

APPENDIX 1

List of DCOs with Protective Provisions for National Grid Gas

1. The Drax Power (Generating Stations) Order 2019
2. The Hornsea Four Offshore Wind Farm Order
3. The East Northamptonshire Resource Management Facility Order 2023
4. The A47 Wansford to Sutton Development Consent Order 2023
5. The Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022
6. The A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 201[]
7. The A47 North Tuddenham to Easton Development Consent Order 2022
8. The A428 Black Cat to Caxton Gibbet Development Consent Order 2022
9. The M25 Junction 28 Development Consent Order 2022
10. The Thurrock Flexible Generation Plant Development Consent Order 2022
11. The South Humber Bank Energy Centre Order 2021
12. The Southampton to London Pipeline Development Consent Order 2020
13. The Immingham Open Cycle Gas Turbine Order 2020
14. The Norfolk Vanguard Offshore Wind Farm Order 2022
15. The Hornsea Three Offshore Wind Farm Order 2020

1. The Drax Power (Generating Stations) Order 2019

Co-operation

29. National Grid and the undertaker must each use their best endeavours to co-ordinate with the other party on the timing and method of execution of any works carried out under the Order or this Part of this Schedule (including, for the avoidance of doubt, pursuant to paragraph 23(2) and paragraph 25) 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 the other party's operations.

Access

30. If in consequence of the agreement reached in accordance with paragraph 22(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker shall 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

31.—(1) Any difference under this Part of this Schedule, unless otherwise provided for, shall be referred to and settled in arbitration by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

(2) Should the Secretary of State fail to make an appointment under paragraph (1) within 14 days of a referral, the referring party may refer to the Centre for Effective Dispute Resolution for appointment of an arbitrator.

PART 4

FOR THE PROTECTION OF NATIONAL GRID GAS PLC

Application

32. For the protection of National Grid as referred to in this part of this Schedule the following provisions shall, unless otherwise agreed in writing between the undertaker and National Grid, have effect.

Interpretation

33. In this Part of this Schedule—

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

“apparatus” means any conduits, cables, lines, towers, ducts, pipes or other apparatus or equipment belonging to or maintained by National Grid for the purposes of gas transmission, storage and distribution 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 in article 2 (interpretation) and (unless otherwise specified) for the purposes of this Part of this Schedule shall include the use and maintenance of the authorised development;

“deeds 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;

“ground mitigation scheme” means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the promoter to submit for the undertaker’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“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 Gas PLC (Company No. 200600) whose registered office is at 1-3 Strand, London, WC2N 5EH; and

“specified works” means any of the authorised works 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 promoter under paragraph 38(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the promoter under paragraph 38(2) or otherwise; and/or
- (c) include any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (the undertaker’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW/22).

34. Except for paragraphs 35 (apparatus in streets subject to temporary prohibition or restriction), 40 (retained apparatus: protection of National Grid as Gas Undertaker), 41 (expenses) and 42 (indemnity) of this Part 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, this Part of this Schedule does 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.

Apparatus of National Grid in streets subject to temporary prohibition or restriction

35.—(1) Without prejudice to the generality of any other protection afforded to National Grid elsewhere in the Order, where any public right of way is stopped up under article 13 (permanent stopping up of public rights of way), if National Grid has any apparatus in the public right of way or accessed via that public right of way National Grid will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the promoter will grant to National Grid, or will procure the granting to the National Grid of, legal easements reasonably satisfactory to the specified undertaker in respect of such apparatus and access to it prior to the stopping up of any such public rights of way.

(2) Notwithstanding the temporary prohibition or restriction under the powers of article 12 (temporary stopping up of streets and public rights of way), National Grid shall be at liberty at all times to take all necessary access across any such street and/or to execute and do all such works

and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

Protective works to buildings

36.—(1) The undertaker, in the case of the powers conferred by article 35 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of National Grid or any interruption in the supply of gas by National Grid is caused, the undertaker must bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

- (a) pay compensation to National Grid for any loss sustained by it; and
- (b) indemnify National Grid against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by National Grid, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of National Grid or its contractors or workmen; and National Grid will give to the undertaker reasonable notice of any claim or demand as previously described and no settlement or compromise thereof shall be made by National Grid, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

Acquisition of land

37.—(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 must not acquire any land interest or apparatus or override any easement or other interest of National Grid otherwise than by agreement (such agreement not to be unreasonably withheld or delayed).

(2) As a condition of agreement between the parties in paragraph 37(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 and National Grid must, as is reasonably required to reconcile any such conflict and/or to avoid any such breach, 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 not be materially less favourable on the whole to National Grid or the undertaker unless otherwise agreed by National Grid and/or the undertaker (as applicable), and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

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

(4) Any agreement or consent granted by National Grid under paragraph 40 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph 37(1)

Removal of apparatus

38.—(1) If, in the exercise of the agreement reached in accordance with paragraph 37 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 shall not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works comprised in the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid 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 shall, subject to sub-paragraph (3), afford to National Grid to their satisfaction (taking into account paragraph 39(1) below) the necessary facilities and rights for—

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

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of 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 except that this obligation shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule shall 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 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.

Facilities and rights for alternative apparatus

39.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to National Grid facilities and rights in land for the construction, use and maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights shall 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 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 shall be referred to arbitration under paragraph 46 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. In respect of the appointment of an arbitrator under this sub-paragraph (2), paragraph 46 shall apply.

Retained apparatus: protection of National Grid as Gas Undertaker

40.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan.

(2) The plan to be submitted to the undertaker pursuant to sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
- (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) intended maintenance regimes; and
- (g) details of any ground monitoring scheme (if required in accordance with National Grid's "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22".)

(3) The undertaker must not commence any works to which sub-paragraph (1) and (2) applies until National Grid has given written approval of the plan so submitted.

(4) Any approval of National Grid required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7);
- (b) must not be unreasonably withheld or delayed.

(5) In relation to a work to which sub-paragraph (1) and (2) applies, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under sub-paragraphs (1) and (2) must be executed only in accordance with the plan, submitted under sub-paragraph (1) and (2) or as relevant sub-paragraph (4), 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), (7) and/or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid shall be entitled to watch and inspect the execution of those works.

(7) Where National Grid requires protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works shall be carried out to National Grid's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) to which sub-paragraph (1) applies and National Grid must give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraph (1) or (2) (except in an emergency).

(8) If National Grid in accordance with sub-paragraph (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 38 and 39 shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 38(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works comprising 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.

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

- (a) comply with sub-paragraph (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order comply with National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and the Health and Safety Executive's "HS(~G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme except that National Grid retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 42.

(13) The plans submitted to National Grid by the undertaker pursuant to sub-paragraph (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.

Expenses

41.—(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, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus or alternative apparatus which may be required in consequence of the execution of any such works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that National Grid elects to use compulsory purchase powers to acquire any necessary rights under paragraph 38(3) all costs incurred as a result of such action;
- (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 settled by arbitration in accordance with paragraph 46 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) shall be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall 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 shall 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) shall, 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

42.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised 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 those works) or property of National Grid, 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 shall—

- (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 previously described.

(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 as a consequence of the authorised development or under its supervision will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of this sub-paragraph (1) where the undertaker 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 materially accord with the approved plan or as otherwise agreed between the undertaker and National Grid.

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

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, 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 pursuant to article 6(a) of the Order or as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or under article 7 of the Order subject to the proviso that once

such works become apparatus (“new apparatus”), any works yet to be executed and not falling within this sub-section 3(b) shall be subject to the full terms of this Part of this Schedule including this paragraph 42 in respect of such new apparatus.

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

Enactments and agreements

43. 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 will 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

44. National Grid and the undertaker must each use their best endeavours to co-ordinate with the other party on the timing and method of execution of any works carried out under the Order or this Part of this Schedule (including, for the avoidance of doubt, pursuant to paragraph 38(2) and paragraph 40) 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 the other party’s operations.

Access

45. If in consequence of the agreement reached in accordance with paragraph 37(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker shall 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

46.—(1) Any difference under this Part of this Schedule, unless otherwise provided for, shall be referred to and settled in arbitration by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

(2) Should the Secretary of State fail to make an appointment under paragraph (1) within 14 days of a referral, the referring party may refer to the Centre for Effective Dispute Resolution for appointment of an arbitrator.

PART 5

FOR THE PROTECTION OF NORTHERN POWERGRID (YORKSHIRE) PLC AND NORTHERN POWERGRID LIMITED

47. For the protection of Northern Powergrid (Yorkshire) Plc and Northern Powergrid Limited the following provisions have effect, unless otherwise agreed in writing between the undertaker and Northern Powergrid.

48. In this part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable Northern Powergrid to fulfil its statutory functions in a manner not less efficient than previously;

2. The Hornsea Four Offshore Wind Farm Order

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works, or other property of an operator); or
- (b) there is any interruption in the supply of the service provided by an operator, the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and must—
 - (i) make reasonable compensation to an operator for loss sustained by it; and
 - (ii) indemnify an operator against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, an operator by reason, or in consequence of, any such damage or interruption.

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

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand may be made without the consent of the undertaker which, if it withholds such consent, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this paragraph must be referred to and settled by arbitration under article 39 (arbitration).

5. This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

6. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 3

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

PART 3A - NATIONAL GRID ELECTRICITY TRANSMISSION PLC

Application

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

Interpretation

2. In this Part 3A of this Schedule—

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

“apparatus” means any 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 this 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 must be lodged or which gives or will give access to apparatus;

“authorised development” has the same meaning as in article 2 (interpretation) of this Order (unless otherwise specified) and for the purposes of this Part of this Schedule must include the use and maintenance of the authorised development and construction of any works authorised by this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Grid’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

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

“National Grid” means National Grid Electricity Transmission PLC (Company No. 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989;

“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; and

“specified works” means any of the authorised development or activities (including onshore site preparation works, monitoring, ground work operations or the receipt and erection of construction plant and equipment) 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 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 or otherwise; and/or
- (c) includes in relation to any electricity apparatus any activity that is referred to in development near overhead lines EN43-8 and HSE’s guidance note 6 “Avoidance of Danger from Overhead Lines.”

3. Except for paragraphs 4 (apparatus of National Grid in streets subject to temporary stopping up), 9 (retained apparatus: protection of National Grid as electricity undertaker), 10 (expenses) and 11 (indemnity) which must apply in respect of the exercise of all or any powers under this Order affecting the rights and apparatus of National Grid, this Schedule does 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.

Apparatus of National Grid in streets subject to temporary closure

4.—(1) Where any public right of way is stopped up under article 11 (closure and diversion of public rights of way and access land), if National Grid has any apparatus in the street or accessed via that street National Grid must be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the closure and the undertaker must grant to National Grid, or must procure the granting to National Grid of, legal easements reasonably satisfactory to National Grid in respect of such apparatus and access to it prior to the closure of any such street or highway but nothing in this paragraph affects any right of the undertaker or National Grid to require the removal of that apparatus under paragraph 7 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 9.

(2) Notwithstanding the temporary closure under the powers of article 11 (closure and diversion of public rights of way and access land), National Grid must be at liberty at all times to take all necessary access across any such street and/or to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the closure or diversion was in that street.

Protective works to buildings

5. The undertaker, in the case of the powers conferred by article 16 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid which must not unreasonably be withheld.

Acquisition of land

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

(2) 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.

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

Removal of apparatus

7.—(1) If, in the exercise of the powers conferred by the Order, the undertaker acquires any interest in or possesses temporarily any Order 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-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works comprised in the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid 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 8(1) below) the necessary facilities and rights—

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

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid 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 shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

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

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

Facilities and rights for alternative apparatus

8.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid 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 the matter must be referred to arbitration under paragraph 31 (arbitration) of this Part 3 and the arbitrator must 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. In respect of the appointment of an arbitrator under this sub-paragraph (2) article 39 (arbitration) of this Order applies.

Retained apparatus: Protection of National Grid as Electricity Undertaker

9.—(1) Not less than 56 days before the commencement of any specified works, 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 assets.

