <p>accordance with such plans as have been approved in writing by the engineer or settled by arbitration under article 53 (arbitration).</p> <p>(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 21 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated their disapproval together with the grounds of any such disapproval of those plans and the grounds of such disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval with a further period of 14 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 14 days the engineer has not intimated approval or disapproval, the engineer is deemed to have approved the plans as submitted.</p> | <p>allows for a further time period where written notice has to be filed before a further 14 days is allowed. This is potentially a 42 day period.</p> <p>Due to the tight time constraints on this Project, National Grid have proposed slightly shortening the initial period under which consideration is made before the further written notice allows 14 further days.</p> | <p>supplied to Network Rail the engineer has not intimated their disapproval together with the grounds of any such disapproval of those plans and the grounds of such disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval with a further period of 14 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 14 days the engineer has not intimated approval or disapproval, the engineer is deemed to have approved the plans as submitted.</p> <p>(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work</p> | <p>issued within that initial 28-day period, the Applicant must serve a final notice requiring Network Rail to respond within a second window of time and if no response is provided during that second window, Network Rail's consent is deemed to be given. Network Rail has already agreed to reduce the second window from its standard position of 28 days to 14 days and the Applicant is now seeking to reduce the initial period to 21 days which cannot be accepted as a minimum of 28 days is required to provide enough time for the matter to be considered by Network Rail.</p> <p>Network Rail is considering whether or not it cannot accept the wording in sub-paragraph 3.</p> |

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| | <p>(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it (together with any adjoining part of the specified work which the undertaker reasonably requires to be constructed in one operation with that work) without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.</p> | | <p>which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it (together with any adjoining part of the specified work which the undertaker reasonably requires to be constructed in one operation with that work) without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.</p> <p>...</p> | |

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| | <p>(4) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the opinion of the engineer must be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified work), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case with all reasonable dispatch and the undertaker must</p> | | | |

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| | not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to their reasonable satisfaction. | | | |
| 5. | <p>5. —(1) Any specified work and any protective works to be constructed by virtue of paragraph 29(4) must, when commenced, be constructed—</p> <p>(a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 29;</p> <p>(b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;</p> <p>(c) in such manner as to cause as little damage as is possible to operational railway property; and</p> <p>(d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail of the</p> | National Grid require limits of financial exposure to be outlined in more detail by Network Rail, the current drafting does not allow for this. | <p>...</p> <p>(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any foreseeable loss which it may sustain by reason of any such damage, interference or obstruction.</p> <p>...</p> | NR must be able to recuperate any losses it incurs as a result of a specified work. NR should not be required to demonstrate that such losses were foreseeable in order to recover them. Unforeseeable losses incurred by NR as a result of should be able to be recovered by NR. National Grid already has the comfort under this wording that the losses must be reasonable. |

| Paragraph number | Clean extract from Part 7 of Schedule 15 to the draft DCO (Document 3.1(E)) at Deadline 6 | National Grid's Justification for drafting of provision | Statutory Undertaker proposed changes shown in tracks | Statutory Undertaker's justification for proposed change |
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| | <p>traffic thereon and the use by passengers of railway property.</p> <p>(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any foreseeable loss which it may sustain by reason of any such damage, interference or obstruction.</p> <p>(3) Nothing in this Part imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker</p> | | | |

| Paragraph number | Clean extract from Part 7 of Schedule 15 to the draft DCO (Document 3.1(E)) at Deadline 6 | National Grid's Justification for drafting of provision | Statutory Undertaker proposed changes shown in tracks | Statutory Undertaker's justification for proposed change |
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| | or its servants, contractors or agents. | | | |
| 6. | <p>6. The undertaker must—</p> <p>(a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and</p> <p>(b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.</p> | Provision is agreed. | No proposed changes. | Provision is agreed. |
| 7. | <p>7. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.</p> | Provision is agreed. | No proposed changes. | Provision is agreed. |
| 8. | <p>8. (1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in</p> | National Grid cannot be exposed to uncontrolled costs | 8. —(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in | National Grid cannot decide what alterations are necessary and apply here for NR to recover its |