- (2) In relation to works which will or may be situated on, over, under or within—
 - (a) 15 metres measured in any direction of any apparatus, or
 - (b) 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 describe—

- (a) the exact position of the works;

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

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must in addition to the matters set out in sub-paragraph (2) include a method statement describing—

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

(4) The undertaker must not commence any works to which sub-paragraph (1), (2)(2) or (3) apply until National Grid has given written approval of the plan so submitted.

(5) Any approval of National Grid required under sub-paragraph (1), (2), or (3)—

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

(6) In relation to a work to which sub-paragraph (1), (2) or (3) apply, 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 provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (2), (3) or (6) 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) and/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 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 specified works for which protective works are required and National Grid must give notice of its

requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

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

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

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under this Order, the undertaker must comply with National Grid's policies for development near overhead lines ENA TA 43-8 and the Health and Safety Executive's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

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

- (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 7(3); 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, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement settled by arbitration in accordance with article 39 (arbitration) of this Order 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 save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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

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

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

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised 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, 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 accompanied by an invoice or claim from National Grid the cost reasonably and properly 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 other than arising from any default by 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 as a consequence of the authorised development or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (2) where the undertaker 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.

- (3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—
- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents;
 - (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 the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or article 5 (benefit of the Order) of the Order subject to the proviso that once such works become apparatus (“new apparatus”), any works yet to be executed and not falling within this sub-paragraph 11(3)(b) will be subject to the full terms of this Part of this Schedule including this paragraph 11 in respect of such new apparatus; and/or
 - (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

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

Enactments and agreements

12. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between the undertaker and National Grid, nothing in this Part of this Schedule affects 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

13.—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or National Grid requires the removal of apparatus under paragraph 7(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 9, National Grid 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 National Grid, it must not be unreasonably withheld or delayed.

Access

14. If in consequence of the agreement reached in accordance with paragraph 6 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

15. Save for differences or disputes arising under paragraphs 7(2), 7(4), 8(1) and 9 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 39 (arbitration).

Notices

16. The plans submitted to National Grid by the undertaker pursuant to paragraph 9(1) must be sent to National Grid LSBUD at <https://lsbud.co.uk/> or assetprotection@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.

PART 3B - NATIONAL GRID GAS PLC

Application

17. For the protection of National Grid as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Grid.

Interpretation

18. In this Part 3B of this Schedule—

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

“apparatus” means any mains, pipes or other apparatus belonging to or maintained by National Grid for the purposes of gas supply, together with any replacement apparatus and such other apparatus constructed pursuant to this 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 must be lodged or which gives or will give access to apparatus;

“authorised development” has the same meaning as in article 2 (interpretation) of this Order (unless otherwise specified) 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;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Grid’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

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

“National Grid” means National Grid Gas PLC (Company No. 200600) whose registered office is at 1-3 Strand, London, WC2N 5EH, or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

“Network Code” means the network code prepared by National Grid as from time to time modified pursuant to the licence granted, or treated as granted, to it from time to time under the Gas Act 1986 as amended, in respect of its national transmission system;

“Network Code Claims” means any claim made against National Grid by any person under the Network Code arising out of or in connection with any failure by National Grid to make gas available for off take at, or a failure to accept gas tendered for delivery from, any entry point to or exit point from the National Grid network as a result of the authorised works or any costs and/or expenses incurred by National Grid as a result of or in connection with, it taking action (including purchase or buy back of capacity) for the purpose of managing constraint or potential constraint on the National Grid Network which may arise as a direct result of the authorised works;

“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; and

“specified works” means any of the authorised development or activities (including onshore site preparation works, monitoring, ground work operations or the receipt and erection of construction plant and equipment) 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 23 or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 23 or otherwise; and/or
- (c) includes in relation to any gas apparatus any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (National Grid’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW/22”.

19. Except for paragraphs 20 (apparatus of National Grid in streets subject to temporary closure), 25 (retained apparatus: protection of National Grid as gas undertaker), 26 (expenses) and 27 (indemnity) which must apply in respect of the exercise of all or any powers under this Order affecting the rights and apparatus of National Grid, this Schedule does 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.

Apparatus of National Grid in streets subject to temporary closure

20.—(1) Where any public right of way is closed under article 11 (closure and diversion of public rights of way and access land), if National Grid has any apparatus in the street or accessed via that street National Grid must be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the closure and the undertaker must grant to National Grid, or must procure the granting to National Grid of, legal easements reasonably satisfactory to National Grid in respect of such apparatus and access to it prior to the closure of any such street or highway but nothing in this paragraph affects any right of the undertaker or National Grid to require the removal of that apparatus under paragraph 23 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 25.

(2) Notwithstanding the temporary closure under the powers of article 11 (closure and diversion of public rights of way and access land), National Grid must be at liberty at all times to take all necessary access across any such street and/or to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the closure or diversion was in that street.

Protective works to buildings

21. The undertaker, in the case of the powers conferred by article 16 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid which must not unreasonably be withheld.

Acquisition of land

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

(2) 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.

(3) Any agreement or consent granted by National Grid under paragraph 23 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

23.—(1) If, in the exercise of the powers conferred by the Order, the undertaker acquires any interest in or possess temporarily any Order 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-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works comprised in the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid 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 24(1) below) the necessary facilities and rights—

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

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph 7(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 shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

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

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph 7(2) or 7(3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

24.—(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 8(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 the matter must be referred to arbitration under paragraph 31 (arbitration) and the arbitrator must 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. In respect of the appointment of an arbitrator under this sub-paragraph 8(2) article 39 (arbitration) of this Order must apply.

Retained apparatus: protection of National Grid as Gas Undertaker

25.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan and, if reasonably required by National Grid, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to National Grid under sub-paragraph 9(1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc;
- (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; and
- (f) any intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraphs 9(1) and (2) apply until National Grid has given written approval of the plan so submitted.

(4) Any approval of National Grid required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7); and
- (b) must not be unreasonably withheld.

(5) In relation to a work to which sub-paragraphs 9(1) and/or (2) apply, 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 provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraphs 9(1) and (2) or as relevant sub-paragraph (5), 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), (7) and/or (8) 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.

(7) Where National Grid 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 specified works for which protective works are required and National Grid must give notice of its requirement for such protective works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If National Grid in accordance with sub-paragraph (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 17 to 19 and 22 to 23 apply as if the removal of the apparatus had been required by the undertaker under paragraph 23(2).

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

(10) The undertaker will not be required to comply with sub-paragraph 9(1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under this Order the undertaker must comply with National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and the Health and Safety Executive's HS(~G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that National Grid retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 26.

Expenses

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

- (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 23(3); 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, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph 10(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 settled by arbitration in accordance with article 39 (arbitration) of this Order 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 10(1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph 10(3)—

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

(5) Any amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph 10(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

27.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised 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, 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 accompanied by an invoice or claim from National Grid the cost reasonably and properly 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 and including any Network Code Claims other than arising from any default by 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 as a consequence of the authorised development or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (2) where the undertaker 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.

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

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents;
- (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 the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or article 5 (benefit of the Order) of the Order subject to the proviso that once such works become apparatus (“new apparatus”), any works yet to be executed and not falling within this sub-paragraph (3)(b) will be subject to the full terms of this Part of this Schedule including this paragraph 11 in respect of such new apparatus; and/or
- (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

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

Enactments and agreements

28. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between the undertaker and National Grid, nothing in this Part of this Schedule affects 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

29.—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or National Grid requires the removal of apparatus under paragraph 23(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 25, National Grid 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 National Grid, it must not be unreasonably withheld or delayed.

Access

30. If in consequence of the agreement reached in accordance with paragraph 22 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

31. Save for differences or disputes arising under paragraphs 23(2), 23(4), 24(1) and 25 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 39 (arbitration).

Notices

32. The plans submitted to National Grid by the undertaker pursuant to paragraph 25(1) must be sent to National Grid LSBUD at <https://lsbud.co.uk/> or assetprotection@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.

PART 4

PROTECTION OF RAILWAY INTERESTS

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 16 of this Part of this Schedule any other person on whom rights or obligations are conferred by that paragraph.

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 prescribed from time to time by Network Rail;

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“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(a);

“Network Rail” means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at 1 Eversholt Street, London, NW1 2DN) 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(b) the holding company 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;

(a) 1993 c. 43.

(b) 2006 c. 46.

3. The East Northamptonshire Resource Management Facility Order 2023

PART 3

For the protection of National Grid as Gas Undertaker

Application

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

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid, where the benefit of this Order is transferred or granted to another person under article 7 (consent to transfer benefit of Order)—

- (a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between National Grid and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to National Grid on or before the date of that transfer or grant

(3) Sub-paragraph (2) does not apply where the benefit of this Order is transferred or granted to National Grid.

Interpretation

21. In this Part of this Schedule—

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

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

“acceptable insurance” means a third party liability insurance effected and maintained by the undertaker with a limit of indemnity of not less than £100,000,000 (one hundred million pounds) per occurrence or series of occurrences arising out of one event. Such insurance must be maintained for the construction period of the authorised works 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 same requirements as an “acceptable credit provider”, such policy must include (but without limitation)—

- (a) a waiver of subrogation and an indemnity to principal clause in favour of the National Grid; and
- (b) 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 security” means either—

- (a) a parent company guarantee from a parent company in favour of National Grid Gas Plc to cover the undertaker’s liability to National Grid Gas Plc to a total liability cap of £100,000,000.00 (one hundred million pounds) (in a form reasonably satisfactory to National Grid and where required by National Grid, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or
- (b) a bank bond or letter of credit from an acceptable credit provider in favour of National Grid Gas Plc to cover the undertaker’s liability to National Grid Gas Plc for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £100,000,000.00 (one hundred million pounds) (in a form reasonably satisfactory to the National Grid);

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

“apparatus” means any mains, pipes or other apparatus belonging to or maintained by National Grid for the purposes of gas supply, together with any replacement apparatus and such other apparatus constructed pursuant to this 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 works” has the same meaning as is given to the term “authorised development” in article 2(1) of this Order and includes any associated development authorised by this Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

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

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

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, must require the undertaker to submit for National Grid’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” must include 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;

“National Grid” means: National Grid Gas plc (Company Number 02006000) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

“Network Code” means the network code prepared by National Grid pursuant to Standard Special Condition A11(3) of its Gas Transporter’s Licence, which incorporates the Uniform Network Code, as defined in Standard Special Condition A11(6) of National Grid’s Gas Transporters Licence, as both documents are amended from time to time;

“Network Code Claims” means any claim made against National Grid by any person or loss suffered by National Grid under the Network Code arising out of or in connection with any failure by National Grid to make gas available for off take at, or a failure to accept gas tendered for delivery from, any entry point to or exit point from the gas national transmission system as a result of the authorised works or any costs and/or expenses incurred by National Grid as a result of or in connection with, it taking action (including purchase or buy back of capacity) for the purpose of managing constraint or potential constraint on the gas national transmission system which may arise as a result of the authorised works;

“parent company” means a parent company of the undertaker acceptable to and which must have been approved by National Grid acting reasonably;

“undertaker” means the undertaker as defined in article 2(1) of this Order;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 24(2) or otherwise; and/or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 24(2) or otherwise; and/or
- (c) includes any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (National Grid’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW/22”).

On Street Apparatus

22. Except for paragraphs 26 (retained apparatus: protection of gas undertaker) and 27 (expenses) and 28 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under this 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

23.—(1) Regardless of any provision in this Order, the undertaker may not—

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

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid or affect 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 works.

(3) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid 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 must prevail.

(4) Any agreement or consent granted by National Grid under paragraph 28 or 29 or any other paragraph of this Part of this Schedule, must not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

24.—(1) If, the undertaker acquires 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).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid 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 reasonable satisfaction (taking into account paragraph 27(1) below) the necessary facilities and rights—

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

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid 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 must not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

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

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

Facilities and rights for alternative apparatus

25.—(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 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 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 the matter may be referred to arbitration in accordance with paragraph 32 (arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of gas undertaker

26.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan and, if reasonably required by National Grid, a ground monitoring scheme in respect of those works.

(2) In relation to 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 describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc;
- (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; and
- (f) any intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until National Grid has given written approval of the plan so submitted.

(4) Any approval of National Grid required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and,
- (b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, 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 for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under sub-paragraphs (1) or (2) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), 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) or (7) 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.

(7) Where National Grid 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 Grids' satisfaction prior to the commencement of any specified works for which protective works are required and National Grid must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If National Grid in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 20 to 22 and 25 to 27 apply as if the removal of the apparatus had been required by the undertaker under paragraph 24(2).

(9) 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 specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

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

Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under this Order National Grid must comply with National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(-G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker must implement an appropriate ground mitigation scheme save that National Grid retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 27.

Expenses

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

- (a) any costs reasonably incurred by or compensation properly paid by National Grid 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 using its own compulsory purchase powers to acquire any necessary rights under paragraph 24(3); or
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 32 (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 save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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

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

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

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

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

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents;
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by National Grid as an assignee, transferee or lessee of the undertaker with the benefit of this Order pursuant to section 156 of the 2008 Act or article 7 (consent to transfer benefit of order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-section 3 will be subject to the full terms of this Part of this Schedule including this paragraph 28.

(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 their representations.

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

(6) Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Grid or 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 until the following conditions are satisfied:

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

(7) In the event that the undertaker fails to comply with paragraph 26(6) of this Part of this Schedule, nothing in this Part of this Schedule must prevent National Grid from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

29. 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 affects 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

30.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 24(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 26 the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid must 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 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

31. If in consequence of the agreement reached in accordance with paragraph 23(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

32. 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 20 (arbitration).

Notices

33. Notwithstanding article 19 (service of notices), any plans submitted to National Grid by the undertaker pursuant to this Part must be submitted using the LSBUD system (<https://lsbud.co.uk/>) or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

EXPLANATORY NOTE

(This note is not part of this Order)

This Order grants development consent for, and authorises Augean South Limited to alter the existing facilities and construct new facilities for the recovery and disposal of hazardous waste and the disposal of low level waste at the East Northamptonshire Resource Management Facility, Stamford Road, Kings Cliffe, Northamptonshire. This Order also authorises further development within the Order limits and provides a defence in proceedings in respect of statutory nuisance. This Order imposes requirements in connection with the development for which it grants development consent.

A copy of the plans and documents referred to in this Order and certified in accordance with article 18 of this Order may be inspected free of charge during working hours at the offices of North Northamptonshire Council, One Angel Square, Northampton, NN1 1ED.

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Water fails to carry out and execute the works properly with due care and attention and in a skilful and professional like manner or in a manner that does not accord with the approved plan.

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

(4) Anglian Water must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made, without the consent of the undertaker (such consent not to be unreasonably withheld or delayed) who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Cooperation

30. Where in consequence of the proposed construction of any of the authorised development, the undertaker or Anglian Water requires the removal of apparatus under paragraph 25(2) (removal of apparatus) or Anglian Water makes requirements for the protection or alteration of apparatus under paragraph 277 (retained apparatus), the undertaker must use all reasonable 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 Anglian Water's undertaking and Anglian Water must use all reasonable endeavours to co-operate with the undertaker for that purpose.

31. Where the undertaker identifies any apparatus which may belong to or be maintainable by Anglian Water but which does not appear on any statutory map kept for the purpose by Anglian Water, it shall inform Anglian Water of the existence and location of the apparatus as soon as reasonably practicable.

32. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Anglian Water in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

33. Any time period in which an action must be taken in this part of the Schedule may be amended by written agreement between the undertaker and Anglian Water.

PART 4

FOR THE PROTECTION OF NGG AS GAS UNDERTAKER

Application

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

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and NGG, where the benefit of this Order is transferred or granted to another person under article 10 (consent to transfer benefit of Order)—

- (a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between NGG and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to NGG on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to NGG (but see paragraph 44(3)(b)).

Interpretation

35. In this Part of this Schedule—

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

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

“apparatus” means any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables or other apparatus belonging to or maintained by NGG for the purposes of gas supply together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of NGG for the purposes of transmission, distribution or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

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

“commence” and “commencement” in paragraph 422 (retained apparatus: protection of gas undertaker) of this Part of this Schedule includes any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment,

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

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by NGG (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, requires the undertaker to submit for NGG’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus of NGG 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;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 40(2) (removal of apparatus) or otherwise; or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 40(2) or otherwise.

36. Except for paragraphs 377 (apparatus of NGG in stopped up streets), 42 (retained apparatus: protection of gas undertaker), 43 (expenses) and 444 (indemnity) of this Part 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 NGG, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and NGG are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of NGG in stopped up streets

37.—(1) Where any street is stopped up under article 17 (permanent stopping up and restriction of use of streets and private means of access), if NGG has any apparatus in the street or accessed via that street NGG has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to NGG, or procure the granting to NGG of, legal easements reasonably satisfactory to NGG in respect of such apparatus and access to it prior to the stopping up of any such street but nothing in this paragraph affects any right of the undertaker or NGG to require the removal of that apparatus under paragraph 40 (removal of apparatus) or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 42 (retained apparatus: protection of gas undertaker).

(2) Notwithstanding the temporary alteration, diversion or restriction of any highway under the powers of article 16 (temporary stopping up and restriction of use of streets), NGG will be at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the alteration, diversion or restriction was in that street.

Protective works to buildings

38. The undertaker must exercise the powers conferred by article 22 (protective work to buildings) so as not to obstruct or render less convenient the access to any apparatus without the written consent of NGG (such consent not to be unreasonably withheld).

Acquisition of land

39.—(1) Regardless of any provision in this Order or anything shown on the land plans, the undertaker may not acquire any interest in land or apparatus or override any easement or other interest of NGG otherwise than by agreement.

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between NGG and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of NGG or affect the provisions of any enactment or agreement regulating the relations between NGG and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as NGG reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between NGG and the undertaker acting reasonably and which must be no less favourable on the whole to NGG unless otherwise agreed by NGG, and it will be the responsibility of the undertaker to procure and secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and NGG agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by NGG or other enactments relied upon by NGG as of right or other use in relation to the apparatus, then the provisions in this Schedule prevail.

(4) Any agreement or consent granted by NGG under paragraph 42 (retained apparatus: protection of gas undertaker) or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

40.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of NGG 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 NGG in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to NGG 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 NGG reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to NGG to its reasonable satisfaction (taking into account paragraph 41(1)) the necessary facilities and rights—

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

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, NGG 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 NGG to use its compulsory purchase powers to this end unless it elects to so do.

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

(5) NGG must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to NGG of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

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

(2) If the facilities and rights to be afforded by the undertaker 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 NGG than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the matter may be referred to arbitration in accordance with paragraph 488 (arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to NGG as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of gas undertaker

42.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to NGG a plan and, if reasonably required by NGG, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to NGG under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc;
- (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; and
- (f) any intended maintenance regimes.

(3) The undertaker must not commence any specified works until NGG has given written approval of the plan so submitted.

(4) Any approval of NGG required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and,
- (b) must not be unreasonably withheld or delayed.

(5) NGG may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Specified works must only be executed in accordance with—

- (a) the plan, submitted under sub-paragraph (1), as approved or as amended from time to time by agreement between the undertaker and NGG; and
- (b) such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by NGG for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and NGG will be entitled to watch and inspect the execution of those works.

(7) Where under sub-paragraph (6) NGG requires any protective works to be carried out by itself or by the undertaker such protective works (whether of a temporary or permanent nature) must be carried out to NGG's satisfaction prior to the commencement of any specified works for which protective works are required and NGG must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If NGG in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 344 to 366 and 399 to 411 apply as if the removal of the apparatus had been required by the undertaker under paragraph 40(2) (removal of apparatus).

(9) 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 specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) As soon as reasonably practicable after any ground subsidence event attributable to the authorised works—

- (a) the undertaker must implement an appropriate ground mitigation scheme; and

- (b) NGG retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 43 (expenses).

(11) The undertaker is not be required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to NGG notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances.

(12) In sub-paragraph (11), “emergency works” means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

Expenses

43.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to NGG within 30 days of receipt of an itemised invoice or claim from NGG all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by NGG in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by NGG in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by NGG as a consequence of NGG—
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 40(3) (removal of apparatus); or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting NGG;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 488 (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 NGG by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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

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

(5) Any amount which apart from this sub-paragraph would be payable to NGG 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 NGG 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

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

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

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

(3) Nothing in sub-paragraph (1) 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 NGG, its officers, servants, contractors or agents;
- (b) any part of the authorised works carried out by NGG in the exercise of any functions conferred by this Order pursuant to a grant or transfer under article 10 (consent to transfer benefit of Order).

(4) NGG must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in

connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

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

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

Enactments and agreements

45. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and NGG 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

46.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or NGG requires the removal of apparatus under paragraph 40(2) (removal of apparatus) or NGG makes requirements for the protection or alteration of apparatus under paragraph 422 (retained apparatus: protection of gas undertaker), the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of NGG's undertaking and NGG must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever the undertaker's or NGG's consent, agreement or approval is required in relation to plans, documents or other information submitted under this schedule, or agreement is required to be reached between the parties under this schedule, it must not be unreasonably withheld or delayed.

Access

47. If in consequence of the agreement reached in accordance with paragraph 39(1) (acquisition of land) 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 NGG to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

48. Save for differences or disputes arising under paragraphs 40(2) and (2) (removal of apparatus), and 41(1) (facilities and rights for alternative apparatus), any difference or dispute arising between the undertaker and NGG under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and NGG, be determined by arbitration in accordance with article 49 (arbitration).

Notices

49. Notwithstanding article 48 (service of notices), any plans submitted to NGG by the undertaker pursuant to paragraph 422 (retained apparatus: protection of gas undertaker) must be sent to <https://lsbud.co.uk/> and National Grid Plant Protection at assetprotection@nationalgrid.com or such other address as NGG may from time to time appoint instead for that purpose and notify to the undertaker in writing.

5. The Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICITY AND GAS UNDERTAKER

Application

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

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid, where the benefit of this Order is transferred or granted to another person under article 7 (consent to transfer benefit of the Order)—

- (a) any agreement of the type mentioned in subparagraph (1) has effect as if it had been made between National Grid and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to National Grid on or before the date of that transfer or grant

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid.

Interpretation

2. In this Part of this Schedule—

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

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

“acceptable insurance” means a third party liability insurance effected and maintained by the undertaker with a limit of indemnity of not less than £100,000,000 (one hundred 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 works 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 same requirements as an “acceptable credit provider”, such policy shall include (but without limitation):

- (a) National Grid Electricity Transmission Plc and National Grid Gas 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 security” means either:

- (a) a parent company guarantee from a parent company in favour of National Grid Electricity Transmission Plc and National Grid Gas Plc to cover the undertaker’s liability to National

(a) 1991 c. 22.

Grid Electricity Transmission Plc and National Grid Gas Plc to a total liability cap of £100,000,000.00 one hundred million pounds) (in a form reasonably satisfactory to National Grid and where required by National Grid, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or

- (b) a bank bond or letter of credit from an acceptable credit provider in favour of National Grid Electricity Transmission Plc and National Grid Gas Plc to cover the undertaker's liability to National Grid Electricity Transmission Plc and National Grid Gas Plc for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £100,000,000.00 (one hundred million pounds) (in a form reasonably satisfactory to the National Grid);

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

“apparatus” means:

- (a) any electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid;
- (b) any mains, pipes or other apparatus belonging to or maintained by National Grid for the purposes of gas supply;

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

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

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

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Grid's approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

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

“National Grid” means:

- (a) National Grid Electricity Transmission Plc (Company Number 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989; and
- (b) National Grid Gas plc (Company Number 02006000) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

“parent company” means a parent company of the undertaker acceptable to and which shall have been approved by National Grid acting reasonably;

“undertaker” means the undertaker as defined in article 2(1) of this Order;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which:

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise; and/or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise; and/or
- (c) includes any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (National Grid’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW/22 and/or activity that is referred to in 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 4 (*Apparatus of National Grid in stopped up streets*), 8 (*retained apparatus: protection*) and 9 (*retained apparatus: protection*), 10 (*expenses*) and 11 (*indemnity*) of this Schedule which will apply in respect of the exercise of all or any powers under this 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.