| Paragraph number | Clean extract from Part 7 of Schedule 15 to the draft DCO (Document 3.1(E)) at Deadline 6 | National Grid's Justification for drafting of provision | Statutory Undertaker proposed changes shown in tracks | Statutory Undertaker's justification for proposed change |
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| | <p>consequence of the construction or completion of a specified work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker 56 days' notice (or in the event of an emergency or safety critical issue such notice as is reasonable in the circumstances) of its intention to carry out such alterations or additions (which must be specified in the notice) and the undertaker gives their consent (such consent not to be unreasonably withheld or delayed) that such alternations and additions are reasonably necessary in consequence of the construction or completion of a specified work, the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the</p> | <p>and so will need some mechanism for managing the costs involved, hence the need for undertaker consent (which has to be given if reasonable).</p> | <p>consequence of the construction or completion of a specified work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker 56 days' notice (or in the event of an emergency or safety critical issue such notice as is reasonable in the circumstances) of its intention to carry out such alterations or additions (which must be specified in the notice) and the undertaker gives their consent (such consent not to be unreasonably withheld or delayed) that such alternations and additions are reasonably necessary in consequence of the construction or completion of a specified work, and within 14 days of receipt of an invoice (or other evidence of the liability incurred in carrying out the alterations and additions) from Network Rail</p> | <p>costs. NR is responsible for determining what works/alterations are necessary as part of the conditions of its Network Licence and to comply with the Railway Group Standards and Rail Industry Standards. NG is only responsible for NR's reasonable costs which should provide sufficient comfort to NG. Sub-para (3) provides that the formula used to calculate the capitalised sum must be provided to NG and in respect of the costs of alterations/additions NR is content to provide invoices/evidence of the liability incurred and wording has been included to cover this.</p> |

| Paragraph number | Clean extract from Part 7 of Schedule 15 to the draft DCO (Document 3.1(E)) at Deadline 6 | National Grid's Justification for drafting of provision | Statutory Undertaker proposed changes shown in tracks | Statutory Undertaker's justification for proposed change |
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| | <p>costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.</p> <p>(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 5(3), pay to Network Rail all reasonable and proper expenses to which Network Rail may be put and compensation for any loss which it suffers by reason of the</p> | | <p>the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.</p> | |

| Paragraph number | Clean extract from Part 7 of Schedule 15 to the draft DCO (Document 3.1(E)) at Deadline 6 | National Grid's Justification for drafting of provision | Statutory Undertaker proposed changes shown in tracks | Statutory Undertaker's justification for proposed change |
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| | <p>execution by Network Rail of that specified work.</p> <p>(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 10(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.</p> <p>(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.</p> | | | |
| 9. | <p>9. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—</p> <p>(a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 29(3) or in</p> | Provision is agreed. | No proposed changes. | Provision is agreed. |

| Paragraph number | Clean extract from Part 7 of Schedule 15 to the draft DCO (Document 3.1(E)) at Deadline 6 | National Grid's Justification for drafting of provision | Statutory Undertaker proposed changes shown in tracks | Statutory Undertaker's justification for proposed change |
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| | <p>constructing any protective works under the provisions of paragraph 29(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;</p> <p>(b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;</p> <p>(c) in respect of the employment or procurement of the services of any inspectors, signallers, watch-persons and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;</p> <p>(d) in respect of any special traffic working resulting from any speed restrictions which may in</p> | | | |

| Paragraph number | Clean extract from Part 7 of Schedule 15 to the draft DCO (Document 3.1(E)) at Deadline 6 | National Grid's Justification for drafting of provision | Statutory Undertaker proposed changes shown in tracks | Statutory Undertaker's justification for proposed change |
|------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | <p>the opinion of the engineer, need to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and</p> <p>(e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work,</p> <p>Provided That any costs incurred arising from an act or omission of Network Rail, will not be paid by the undertaker.</p> | | | |
| 10. EMI Testing | <p>10. (1) In this paragraph- "EMI" means, subject to subparagraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe</p> | <p><u>Sub-para (6)</u> National Grid has committed to working with Network Rail to establish appropriate arrangements to verify</p> | <p>... (6) If at any time prior to the commencement of operation of the authorised development the undertaker shall test the use of the authorised development in a manner that shall first have been agreed with Network Rail</p> | <p><u>Sub-para (6):</u> This is not duplicative, it ensures that testing must occur prior to commencement and that any verification arrangements agreed must provide for pre-commencement testing. National Grid's wording</p> |