Apparatus of National Grid in stopped up streets

4.—(1) Where any street is permanently stopped up under this Order, if National Grid has any apparatus in the street or accessed via that street National Grid has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Grid, or procure the granting to National Grid of, legal easements reasonably satisfactory to National Grid in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph affects any right of the undertaker or National Grid to require the removal of that apparatus under paragraph 7 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 9.

(2) Notwithstanding the temporary stopping up or diversion of any highway pursuant to Article 13 (*Agreement with street authorities*), National Grid is at liberty at all times to take all necessary access across any such stopped up highway and to execute all such works and things in, upon, or under any such highway as may be reasonable necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

5.—(1) The undertaker, in the case of the powers conferred by article 34 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid and, if by reason of the exercise of

those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of National Grid or any interruption in the supply of electricity by National Grid is caused, the undertaker must bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

- (a) pay compensation to National Grid for any loss sustained by it; and
- (b) indemnify National Grid against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by that undertaker, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of National Grid or its contractors or workmen; and National Grid will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made by National Grid, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

Acquisition of land

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

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid or affect 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 or the undertaker unless otherwise agreed by National Grid and/or the undertaker (as applicable), and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid 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) Any agreement or consent granted by National Grid under paragraph 8 or 9 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

7.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid 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).

(2) If, for the purpose of executing any authorised 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 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 reasonable satisfaction (taking into account paragraph 8(1) below) the necessary facilities and rights—

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

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid 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 shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

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

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

Facilities and rights for alternative apparatus

8.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid 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 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 the matter may be referred to arbitration in accordance with paragraph 16 (*Arbitration*) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of electricity undertaker

9.—(1) Not less than 56 days before the commencement of any specified works 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 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 describe—

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

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing:-

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

(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.

(5) Any approval of National Grid required under sub-paragraphs (4)—

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

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, 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, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) 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 under sub-paragraph (6) National Grid 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 notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

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

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised 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 National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under this 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".

Retained apparatus: protection of gas undertaker

10.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan and, if reasonably required by National Grid, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc;
- (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; and
- (f) any intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until National Grid has given written approval of the plan so submitted.

(4) Any approval of National Grid required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (6); and,
- (b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, 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 for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under sub-paragraphs (1) or (2) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub paragraph (5), 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) or (7) 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.

(7) Where National Grid 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 specified works for which protective works are required and National Grid must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If National Grid in accordance with sub-paragraphs (4) or (6) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1, 2 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(9) 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 specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances and comply with sub paragraph (11) at all times.

(11) At all times when carrying out any works authorised under this Order National Grid must comply with National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(~G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that National Grid retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 11.

Expenses

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

- (a) any costs reasonably incurred by or compensation properly paid by National Grid 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 7(3); or
 - (ii) exercising any compulsory purchase powers in this 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, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works and;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 16 (arbitration) of this Part of this Schedule 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 save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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

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

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

12.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the

purposes of the authorised works) or property of National Grid, 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 and properly 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 and including Network Code Claims 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 will 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.

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

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents;
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by National Grid as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or article 7 (consent to transfer benefit of the order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 12.

(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 their representations.

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

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

(7) The undertaker must not commence construction (and not permit the commencement of such construction) of the authorised works on any land owned by National Grid or 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 until the following conditions are satisfied:

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

(8) In the event that the undertaker fails to comply with paragraph 11(7) 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

13. 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 affects 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

14.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 7(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 9 or 10, the undertaker shall use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid'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 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

15. If in consequence of the agreement reached in accordance with paragraph 6(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

16. Save for difference or dispute arising under paragraph 7(2), 7(4), 8(1), 9 and 10 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 44 (arbitration).

Notices

17. Notwithstanding article 42 (service of notices), any plans submitted to National Grid by the undertaker pursuant to this Part of this Schedule 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.

6. The A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 201[]

(2) The maximum amount payable to a relevant drainage authority under sub-paragraph (1)(a) or (b) shall be the same as would have been payable to the relevant drainage authority in accordance with the scale of charges for pre-application advice and land drainage consent applications published on the relevant drainage authority’s website from time to time.

39.—(1) Without prejudice to the other provisions of this Part of this Schedule, the undertaker must indemnify a relevant drainage authority from all claims, demands, proceedings or damages, which may be made or taken against, or recovered from a relevant drainage authority by reason of—

- (a) any damage to any ordinary watercourse so as to impair its efficiency for flood defence purposes,
- (b) any raising or lowering of the water table in land adjoining the works authorised by this Order or adjoining any sewers, drains and watercourses, or
- (c) any flooding or increased flooding of any such lands,

which is caused by, or results from, the construction of any specified work or any act or omission of the undertaker, its contractors, agents or employees whilst engaged upon the work.

(2) A relevant drainage authority must give to the undertaker reasonable notice of any such claim or demand and no settlement or compromise of any such claim or demand is to be made without the consent of the undertaker which, if it withholds such consent, is to have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

40. The fact that any work or thing has been executed or done in accordance with a plan approved or deemed to have been approved by a relevant drainage authority, or to its satisfaction, does not (in the absence of negligence on the part of a relevant drainage authority, its officers, contractors or agents) relieve the undertaker from any liability under the provisions of this Part of this Schedule.

41. Any dispute arising between the undertaker and a relevant drainage authority under this Part of this Schedule is to be determined by arbitration.

PART 5

FOR THE PROTECTION OF NATIONAL GRID

Application

42. For the protection of National Grid as referred to in this Schedule the following provisions shall, unless otherwise agreed in writing between the undertaker and National Grid, have effect.

Interpretation

43. In this Schedule—

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

“apparatus” means mains, pipes or other apparatus belonging to or maintained by National Grid for the purposes of gas supply;

“authorised development” has the same meaning as in article 2 of this Order and (unless otherwise specified) for the purposes of this Schedule shall include the use and maintenance of the authorised development;

“commence” has the same meaning as in article 2 of this Order and commencement shall be construed to have the same meaning;

“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” shall include 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;

“National Grid” means National Grid Gas PLC (Company No. 200600) whose registered office is at 1-3 Strand, London, WC2N 5EH;

“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; and

“specified work” means so much of any of the authorised development that will or may be situated 15m (measured in any direction) of, or which may affect, any apparatus.

44. This Schedule does 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.

Apparatus of National Grid in streets subject to temporary stopping up or restriction

45. Notwithstanding the temporary prohibition or restriction under the powers of article 14 (temporary stopping up and restriction of use of streets), National Grid shall be at liberty at all times to take all necessary access across any such street and/or to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

Acquisition of land

46.—(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 must not acquire any land interest or apparatus or override any easement or other interest of National Grid otherwise than by agreement (such agreement not to be unreasonably withheld).

(2) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in 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 as of right or other use in relation to the apparatus then the provisions in this Schedule shall prevail.

Removal of apparatus

47.—(1) If, in the exercise of the agreement reached in accordance with paragraph 46 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 Schedule and any right of National Grid to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works comprised in the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid 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 shall, subject to sub-paragraph (3), afford to National Grid to their satisfaction (taking into account paragraph 48(1) below) the necessary facilities and rights for—

(a) the construction of alternative apparatus in other land of the undertaker; and

(b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of 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 shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Schedule shall 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 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 Schedule.

Facilities and rights for alternative apparatus

48.—(1) Where, in accordance with the provisions of this Schedule, the undertaker affords to National Grid facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights shall 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 agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid under 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 shall be referred to arbitration 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. In respect of the appointment of an arbitrator under this sub-paragraph (2), article 43 of the Order shall apply.

Retained apparatus: protection of National Grid as Gas Undertaker

49.—(1) Not less than 56 days before the commencement of any authorised development authorised by this Order that involves activities or works specified in National Grid's "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" that are within the proximities described therein to any apparatus the removal of which has not been required by the undertaker under paragraph 47(2) or otherwise, the undertaker must submit to National Grid a plan.

(2) In relation to specified works, or any works that (wherever situated) impose any load directly upon any apparatus, the plan to be submitted to National Grid under sub-paragraph (1) shall show—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
- (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) intended maintenance regimes; and
- (g) details of any ground monitoring scheme (if required in accordance with National Grid's "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22").

(3) The undertaker must not commence any works to which sub-paragraph (2) applies until National Grid has given written approval of the plan so submitted.

(4) Any approval of National Grid required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7);
- (b) must not be unreasonably withheld.

(5) In relation to a work to which sub-paragraphs (1) and (2) applies, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under sub-paragraphs (1) or (2) shall be executed only in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub paragraph (2), 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 (4), (5), (7) and/or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid shall be entitled to watch and inspect the execution of those works.

(7) Where National Grid requires protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works shall be carried out to National Grid's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) and National Grid must give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraph (1) or (2) (except in an emergency).

(8) If National Grid in accordance with sub-paragraph (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 42 to 44 and 47 to 48 shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 47(2).

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

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

- (a) comply with sub-paragraph (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order comply with National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and the Health and Safety Executive's "HS(~G)47 Avoiding Danger from underground services".

Expenses

50.—(1) Subject to the following provisions of this paragraph, the undertaker shall pay to National Grid on demand all charges, costs and expenses reasonably anticipated or incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration

or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in this Schedule including without limitation—

- (a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that National Grid elects to use compulsory purchase powers to acquire any necessary rights under paragraph 47(3) all costs incurred as a result of such action;
- (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 Schedule.

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions 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 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 settled by arbitration in accordance with article 43 (arbitration) of the Order to be necessary, then, if such placing involves cost in the construction of works under 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) shall be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs shall be borne by the undertaker.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall 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 shall 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) shall, 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

51.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by 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 Schedule or any subsidence resulting from any of these works), any material 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 those works) or property of National Grid, 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 shall—

- (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.

(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 as a consequence of the authorised development or under its supervision shall not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of 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 materially accord with the approved plan or as otherwise agreed between the undertaker and National Grid.

(3) 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 National Grid, its officers, servants, contractors or agents.

(4) National Grid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made without first consulting the undertaker and considering their representations.

(5) National Grid must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 51 applies. If reasonably requested to do so by the undertaker, National Grid shall provide an explanation of how the claim has been minimised. The undertaker shall only be liable under this paragraph 51 for costs and expenses properly incurred by National Grid.

Co-operation

52. National Grid and the undertaker must each use their best endeavours to co-ordinate with the other party on the timing and method of execution of any works carried out under the Order or this Schedule 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 the other party's operations.

Access

53. If in consequence of the agreement reached in accordance with paragraph 46(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker shall 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

54. Any difference or dispute arising between the undertaker and National Grid under this Schedule shall, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 43 (arbitration) of the Order.

PART 6

FOR THE PROTECTION OF RAILWAY INTERESTS

55. The following provisions of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 69, any other person on whom rights or obligations are conferred by that paragraph.

56. In this Schedule—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“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 his powers under section 8 of the Railways Act 1993(a);

“Network Rail” means Network Rail Infrastructure Limited 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(b) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“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;

“protective works” means any works specified by the engineer under paragraph 59(4);

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail and—

(a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and

(b) any easement or other property interest held or used by Network Rail for or connected with the purposes of such railway or works, apparatus or equipment; and

“specified work” means so much of any of the authorised development as is or is to be situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

57.—(1) Where under 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 procedures and any obligations under its network licence or under statute.

(a) 1993 c.43

(b) 2006 c.46

7. The A47 North Tuddenham to Easton Development Consent Order 2022

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7(2) of that code; and

“operator” means the operator of an electronic communications code network.

16. The exercise of the powers conferred by article 35 (statutory undertakers) is subject to Part 10 (undertakers works affecting electronic communications apparatus) the electronic communications code in the 2003 Act.

17.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or
- (b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

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

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 52 (arbitration).

(5) This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; or
- (b) any damages, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

(6) Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 3

FOR THE PROTECTION OF NATIONAL GRID AS GAS UNDERTAKER

Application

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

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid, where the benefit of this Order is transferred or granted to another person under article 10 (consent to transfer benefit of Order)—

- (a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between National Grid and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to National Grid on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid (but see paragraph 28(3)(b)).

Interpretation

19. In this Part of this Schedule—

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

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

“apparatus” means any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables or other apparatus belonging to or maintained by National Grid for the purposes of gas supply 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 or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

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

“commence” and “commencement” in paragraph 26 and 28 of this Part of this Schedule includes any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment,

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

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, requires the undertaker to submit for National Grid’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“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;

“National Grid” means National Grid Gas Plc or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986 as the context requires;

“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;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which:

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 24(2) or otherwise; or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 24(2) or otherwise.

20. Except for paragraphs 21 (apparatus in stopped up streets), 26 (retained apparatus: protection), 27 (expenses) and 28 (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.

Apparatus of National Grid in stopped up streets

21.—(1) Where any street is stopped up under article 16 (permanent stopping up and restriction of use of streets and private means of access), if National Grid has any apparatus in the street or accessed via that street National Grid has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Grid, or procure the granting to National Grid of, legal easements reasonably satisfactory to National Grid in respect of such apparatus and access to it prior to the stopping up of any such street but nothing in this paragraph affects any right of the undertaker or National Grid to require the removal of that apparatus under paragraph 24 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 26.

(2) Notwithstanding the temporary alteration, diversion or restriction of any highway under the powers of article 15 (temporary stopping up and restriction of use of streets), National Grid will be at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the alteration, diversion or restriction was in that street.

Protective works to buildings

22. The undertaker must exercise the powers conferred by article 21 (protective work to buildings) so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid (such consent not to be unreasonably withheld).

Acquisition of land

23.—(1) Regardless of any provision in this Order or anything shown on the land plans, the undertaker may not acquire any interest in land or apparatus or override any easement or other interest of National Grid otherwise than by agreement.

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid or affect 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 secure the consent and entering into of such deeds

and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid 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 prevail.

(4) Any agreement or consent granted by National Grid under paragraph 26 or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

24.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid 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).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid 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), afford to National Grid to its reasonable satisfaction (taking into account paragraph 25(1)) the necessary facilities and rights—

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

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid 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 National Grid to use its compulsory purchase powers to this end unless it elects to so do.

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

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

Facilities and rights for alternative apparatus

25.—(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 under 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, the matter may be referred to arbitration in accordance with paragraph 32 (Arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of gas undertaker

26.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan and, if reasonably required by National Grid, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc;
- (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; and
- (f) any intended maintenance regimes.

(3) The undertaker must not commence any specified works until National Grid has given written approval of the plan so submitted.

(4) Any approval of National Grid required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7) ; and,
- (b) must not be unreasonably withheld or delayed.

(5) 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 for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Specified works must only be executed in accordance with—

- (a) the plan, submitted under sub-paragraph (1), as approved or as amended from time to time by agreement between the undertaker and National Grid; and
- (b) such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) 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.

(7) Where under sub-paragraph (6) National Grid requires any protective works to be carried out by itself or by the undertaker such protective works (whether of a temporary or permanent nature) must be carried out to National Grid's satisfaction prior to the commencement of any specified works for which protective works are required and National Grid must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If National Grid in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 18 to 20 and 23 to 25 apply as if the removal of the apparatus had been required by the undertaker under paragraph 24(2).

(9) 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 specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) As soon as reasonably practicable after any ground subsidence event attributable to the authorised works—

- (a) the undertaker must implement an appropriate ground mitigation scheme; and
- (b) National Grid retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 28.

(11) The undertaker is not be required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances.

(12) In sub-paragraph (11), “emergency works” means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

Expenses

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

- (a) any costs reasonably incurred by or compensation properly paid by National Grid 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 24(3); 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, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 32 (*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 save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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

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

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

28.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid, 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 accompanied by an invoice or claim from National Grid the cost reasonably and properly 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 will 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.

(3) 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;
- (b) any part of the authorised works carried out by National Grid in the exercise of any functions conferred by this Order pursuant to a grant or transfer under article 9 (consent to transfer benefit of Order).

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

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

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

Enactments and agreements

29. Nothing in this Part of this Schedule affects 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

30.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 24(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 26, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever the undertaker's or National Grid's consent, agreement or approval is required in relation to plans, documents or other information submitted under this schedule, or agreement is required to be reached between the parties under this schedule, it must not be unreasonably withheld or delayed.

Access

31. If in consequence of the agreement reached in accordance with paragraph 23(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

32. Save for differences or disputes arising under paragraph 24(2), 24(4) and 25(1), 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 52 (*arbitration*).

Notices

33. Notwithstanding article 51 (service of notices), any plans submitted to National Grid by the undertaker pursuant to paragraph 26 must be sent to [REDACTED] and National Grid Plant Protection at assetprotection@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.

PART 4

FOR THE PROTECTION OF ANGLIAN WATER

Application

34. For the protection of Anglian Water, the following provisions have effect, unless otherwise agreed in writing between the undertaker and Anglian Water.

Interpretation

35. In this part of this Schedule –

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

“alternative apparatus” means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in a manner no less efficient than previously;

“Anglian Water” means Anglian Water Services Limited;

“apparatus” means—

- (a) works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage;
- (b) any drain or works vested in Anglian Water under The Water Industry Act 1991,
- (c) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act; and
- (d) includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus

and for the purpose of this definition, where words are defined by section 219 of the Water Industry Act 1991 they shall be taken to have the same meaning.

“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 or upon land;

“plan” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed.

8. The A428 Black Cat to Caxton Gibbet Development Consent Order 2022

Arbitration

29. Any dispute arising between the undertaker and the drainage authority under this Part of this Schedule, may if the parties agree, be determined by arbitration under article 50 (arbitration) but may otherwise be determined by the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Transport acting jointly on a reference to them by the undertaker or the drainage authority, after notice in writing by one to the other.

PART 4

FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICITY AND GAS UNDERTAKER

Application

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

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid, where the benefit of this Order is transferred or granted to another person under article 11 (consent to transfer benefit of Order)—

- (a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between National Grid and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to National Grid on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid (but see paragraph 41(3)(b)).

Interpretation

31. In this Part of this Schedule—

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

“apparatus” means any electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid or any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables or other apparatus belonging to or maintained by National Grid for the purposes of gas supply 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 or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

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

“commence” and “commencement” in paragraph 38, 39 and 38 of this Part of this Schedule includes any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

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

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, requires the undertaker to submit for National Grid’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“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;

“National Grid” means National Grid Electricity Transmission Plc (company number 02366977) whose registered office is at 1-3 Strand, London, WC2N 5EH, or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989 and National Grid Gas Plc (company number 02006000) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986 as the context requires;

“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;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 36(2) or otherwise; or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 36(2) or otherwise.

32. Except for paragraphs 33 (apparatus of National Grid in stopped up streets), 38 (retained apparatus: protection of electricity undertaker) and 39 (retained apparatus: protection of gas undertaker), 40 (expenses) and 41 (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.

Apparatus of National Grid in stopped up streets

33.—(1) Where any street is stopped up under article 17 (permanent stopping up and restriction of use of streets and private means of access), if National Grid has any apparatus in the street or accessed via that street National Grid has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Grid, or procure the granting to National Grid of, legal easements reasonably satisfactory to National Grid in respect of such apparatus and access to it prior to the stopping up of any such street but nothing in this paragraph affects any right of the undertaker or National Grid to require the removal of that apparatus under paragraph 36 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 38.

(2) Notwithstanding the temporary alteration, diversion or prohibition or restriction of any highway under the powers of article 16 (temporary alteration, diversion, prohibition and restriction of the use of streets), National Grid is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up, alteration, diversion or restriction was in that street.

Protective works to buildings

34. The undertaker must exercise the powers conferred by article 21 (protective work to buildings) so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid (such consent not to be unreasonably withheld).

Acquisition of land

35.—(1) Regardless of any provision in this Order or anything shown on the land plans, the undertaker may not acquire any interest in land or apparatus or override any easement or other interest of National Grid otherwise than by agreement.

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid or affect 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 secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid 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 prevail.

(4) Any agreement or consent granted by National Grid under paragraph 9 or 10 or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

36.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid 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).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid 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), afford to National Grid to its reasonable satisfaction (taking into account paragraph 37(1)) the necessary facilities and rights—

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

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid 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 National Grid to use its compulsory purchase powers to this end unless it elects to so do.

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

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

Facilities and rights for alternative apparatus

37.—(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 under paragraph 8(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, the matter may be referred to arbitration in accordance with paragraph 45 (Arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of electricity undertaker

38.—(1) Not less than 56 days before the commencement of any specified works 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 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 describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;

- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes; and
- (g) an assessment of risks of rise of earth issues.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

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

(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.

(5) Any approval of National Grid required under sub-paragraphs (4)—

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

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, 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, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) 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 under sub-paragraph (6) National Grid 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 specified works for which protective works are required and National Grid must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives

written notice to the undertaker of that requirement, paragraphs 30 to 32 and 35 to 37 apply as if the removal of the apparatus had been required by the undertaker under paragraph 36(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 specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph 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 but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances.

(12) In sub-paragraph (11) “emergency works” means works whose execution at the time when they are executed is required in order to put an end to or to prevent the occurrence of circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

Retained apparatus: protection of gas undertaker

39.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan and, if reasonably required by National Grid, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc;
- (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; and
- (f) any intended maintenance regimes.

(3) The undertaker must not commence any specified works until National Grid has given written approval of the plan so submitted.

(4) Any approval of National Grid required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and,
- (b) must not be unreasonably withheld or delayed.

(5) 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 for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Specified works must only be executed in accordance with—

- (a) the plan, submitted under sub-paragraph (1), as approved or as amended from time to time by agreement between the undertaker and National Grid; and
- (b) such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) 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.

(7) Where under sub-paragraph (6) National Grid requires any protective works to be carried out by itself or by the undertaker such protective works (whether of a temporary or permanent nature) must be carried out to National Grid’s satisfaction prior to the commencement of any specified

works for which protective works are required and National Grid must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If National Grid in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 30 to 32 and 35 to 37 apply as if the removal of the apparatus had been required by the undertaker under paragraph 36(2).

(9) 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 specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) As soon as reasonably practicable after any ground subsidence event attributable to the authorised works—

- (a) the undertaker must implement an appropriate ground mitigation scheme; and
- (b) National Grid retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 11.

(11) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances.

(12) In sub-paragraph (11), “emergency works” means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

Expenses

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

- (a) any costs reasonably incurred by or compensation properly paid by National Grid 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 36(3); 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, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 45 (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 save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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

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

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

41.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid, 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 accompanied by an invoice or claim from National Grid the cost reasonably and properly 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 will 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.

(3) 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;
- (b) any part of the authorised works carried out by National Grid in the exercise of any functions conferred by this Order pursuant to a grant or transfer under article 10 (consent to transfer benefit of Order).

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

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

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

Enactments and agreements

42. Nothing in this Part of this Schedule affects 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

43.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 36(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 38 or 39, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever the undertaker's or National Grid's consent, agreement or approval is required in relation to plans, documents or other information submitted under this schedule, or agreement is required to be reached between the parties under this Part of this Schedule, it must not be unreasonably withheld or delayed.

Access

44. If in consequence of the agreement reached in accordance with paragraph 35(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

45. Save for differences or disputes arising under paragraph 36(2), 36(4) and 37(1), 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 500 (arbitration).