| Paragraph number | Clean extract from Part 7 of Schedule 15 to the draft DCO (Document 3.1(E)) at Deadline 6 | National Grid's Justification for drafting of provision | Statutory Undertaker proposed changes shown in tracks | Statutory Undertaker's justification for proposed change |
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| | <p>operation of Network Rail's apparatus; and</p> <p>"Network Rail's apparatus" means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.</p> <p>(2) This paragraph 11 applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail's apparatus carried out after approval of plans under paragraph 5(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).</p> <p>(3) Subject to sub-paragraph (5), the undertaker must in the design</p> | <p>effectiveness, needing to agree this process again is duplicative and has the potential to add delay to the process.</p> <p><u>Sub-para (7)</u> This wording is duplication of sub-paragraph (3) and is unclear in its scope.</p> <p><u>Sub-para (9)</u> National Grid do not consider that the indemnity should extend to the EMI provisions. This is consistent with the approach taken in the Richborough Order, as confirmed by the Secretary of State in that instance.</p> | <p>and if notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.</p> <p>(7) In the event of EMI having occurred—</p> | <p>does not ensure pre-commencement testing will occur, it only provides the parties will agree arrangements for testing. If the parties cannot agree that pre-commencement testing will be carried out, there is a risk that such testing never occurs which could compromise the safety of the railway.</p> <p><u>Sub-para (7)</u>: This paragraph is to be read in the context of EMI having occurred and preventing it from re-occurring. National Grid should not be able to re-commence operations until measures have been taken to stop EMI occurring again. This matter is not covered elsewhere in the provisions and so is not a duplication. Sub-paragraph (3) applies to the design and construction of the authorised development</p> |

| Paragraph number | Clean extract from Part 7 of Schedule 15 to the draft DCO (Document 3.1(E)) at Deadline 6 | National Grid's Justification for drafting of provision | Statutory Undertaker proposed changes shown in tracks | Statutory Undertaker's justification for proposed change |
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| | <p>and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.</p> <p>(4) In order to facilitate the undertaker's compliance with sub-paragraph (3)-</p> <p>(a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail's apparatus which may be at risk of EMI, and thereafter continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;</p> <p>(b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's</p> | | <p>(a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;</p> <p>(b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI;</p> <p>and</p> <p>(c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI;and.</p> <p>(d) the undertaker shall not allow the use or operation of the authorised development in a manner that has caused or will cause EMI until measures have been taken in accordance with this paragraph to prevent EMI occurring.</p> <p>...</p> | <p>and not to the operation of the authorised development.</p> <p><u>Sub-para (9)</u>: The indemnity given by National Grid in paragraph 15 must extend to EMI matters as NR could incur losses as a result of EMI caused by the authorised development. This paragraph makes clear that such losses are covered by the indemnity. National Grid has provided no justification as to why EMI matters should be excluded from the indemnity.</p> |

| Paragraph number | Clean extract from Part 7 of Schedule 15 to the draft DCO (Document 3.1(E)) at Deadline 6 | National Grid's Justification for drafting of provision | Statutory Undertaker proposed changes shown in tracks | Statutory Undertaker's justification for proposed change |
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| | <p>apparatus identified pursuant to sub-paragraph (a); and</p> <p>(c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (a).</p> <p>(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but Network Rail may, in its reasonable discretion, select the means of prevention and the method of their execution, and in relation to such modifications paragraph 5(1) has effect subject to this sub-paragraph.</p> <p>(6) If at any time prior to the commencement of operation of the authorised development and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing of the authorised development causes EMI then the undertaker must</p> | | <p>(9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.</p> <p>...</p> | |

| Paragraph number | Clean extract from Part 7 of Schedule 15 to the draft DCO (Document 3.1(E)) at Deadline 6 | National Grid's Justification for drafting of provision | Statutory Undertaker proposed changes shown in tracks | Statutory Undertaker's justification for proposed change |
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| | <p>immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in subparagraph (5)) to Network Rail's apparatus.</p> <p>(7) In the event of EMI having occurred –</p> <p>(a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;</p> <p>(b) Network Rail must afford reasonable facilities to the undertaker for access to Network</p> | | | |

| Paragraph number | Clean extract from Part 7 of Schedule 15 to the draft DCO (Document 3.1(E)) at Deadline 6 | National Grid's Justification for drafting of provision | Statutory Undertaker proposed changes shown in tracks | Statutory Undertaker's justification for proposed change |
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| | <p>Rail's apparatus in the investigation of such EMI; and</p> <p>(c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI.</p> <p>(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6) –</p> <p>(a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;</p> <p>(b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 6.</p> <p>(10) For the purpose of paragraph 10(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.</p> | | | |

| Paragraph number | Clean extract from Part 7 of Schedule 15 to the draft DCO (Document 3.1(E)) at Deadline 6 | National Grid's Justification for drafting of provision | Statutory Undertaker proposed changes shown in tracks | Statutory Undertaker's justification for proposed change |
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| | (11) In relation to any dispute arising under this paragraph the reference in article 53 (arbitration) to the Secretary of State shall be read as a reference to the President of the Institution of Engineering and Technology. | | | |
| 11. | 11. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property. | Provision is agreed. | No proposed changes. | Provision is agreed. |
| 12. | 12. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway | Provision is agreed. | No proposed changes. | Provision is agreed. |

| Paragraph number | Clean extract from Part 7 of Schedule 15 to the draft DCO (Document 3.1(E)) at Deadline 6 | National Grid's Justification for drafting of provision | Statutory Undertaker proposed changes shown in tracks | Statutory Undertaker's justification for proposed change |
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| | <p>belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.</p> | | | |
| 13. | <p>13. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail upon the receipt of a VAT invoice.</p> | <p>Provision is agreed.</p> | <p>No proposed changes.</p> | <p>Provision is agreed.</p> |
| 14. | <p>14. (1)The undertaker must pay to Network Rail all reasonable and proper costs,</p> | <p>National Grid should not be liable for economic</p> | <p>14. —(1) The undertaker must pay to Network Rail all reasonable and proper costs,</p> | <p><u>Sub-para (1):</u> paragraphs (c), (d) and (e) must be included within this</p> |

| Paragraph number | Clean extract from Part 7 of Schedule 15 to the draft DCO (Document 3.1(E)) at Deadline 6 | National Grid's Justification for drafting of provision | Statutory Undertaker proposed changes shown in tracks | Statutory Undertaker's justification for proposed change |
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| | <p>charges, damages and expenses not otherwise provided for in this Part of this Schedule (subject to the provisions of this paragraph) which may be occasioned to or reasonably incurred by Network Rail by reason of—</p> <p>(a) the construction, maintenance or operation of a specified work or the failure of such a work; or</p> <p>(b) any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;</p> <p>(and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision shall not (if it was</p> | <p>costs other than those which Network Rail has a direct contractual obligation to pay. If the agreements in question are in the public domain, then Network Rail should have no issue disclosing them to National Grid at the outset. This approach is consistent with the approach that was taken in the Richborough Connection Order, as confirmed by the Secretary of State.</p> | <p>charges, damages and expenses not otherwise provided for in this Part of this Schedule (subject to the provisions of this paragraph) which may be occasioned to or reasonably incurred by Network Rail by reason of—</p> <p>(a) the construction, maintenance or operation of a specified work or the failure of such a work; or</p> <p>(b) any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;</p> <p>(c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to or egressing from the authorised development; or</p> <p>(d) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or</p> | <p>indemnity as they cover heads of losses which may be legitimately incurred by NR as a result of the carrying out of the authorised development.</p> <p><u>Sub-para (3)</u>: Network Rail is content for indirect costs to be linked to those for which it is liable under train operator agreements, however the need for Network Rail to have previously disclosed these agreements to National Grid in order to be able to recover its losses through the indemnity provision is onerous, unreasonable and unnecessary. Network Rail is content to provide the relevant agreement at the time of making the request for recovery of losses, but not before as it would not know which agreements were relevant until the losses had been suffered.</p> |

| Paragraph number | Clean extract from Part 7 of Schedule 15 to the draft DCO (Document 3.1(E)) at Deadline 6 | National Grid's Justification for drafting of provision | Statutory Undertaker proposed changes shown in tracks | Statutory Undertaker's justification for proposed change |
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| | <p>done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.</p> <p>(2) Network Rail must –</p> <p>(a) give the undertaker reasonable written notice of any such sums referred to in sub-paragraph (1) as soon as reasonably possible after Network Rail become aware of the same</p> <p>(b) not make any payment without the prior consent of the undertaker;</p> <p>(c) take all reasonable steps to mitigate any liabilities; and</p> <p>(d) keep the undertaker informed and have regard to the undertaker's representations in relation to any such sums referred to in sub-paragraph (1).</p> <p>(3) In no circumstances is the undertaker liable to Network Rail under sub-paragraph (1) for any indirect or consequential loss or loss of profits, save that the sums</p> | | <p>delay to the operation of the railway as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others; or</p> <p>(e) in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the carrying out or operation of the authorised development;</p> <p>and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in</p> | <p>Otherwise, in order for Network Rail to avoid the risk of not being able to recover its indirect losses, it would need to provide National Grid with copies of all train operator agreements which might ever be relevant, which is clearly unreasonable.</p> |