Notices

46. Notwithstanding article 49 (service of notices), any plans submitted to National Grid by the undertaker pursuant to paragraph 9 or 10 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.

PART 5

PROTECTION FOR NETWORK RAIL INFRASTRUCTURE LIMITED

47. The following 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 61, any other person on whom rights or obligations are conferred by that paragraph.

48. In this Part of the Schedule—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“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 his powers under section 8(a) (licences) of the Railways Act 1993;

“Network Rail” means Network Rail Infrastructure Limited (company number 02904587 whose registered office is at 1 Eversholt Street, London, NW1 2DN) 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 (meaning of “subsidiary” etc.) of the Companies Act 2006(b) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“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;

“protective works” means any works specified by the engineer under paragraph 51(4);

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail Infrastructure Limited and—

(a) any station, land, works, apparatus and equipment belonging to Network Rail Infrastructure Limited or connected with any such railway; and

(a) 1993 c. 43. Section 8 was amended by section 216 of, and Part 1 of Schedule 2, paragraph 4 of Schedule 17 and Part IV of Schedule 31 to, the Transport Act 2000 (c. 38), by section 16(5) of, and paragraph 5 of Schedule 2 to, the Railways and Transport Safety Act 2003 (c. 20), by sections 1 and 60 of, and paragraph 3 of Schedule 1 and Part 1 of Schedule 13 to, the Railways Act 2005 (c. 38), by S.I. 2015/1682 and by S.I. 2015/1682.

(b) 2006 c. 46.

9. The M25 Junction 28 Development Consent Order 2022

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (3), the drainage authority must not except in a case of emergency exercise the powers of sub-paragraph (4) until the dispute has been finally determined in accordance with paragraph 36.

(6) This paragraph does not apply to—

- (a) drainage works which are vested in the drainage authority, or which the drainage authority or another person is liable to maintain and is not prevented by this Order from so doing; and
- (b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part of this Schedule provided that any obstruction is removed as soon as reasonably practicable.

(7) Subject to paragraphs 34(6)(b) and 36, if by reason of the construction of any specified work or of the failure of any such work the efficiency of any ordinary watercourse for flood defence purposes is impaired, or that watercourse is otherwise damaged, so as to require remedial action, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the drainage authority and if the undertaker fails to do so, the drainage authority may make good the same and recover from the undertaker the expense reasonably incurred by it in doing so.

35.—(1) The undertaker must make reasonable compensation for costs, charges and expenses which the drainage authority may reasonably incur in—

- (a) in the examination or approval of plans under this Part of this Schedule; and
- (b) in the inspection of the construction of a specified work in respect of a key watercourse or any protective works required by the drainage authority under this Part of this Schedule.

(2) The maximum amount payable to the drainage authority under sub-paragraph (1)(a) or (b) is to be the same as would have been payable to the drainage authority in accordance with the scale of charges for pre-application advice and land drainage consent applications published on the drainage authority's website from time to time.

36. Any dispute arising between the undertaker and the drainage authority under this Part of this Schedule is to be determined in accordance with article 53 (arbitration).

PART 5

FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICITY AND GAS UNDERTAKER

Application

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

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid, where the benefit of this Order is transferred or granted to another person under article 9 (consent to transfer benefit of Order)—

- (a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between National Grid and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to National Grid on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid (but see paragraph 48(3)(b)).

Interpretation

38. In this Part of this Schedule—

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

“apparatus” means any electric lines or electrical plant as defined in the Electricity Act 1989(a), belonging to or maintained by National Grid or any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables or other apparatus belonging to or maintained by National Grid for the purposes of gas supply 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 or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“commence” and “commencement” in paragraph 45 and 46 of this Part of this Schedule includes any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

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

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, will require the undertaker to submit for National Grid’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“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;

“National Grid ” means National Grid Electricity Transmission Plc or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989 and National Grid Gas Plc or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986 as the context requires;

“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;

“specified works” means any of the authorised development or activities undertaken in association with the authorised development (including maintenance) 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 43(2) or otherwise; or

(a) 1989 c. 29. The definition of “electrical plant” (in section 64) was amended by paragraphs 24 and 38(1) and (3) of Schedule 6 to the Utilities Act 2000 (c. 27).

- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 43(2) or otherwise.

39. Except for paragraphs 40 (apparatus of National Grid in stopped up streets), 45 (retained apparatus: protection of electricity undertaker), 46 (retained apparatus: protection of gas undertaker), 47 (expenses), and 48 (indemnity) of this Part 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 Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provision of Part 3 of the 1991 Act.

Apparatus of National Grid in stopped up streets

40.—(1) Where any street is stopped up under article 15 (permanent stopping up of streets and private means of access), if National Grid has any apparatus in the street or accessed via that street National Grid has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Grid, or procure the granting to National Grid of, legal easements reasonably satisfactory to National Grid in respect of such apparatus and access to it prior to the stopping up of any such street but nothing in this paragraph affects any right of the undertaker or National Grid to require the removal of that apparatus under paragraph 43 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 45 or 46.

(2) Notwithstanding the temporary closure, alteration, diversion or restriction of use of any street under the powers of article 13 (temporary stopping up and restriction of use of streets), National Grid is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the closure, alteration, diversion or restriction of use was in that street.

Protective works to buildings

41. The undertaker must exercise the powers conferred by article 21 (protective work to buildings) so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid (such consent not to be unreasonably withheld).

Acquisition of land

42.—(1) Regardless of any provision in this Order or anything shown on the land plans, the undertaker may not possess temporarily acquire any interest in land or apparatus, or override any easement or other interest in land, of National Grid otherwise than by agreement.

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out or maintenance of any part of the authorised development (or in such other timeframe as may be agreed between National Grid and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid or affect 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 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 or maintenance thereof.

(3) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus) and the provisions of any existing easement, rights,

agreements and licences granted, used, enjoyed or exercised by National Grid 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 prevail.

(4) Any agreement or consent granted by National Grid under paragraph 45 or 46 or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

43.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule, and any right of National Grid 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-paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid 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), afford to National Grid to its reasonable satisfaction (taking into account paragraph 44(1)) the necessary facilities and rights—

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

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid 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 National Grid to use its compulsory purchase powers to this end unless it elects to so do.

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

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

Facilities and rights for alternative apparatus

44.—(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, such agreement not to be unreasonably withheld.

(2) If the facilities and rights to be afforded by the undertaker under sub-paragraph (1) in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and

rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the matter may be referred to arbitration in accordance with paragraph 52 (arbitration) and the arbitrator must 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 electricity undertaker

45.—(1) Not less than 56 days before the commencement of any specified works 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 works which will or may be situated on, over, under or within 15 metres measured in any direction of any apparatus, or 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 describe—

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

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

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

(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.

(5) Any approval of National Grid required under sub-paragraph (4)—

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

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of

securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) 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 under sub-paragraph (6) National Grid 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 specified works for which protective works are required and National Grid must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 37 to 39 and 42 to 44 apply as if the removal of the apparatus had been required by the undertaker under paragraph 43(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 specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph 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 but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances.

(12) In sub-paragraph (11) "emergency works" means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

Retained apparatus: protection of gas undertaker

46.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan and, if reasonably required by National Grid, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
- (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; and
- (f) any intended maintenance regimes.

(3) The undertaker must not commence any specified works until National Grid has given written approval of the plan so submitted.

(4) Any approval of National Grid required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and,
- (b) must not be unreasonably withheld or delayed.

(5) 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 for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Specified works must only be executed in accordance with—

- (a) the plan, submitted under sub-paragraph (1), as approved or as amended from time to time by agreement between the undertaker and National Grid; and
- (b) such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) 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.

(7) Where under sub-paragraph (6) National Grid requires any protective works to be carried out by itself or by the undertaker such protective works (whether of a temporary or permanent nature) must be carried out to National Grid's satisfaction prior to the commencement of any specified works for which protective works are required and National Grid must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If National Grid in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 37 to 39 and 42 to 44 apply as if the removal of the apparatus had been required by the undertaker under paragraph 43(2).

(9) 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 specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development or its maintenance—

- (a) the undertaker must implement an appropriate ground mitigation scheme; and
- (b) National Grid retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 47.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances.

(12) In sub-paragraph (11), “emergency works” means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

Expenses

47.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to National Grid within 30 days of receipt of an itemised invoice or claim from National Grid all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised development or its maintenance including without limitation—

- (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 43(3); 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, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 52 (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 save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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

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

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

48.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised 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, 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 accompanied by an invoice or claim from National Grid the cost reasonably and properly 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 will 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.

(3) 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;
- (b) any part of the authorised development (including maintenance) carried out by National Grid in the exercise of any functions conferred by this Order pursuant to a grant or transfer under article 9 (consent to transfer benefit of Order).

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

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

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

Enactments and agreements

49. Nothing in this Part of this Schedule affects 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

50.—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or National Grid requires the removal of apparatus under paragraph 43(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 45 or 46, the undertaker must 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 must use its best endeavours to co-operate with the undertaker for that purpose.

(2) Whenever the undertaker’s or National Grid’s consent, agreement or approval is required in relation to plans, documents or other information submitted under this Schedule, or agreement is required to be reached between the parties under this Schedule, it must not be unreasonably withheld or delayed.

Access

51. If in consequence of the agreement reached in accordance with paragraph 42(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

52. Save for differences or disputes arising under paragraphs 43(2), 43(4) and 44(1) 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 53 (arbitration).

Notices

53. Notwithstanding article 46 (service of notices), any plans submitted to National Grid by the undertaker pursuant to paragraph 45 or 46 must be sent to National Grid Plant Protection at plantprotection@cadentgas.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.

PART 6

FOR THE PROTECTION OF CADENT GAS LIMITED

Application

54. For the protection of Cadent the following provisions will, unless otherwise agreed in writing between the undertaker and Cadent, have effect.

Interpretation

55. In this Part of this Schedule—

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

“apparatus” means any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables or other apparatus belonging to or maintained by Cadent for the purposes of Cadent’s undertaking together with any replacement apparatus and such other apparatus constructed pursuant to this Order that becomes operational apparatus of Cadent for the purposes of

10. The Thurrock Flexible Generation Plant Development Consent Order 2022

(2) For the avoidance of doubt, in sub-paragraph (1)—

“costs” includes—expenses and charges; staff costs and overheads; and legal costs; and

“losses” includes physical damage.

(3) The undertaker shall indemnify the Agency against all liabilities, claims and demands arising out of or in connection with the authorised works or otherwise out of the matters referred to in sub-paragraph (1)(a) and (b).

(4) For the avoidance of doubt, in sub-paragraph (3)—

“claims” and “demands” include as applicable—

(a) costs (within the meaning of sub-paragraph (2)) incurred in connection with any claim or demand;

(b) any interest element of sums claimed or demanded;

“liabilities” includes—

(a) contractual liabilities;

(b) tortious liabilities (including liabilities for negligence or nuisance);

(c) liabilities to pay statutory compensation or for breach of statutory duty; and

(d) liabilities to pay statutory penalties imposed on the basis of strict liability (but does not include liabilities to pay other statutory penalties).

(5) The Agency must give to the undertaker reasonable written notice of any such claim or demand as is referred to in sub-paragraph (3) as soon as reasonably practicable after it becomes aware of such claim or demand, and no settlement or compromise of any such claim or demand is to be made without the prior agreement of the Undertaker which agreement may not be unreasonably withheld or delayed.

(6) The fact that any work or thing has been executed or done by the Undertaker in accordance with a plan approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the Undertaker from any liability under the provisions of this Part of this Schedule.

(7) Nothing in this paragraph imposes any liability on the undertaker with respect to any costs, charges, expenses, damages, claims, demands or losses to the extent that they are attributable to the neglect or default of the Agency, its officers, servants, contractors or agents.

12. Any dispute arising between the undertaker and the Agency under this part of this Schedule will, be determined by arbitration under article 42 (arbitration) unless otherwise agreed in writing by the undertaker and the Agency.

PART 5

FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICITY AND GAS UNDERTAKER

Application

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

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid, where the benefit of this Order is transferred or granted to another person under article 8 (consent to transfer benefit of Order)—

(a) any agreement of the type mentioned in subparagraph (1) has effect as if it had been made between National Grid and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to National Grid on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid.

Interpretation

2. In this Part of this Schedule—

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

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

“apparatus” means—

- (a) any electric lines or electrical plant as defined in the Electricity Act 1989(a), belonging to or maintained by National Grid;
- (b) any mains, pipes or other apparatus belonging to or maintained by National Grid for the purposes of gas supply;

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

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

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

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Grid’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

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

“National Grid” means—

(a) 1989 c. 29.

- (a) National Grid Electricity Transmission Plc (company number 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989; and
- (b) National Grid Gas plc (company number 02006000) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986(a);

“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;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise; and/or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise; and/or
- (c) includes any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (National Grid’s policies for safe working in proximity to gas apparatus, “Specification for safe working in the vicinity of National Grid, High Pressure Gas pipelines and associated installations- requirements for third parties” and/or activity that is referred to in National Grid’s document “Development near overhead lines” and the Health and Safety Executive’s (HSE) Guidance Note GS6 “Avoiding Danger from Overhead Power Lines”;

“undertaker” means the undertaker as defined in article 2(1) of this Order.

On Street Apparatus

3. Except for paragraphs 4 (Apparatus of statutory undertakers in temporarily restricted streets), 8 (retained apparatus: protection of electricity undertaker), 9 (retained apparatus: protection of gas undertaker), and 10 (expenses) 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.

Apparatus of statutory undertakers in temporarily restricted streets

4. Despite the temporary stopping up or diversion of any highway under article 13 (temporary restriction of use of streets), National Grid may at all times take all necessary access across any such highway and execute and do all such works and things in, on or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the restriction or diversion was in that highway.

Acquisition of land

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

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

(a) 1986 c. 44.

Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid or affect 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 works.

(3) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid 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) Any agreement or consent granted by National Grid under paragraph 8 or 9 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

6.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid 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).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid 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 reasonable satisfaction (taking into account paragraph 7(1) below) the necessary facilities and rights—

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

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid 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 shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

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

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph

(2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

7.—(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 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 the matter may be referred to arbitration in accordance with paragraph 14 (*Arbitration*) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of electricity undertaker

8.—(1) Not less than 56 days before the commencement of any specified works 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 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 describe—

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

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;

- (f) written details of the operations and maintenance regime for any cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid's engineers; and
- (h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of at least 26 tonnes in weight.

(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.

(5) Any approval of National Grid required under sub-paragraph (4)—

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

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

(7) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) 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 under sub-paragraph (6) National Grid 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 Grids' satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and National Grid must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 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 National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order, the undertaker must comply with National Grid's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Retained apparatus: protection of gas undertaker

9.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan and, if reasonably required by National Grid, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc;
- (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; and
- (f) any intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until National Grid has given written approval of the plan so submitted.

(4) Any approval of National Grid required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and,
- (b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, 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 for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under sub-paragraphs (1) or (2) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub paragraph (5), 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) or (7) 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.

(7) Where National Grid 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 specified works for which protective works are required and National Grid must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

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

(9) 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 specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order the undertaker must comply with National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and

associated installation requirements for third parties T/SP/SSW22” and HSE’s “HS(-G)47 Avoiding Danger from underground services”.

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker must implement an appropriate ground mitigation scheme save that National Grid retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 10.

Expenses

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

- (a) any costs reasonably incurred by or compensation properly paid by National Grid 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 6(3); 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, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 14 (*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 save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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

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

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

Enactments and agreements

11. 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 affects 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

12.—(1) Where in consequence of the proposed construction of any part of the authorised works, 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 or 9, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid must 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 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

13. 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

14. Save for differences or disputes arising under paragraph 6(2), 6(4), 7(1), 8 and 9 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 42 (*arbitration*).

Notices

15. Notwithstanding article 39 (*service of notices*), any plans submitted to National Grid by the undertaker pursuant to this Part must be sent to 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.

11. The South Humber Bank Energy Centre Order 2021

PART 2

FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICITY AND GAS UNDERTAKER

Application

10. For the protection of National Grid the following provisions in this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and National Grid.

Interpretation

11. In this Part of this Schedule—

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

“apparatus” means—

- (a) in the case of an electricity undertaking, an electric line or electrical plant, as defined in the Electricity Act 1989(a), belonging to or maintained by that electricity undertaker; and
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply,

together with any replacement apparatus and such other apparatus constructed under the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” 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 works and construction of any works authorised by this Schedule;

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

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, will require the undertaker to submit for National Grid’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

(a) 1989 c. 29, as amended by section 108 of, and paragraphs 24 and 38(1) and (3) of Schedule 6 to, the Utilities Act 2000 (c. 27) and regulation 48 of S.I. 2011/2704. There are other amendments not relevant to this Order.

“maintain” and “maintenance” include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of the undertaker – 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; and

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which—

- (a) are 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 14(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 14(2) or otherwise; or
- (c) include any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (National Grid’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties”).

Apparatus of Undertakers in stopped up streets

12. Despite the temporary stopping up or diversion of any highway under the powers of article 13 (temporary stopping up of streets and public rights of way), National Grid is at liberty at all times to take all necessary access across any such stopped up highway or to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Acquisition of apparatus

13.—(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 acquire apparatus or override any easement and/or other interest of National Grid otherwise than by agreement.

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid 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 or other legal or land interest of National Grid 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 a deed 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 is the responsibility of the undertaker to procure or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

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

(4) Any agreement or consent granted by National Grid under paragraph 17 or any other paragraph of this Part of this Schedule, are not to be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

14.—(1) If, in the exercise of the agreement reached in accordance with paragraph 13(1) 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 an undertaker 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 question in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid 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), afford to National Grid to its satisfaction (taking into account paragraph 15(1)) the necessary facilities and rights—

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

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid 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 National Grid to use its compulsory purchase powers to this end unless it elects to so do.

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

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

Facilities and rights for alternative apparatus

15.—(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 15(1) in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid 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 then the matter must be referred to arbitration in accordance with paragraph 23 (arbitration) of this Part of this Schedule and the arbitrator may 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 Gas Undertakers

16.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan and, if reasonably required by National Grid, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
- (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; and
- (f) any intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until National Grid has given written approval of the plan so submitted.

(4) Any approval of National Grid required under sub-paragraph (2)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and
- (b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraphs (1) and (2) apply, 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.

(6) Works to which this paragraph applies must only be executed in accordance with the plan approved under sub-paragraph (3) and as relevant sub-paragraph (4) 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) or (7) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid must be entitled to watch and inspect the execution of those works.

(7) Where National Grid 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 under this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any authorised works (or any relevant part of the authorised works) for which protective works are required and National Grid must give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If National Grid in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 10 to 12 and 14 to 16 apply as if the removal of the apparatus had been required by the undertaker under paragraph 15(2).

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

(10) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in section 52 of the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must—

- (a) comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and

(b) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order the undertaker must comply with National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(-G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker must implement an appropriate ground mitigation scheme save that National Grid retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 18.

Retained apparatus: Protection: Electricity Undertakers

17.—(1) Not less than 56 days before the commencement of any authorised works that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 15(2) or otherwise, 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 works which will or may be situated on, over, under or within—

- (a) 15 metres measured in any direction of any apparatus; or
- (b) 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 describe—

- (c) the exact position of the works;
- (d) the level at which these are proposed to be constructed or renewed;
- (e) the manner of their construction or renewal including details of excavation, positioning of plant;
- (f) the position of all apparatus;
- (g) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (h) any intended maintenance regimes; and
- (i) 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 ten metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

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

(5) Any approval of National Grid required under sub-paragraph (4)—

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

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid 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.

(7) Works to which this paragraph applies must only be executed in accordance with the plan approved under sub-paragraph (1) and as relevant sub-paragraph (5) 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 (6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid is entitled to watch and inspect the execution of those works.

(8) Where National Grid requires any protective works to be constructed 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 under this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any authorised works (or any relevant part of the authorised works) for which protective works are required and National Grid must 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, paragraphs 10 to 12 and 14 to 16 apply as if the removal of the apparatus had been required by the undertaker under paragraph 15(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 construction of the authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(11) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in section 52 of the 1991 Act but in that case it must give to 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 constructing 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

18.—(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, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with 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 14(3); or
- (ii) exercising any powers in the Order transferred to or benefitting National Grid;
- (b) in connection with the cost of the constructing 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 construction of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and
- (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 must 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 29 (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) must be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs must be borne by the undertaker.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus must 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 must 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 an undertaker 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

19.—(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 works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by the undertaker) in the course of constructing such works, including without

limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid, 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 must—

- (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 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 construct the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) 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 works or any other works authorised by this Part of this Schedule constructed by National Grid or an assignee, transferee or lessee of National Grid with the benefit of the Order under section 156 of the Planning Act 2008 (benefit of order granting development consent) or article 9 (consent to transfer benefit of the order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be constructed and not falling within this paragraph 19(3)(b) are to be subject to the full terms of this Part of this Schedule including this paragraph 19.

(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 without the consent of the undertaker.

(5) National Grid must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands and penalties to which the indemnity under this paragraph 19 applies where it is within National Grid’s reasonable gift and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid’s control.

Enactments and agreements

20. 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 affects 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

21.—(1) Where in consequence of the proposed construction of any of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 14(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 17, the undertaker must 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 National Grid must use its best endeavours to co-operate with the undertaker for that purpose.

(2) Whenever National Grid's consent, agreement or approval to is required in relation to plans, documents or other information submitted by National Grid or the taking of action by National Grid, it must not be unreasonably withheld or delayed.

Access

22. If in consequence of the agreement reached in accordance with paragraph 14(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

23. Save for differences or disputes arising under paragraphs 14(2), 14(4), 15(1), 16 and 18(5), 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 29 (arbitration).

Notices

24. The plans submitted to National Grid by the undertaker under paragraph 17(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.

PART 3

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

25. For the protection of the utility undertakers referred to in this Part of this Schedule, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertakers concerned.

26. In this Part—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of a utility undertaker within paragraph (a) of the definition of that term, electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by that utility undertaker;
- (b) in the case of a utility undertaker within paragraph (b) of the definition of that term, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a utility undertaker within paragraph (c) of the definition of that term—
 - (i) mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and

(a) See section 64; there are amendments not relevant to this Order.

12. The Southampton to London Pipeline Development Consent Order 2020

Expert determination

70.—(1) Article 48 (arbitration) of this Order does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule may be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(4) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;
- (c) issue a decision within 42 days of receipt of the submissions under sub-paragraph (b); and
- (d) give reasons for the decision.

(5) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 48 (arbitration).

(6) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

PART 7

FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICITY AND GAS UNDERTAKER

Application

71.—(1) For the protection of the statutory undertakers referred to in this Part of this Schedule the following provisions will, unless otherwise agreed in writing between the undertaker and the statutory undertaker concerned, have effect.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the promoter and National Grid, where the benefit of this Order is transferred or granted to another person under article 8 (consent to transfer benefit of Order)—

- (a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between National Grid and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to National Grid before or within 15 days of the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid (but see paragraph 81(3)(b)).