| Paragraph number | Clean extract from Part 7 of Schedule 15 to the draft DCO (Document 3.1(E)) at Deadline 6 | National Grid's Justification for drafting of provision | Statutory Undertaker proposed changes shown in tracks | Statutory Undertaker's justification for proposed change |
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| | <p>payable by the undertaker under that sub-paragraph shall if relevant include a sum equivalent to the relevant costs in circumstances where Network Rail is liable to make payment of the relevant costs pursuant to the terms of an agreement between Network Rail and a train operator;</p> <p>(b) the existence of that agreement and the extent of Network Rail's liability to make payment of the relevant costs pursuant to its terms has previously been disclosed in writing to the undertaker, but not otherwise.</p> <p>(4) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of any damage or interruption to the extent that it is attributable to the neglect or default of Network Rail, its officers, servants, contractors or agents.</p> <p>(5) Subject to the terms of any agreement between Network Rail and a train operator regarding the amount, timing or method of</p> | | <p>accordance with any requirement of the engineer or under the engineer's supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.</p> <p>...</p> <p>(3) In no circumstances is the undertaker liable to Network Rail under sub-paragraph (1) for any indirect or consequential loss or loss of profits, save that the sums payable by the undertaker under that sub-paragraph shall if relevant include a sum equivalent to the relevant costs in circumstances where—</p> <p>(a) Network Rail is liable to make payment of the relevant costs pursuant to the terms of</p> | |

| Paragraph number | Clean extract from Part 7 of Schedule 15 to the draft DCO (Document 3.1(E)) at Deadline 6 | National Grid's Justification for drafting of provision | Statutory Undertaker proposed changes shown in tracks | Statutory Undertaker's justification for proposed change |
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| | <p>payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.</p> <p>(6) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs is, in the event of default, enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub paragraph (4).</p> <p>(7) In this paragraph— "the relevant costs" means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by a train operator as a consequence of any specified work including but not limited to any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or</p> | | <p>an agreement between Network Rail and a train operator; and</p> <p>(b) The existence of that agreement and the extent of Network Rail's liability to make payment of the relevant costs pursuant to its terms has previously been disclosed in writing to the undertaker,</p> <p>but not otherwise.</p> <p>(4) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of any damage or interruption to the extent that it is attributable to the neglect or default of Network Rail, its officers, servants, contractors or agents.</p> | |

| Paragraph number | Clean extract from Part 7 of Schedule 15 to the draft DCO (Document 3.1(E)) at Deadline 6 | National Grid's Justification for drafting of provision | Statutory Undertaker proposed changes shown in tracks | Statutory Undertaker's justification for proposed change |
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| | omission as mentioned in subparagraph (1); and "train operator" means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993. | | | |
| 15. | 15. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 39) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs). | Provision is agreed. | No proposed changes. | Provision is agreed. |
| 16. | 16. In the assessment of any sums payable to Network Rail under this Part there must not be | Provision is agreed. | No proposed changes. | Provision is agreed. |

| Paragraph number | Clean extract from Part 7 of Schedule 15 to the draft DCO (Document 3.1(E)) at Deadline 6 | National Grid's Justification for drafting of provision | Statutory Undertaker proposed changes shown in tracks | Statutory Undertaker's justification for proposed change |
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| | <p>taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part or increasing the sums so payable.</p> | | | |
| 17. | <p>17. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—</p> <p>(a) any railway property shown on the works plan and land plan and described in the book of reference;</p> <p>(b) any lands, works or other property held in connection with any such railway property; and</p> | Provision is agreed. | No proposed changes. | Provision is agreed. |

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| | (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph. | | | |
| 18. | 18. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993. | Provision is agreed. | No proposed changes. | Provision is agreed. |
| 19. | <p>19. The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 7 (consent to transfer benefit of the Order) of this Order and any such notice must be given no later than 14 days before any such application is made and must describe or give (as appropriate)—</p> <p>(a) the nature of the application to be made;</p> | Provision is agreed. | No proposed changes. | Provision is agreed. |

| Paragraph number | Clean extract from Part 7 of Schedule 15 to the draft DCO (Document 3.1(E)) at Deadline 6 | National Grid's Justification for drafting of provision | Statutory Undertaker proposed changes shown in tracks | Statutory Undertaker's justification for proposed change |
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| | <p>(b) the extent of the geographical area to which the application relates; and</p> <p>(c) the name and address of the person acting for the Secretary of State to whom the application is to be made.</p> | | | |
| 20. | <p>20. The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 50 (certification of plans etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in an electronic format specified by Network Rail.</p> | Provision is agreed. | No proposed changes. | Provision is agreed. |

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