Interpretation

72. In this Part of this Schedule—

“acceptable insurance” means a third party liability insurance(s) effected and maintained by the undertaker and/or its contractors to a cumulative level of not less than £25,000,000 (twenty five million pounds) per occurrence or series of occurrences arising out of one event. Such insurance(s) must be maintained for the construction period of the authorised works which

constitute specified works and arranged with an internationally recognised insurer of repute operating in the London and worldwide insurance market underwriters such policy must include (but without limitation)—

- (a) the statutory undertaker 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 a cumulative cover of £10,000,000.00 (ten million pounds) per event or £20,000,000.00 (twenty million pounds) in aggregate;

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

“apparatus” means electric lines or electrical plant as defined in section 64 of the Electricity Act 1989, within the work limits, belonging to or maintained by the statutory undertaker together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of the statutory undertaker concerned 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 works” has the same meaning as is given to the term “authorised development” in article 2 (interpretation) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use, maintenance and construction of any works authorised by this Schedule;

“commence” has the same meaning as in article 2(1) of this Order save that for the purposes of paragraphs 79 and 81 of this Part of this Schedule it will include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment and commencement will be construed to have the same meaning;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by the statutory undertaker (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, will require the undertaker to submit for the statutory undertaker's approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus of the statutory undertaker 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;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 77(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 77(2) or otherwise; and/or
 - (c) include any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (the statutory undertaker's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW/22");
- "statutory undertaker" means National Grid Electricity Transmission plc as a licence holder within the meaning of Part 1 of the Electricity Act 1989; and
- "undertaker" means the undertaker as defined in article 2 (interpretation) of this Order.

On Street Apparatus

73. Save in respect of paragraph 74 (apparatus of undertakers in stopped up streets), 79 (retained apparatus: protection), 80 (expenses) and 81 (indemnity) this part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and statutory undertaker are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of undertakers in stopped up streets

74. Regardless of the temporary stopping up or diversion of any highway under the powers of article 13 (temporary closure, alteration, diversion or restriction of streets and public rights of way), the statutory undertaker is at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway as is be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

75. The undertaker, in the case of the powers conferred by article 19 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of the statutory undertaker (such consent not to be unreasonably withheld or delayed).

Acquisition of land

76.—(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 must not acquire any land interest or apparatus or extinguish any easement and/or other interest of the statutory undertaker otherwise than by agreement (such agreement not to be unreasonably withheld or delayed).

(2) The undertaker and the statutory undertaker agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by the statutory undertaker and/or other enactments relied upon by the statutory undertaker as of right or other use in relation to the apparatus, then the provisions in this Schedule will prevail.

(3) Any agreement or consent granted by the statutory undertaker under paragraph 79 (retained apparatus: protection) or any other paragraph of this Part of this Schedule, will not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

77.—(1) If, in the exercise of the powers conferred by this Order or under an agreement reached in accordance with paragraph 76 (acquisition of land) or in any other authorised manner, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed or requires that the statutory undertaker's apparatus is relocated or diverted, that apparatus

must not be removed under this Part of this Schedule and any right of the statutory undertaker 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 the statutory undertaker in question in accordance with sub-paragraph (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the statutory undertaker 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 the statutory undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the statutory undertaker to its reasonable satisfaction (taking into account paragraph 78(1)) the necessary facilities and rights—

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

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker within the order limits, 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, the statutory undertaker 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 will only extend to the requirement for the statutory undertaker to use its compulsory purchase powers if 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 the statutory undertaker and the undertaker.

(5) The statutory undertaker must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to the statutory undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

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

(2) If the facilities and rights to be afforded by the undertaker and agreed with the statutory undertaker under sub-paragraph (1) in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to the statutory undertaker 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 85 (arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to the statutory undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: Protection: National Grid Electricity Transmission plc

79.—(1) Not less than 56 days before the commencement of any authorised works that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 77(2) or otherwise, the undertaker must submit to the statutory undertaker a plan of the works to be executed and seek from the statutory undertaker details of the underground extent of their electricity tower foundations.

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

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

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of the cable route;
- (f) written details of the operations and maintenance regime for the cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid's engineers; and
- (h) 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 the statutory undertaker has given written approval of the plan so submitted.

(5) Any approval of the statutory undertaker 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 to which sub-paragraphs (2) or (3) apply, the statutory undertaker 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 no less convenient means of access to any apparatus.

(7) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), as approved or as amended

from time to time by agreement between the undertaker and the statutory undertaker and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by the statutory undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the statutory undertaker will be entitled to watch and inspect the execution of those works.

(8) Where the statutory undertaker 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 the statutory undertaker's reasonable satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required.

(9) If the statutory undertaker in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 71 to 73 and 76 to 78 apply as if the removal of the apparatus had been required by the undertaker under paragraph 77(2).

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

(11) The undertaker is not 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 statutory undertaker 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 the statutory undertaker's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

(13) Not less than 56 days before the commencement of any specified works the undertaker must submit to the statutory undertaker a ground monitoring scheme in respect of those works, and as soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker must implement an appropriate ground mitigation scheme save that the statutory undertaker retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 81 (indemnity).

Expenses

80.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to the statutory undertaker on demand following submission of a claim in writing from the statutory undertaker all charges, costs and expenses reasonably anticipated or incurred by the statutory undertaker in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by the statutory undertaker in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by the statutory undertaker as a consequence of the statutory undertaker—
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 77(3) if it elects to do so; and/or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting the statutory undertaker;

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 85 (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 the statutory undertaker by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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

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

(5) An amount which apart from this sub-paragraph would be payable to an undertaker 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 the statutory undertaker 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

81.—(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 works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of the statutory undertaker, or there is any interruption in any service provided, or in the supply of any goods, by the statutory undertaker, or

the statutory undertaker becomes liable to pay any amount to any third party, the undertaker will—

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

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

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

- (a) any damage or interruption to the extent that it is attributable to the neglect or wilful act or default of the statutory undertaker, its officers, servants, contractors or agents; and
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by the statutory undertaker as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 8 (consent to transfer benefit of order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-paragraph 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 81.

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

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

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

(7) Save where the undertaker is Esso Petroleum Company Limited, or a group company of sufficient covenant strength to self-insure, the undertaker must not commence construction (and must not permit the commencement of such construction) of the authorised works on any land owned by the statutory undertaker or in respect of which the statutory undertaker has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres in any direction of the statutory undertaker’s apparatus unless and until the statutory undertaker is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to the statutory undertaker that it will maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and the statutory undertaker has confirmed the same in writing to the undertaker (such confirmation not to be unreasonably withheld or delayed).

Enactments and agreements

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

83.—(1) Where in consequence of the proposed construction of any of the authorised works, the undertaker or an undertaker requires the removal of apparatus under paragraph 77(2) or (3) or an undertaker makes requirements for modifications to the undertaker's works or for the protection or alteration of apparatus under paragraph 79 (retained apparatus: protection) or the statutory undertaker is required to access its apparatus in temporarily stopped up streets under paragraph 74, the undertaker must use its best endeavours to co-ordinate the execution of the works—

- (a) in the interests of safety;
- (b) taking into account the efficient and economic execution of the authorised development; and
- (c) taking into account the need to ensure the safe and efficient operation of the statutory undertaker's undertaking,

and the statutory undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

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

Access

84. If in consequence of the agreement reached in accordance with paragraph 76(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 the statutory undertaker to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

85. Save for differences or disputes arising under paragraph 79 (retained apparatus: protection) any difference or dispute arising between the undertaker and the statutory undertaker under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and the statutory undertaker, be determined by arbitration in accordance with article 48 (arbitration).

Notices

86. The plans submitted to the statutory undertaker by the undertaker pursuant to paragraph 79(1) must be sent to National Grid Plant Protection at plantprotection@nationalgrid.com or such other address as the statutory undertaker may from time to time appoint instead for that purpose and notify to the undertaker.

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operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

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

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 42 (arbitration).

15. This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

16. Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 3

FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICITY AND GAS UNDERTAKER

Application

17. For the protection of National Grid referred to in this Part of this Schedule the following provisions, unless otherwise agreed in writing between the undertaker and National Grid, have effect.

Interpretation

18. In this Part of this Schedule—

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

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant as defined in the Electricity Act 1989(, belonging to or maintained by that undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply,

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 in article 2 (interpretation) of this Order and includes any associated development authorised by the Order and (unless otherwise specified) 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;

“commence” has the same meaning as in article 2 (interpretation) of the Order and commencement is to be construed to have the same meaning save that for the purposes of this Part only the term commence and commencement 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;

“ground mitigation scheme” means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary mitigation measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, will require the undertaker to submit for National Grid’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of the undertaker 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—

- (a) National Grid Electricity Transmission plc (company number 2366977) whose registered office is at 1-3 Strand, London WC2N 5EH; and
- (b) National Grid Gas plc (company number 200600) whose registered office is at 1-3 Strand, London WC2N 5EH,

as the context requires; and

“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 23(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 23(2) or otherwise; and/or
- (c) includes in relation to gas apparatus any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (National Grid’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW/22”).

On Street Apparatus

19. Except for paragraphs 20 (apparatus of undertakers in streets subject to temporary prohibition or restriction), 25 (retained apparatus: protection), 27 (expenses) and 28 (indemnity) of

this Schedule which will apply in respect of the exercise of all or any powers under this 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.

Apparatus of undertakers in streets subject to temporary prohibition or restriction

20. Notwithstanding a temporary prohibition or restriction under the powers of article 11 (temporary prohibition or restriction on the use of streets), National Grid will be at liberty at all times to take all necessary access across any street and/or to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

Protective works to buildings

21.—(1) The undertaker, in the case of the powers conferred by article 33 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of National Grid or any interruption in the supply of electricity and/or gas, as the case may be, by National Grid is caused, the undertaker must bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and, subject to sub-paragraph (2), must—

- (a) pay compensation to National Grid for any loss sustained by it; and
- (b) indemnify National Grid against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by that undertaker, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of an undertaker or its contractors or workmen; and National Grid will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof may be made by National Grid, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

Acquisition of land

22.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to this 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, such agreement not to be unreasonably withheld.

(2) As a condition of agreement between the parties in paragraph 22(1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid 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 affect the provision of any enactment or 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 variation by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid 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 will prevail.

(4) Any agreement or consent granted by National Grid under paragraph 25 or any other paragraph of this Part of this Schedule, must not be taken to constitute agreement under sub-paragraph (3).

Removal of apparatus

23.—(1) If, in the exercise of the agreement reached in accordance with paragraph 22 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 an undertaker 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 question in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works comprised in the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid 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), afford to National Grid to its satisfaction (taking into account paragraph 24(1) below) the necessary facilities and rights—

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

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid 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 must not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

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

Facilities and rights for alternative apparatus

24.—(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 under paragraph 32 (arbitration) of this Part of this Schedule and the arbitrator may 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 gas undertaker

25.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan and, if reasonably required by National Grid, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
- (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; and
- (f) any intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until National Grid has given written approval of the plan so submitted.

(4) Any approval of National Grid required under sub-paragraph (2)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and
- (b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, 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.

(6) Works executed under sub-paragraphs (1) or (2) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (4), 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) or (7) 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.

(7) Where National Grid 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 must give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If National Grid in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 17 to 19 and 22 to 24 apply as if the removal of the apparatus had been required by the undertaker under paragraph 23(2).

(9) 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 will apply to and in respect of the new plan.

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

- (a) comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order the undertaker must comply with National Grid’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22” and HSE’s “HS(G)47 Avoiding Danger from underground services”.

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker must implement an appropriate ground mitigation scheme save that National Grid retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 28.

Retained apparatus: protection of electricity undertaker

26.—(1) Not less than 56 days before the commencement of any specified works 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 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 describe—

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

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;

- (d) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of the cable route;
- (f) written details of the operations and maintenance regime for the cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid's engineers; and
- (h) 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.

(5) Any approval of 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.

(6) In relation to any work to which sub-paragraph (2) or (3) apply, 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.

(7) Works executed under sub-paragraphs (1) or (2) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), 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 (6) or (8) 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 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 Grids' satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and National Grid must 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, paragraphs 17 to 19 and 22 to 24 apply as if the removal of the apparatus had been required by the undertaker under paragraph 23(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 will apply to and in respect of the new plan.

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

27.—(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, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised development as are referred to in this Part of this Schedule including without limitation—

- (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 23(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 42 (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 save where it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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

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

(5) An amount which apart from this sub-paragraph would be payable to an undertaker 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

28.—(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, 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 will 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.

(3) 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 part of the 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 this Order pursuant to section 156 of the Planning Act 2008 (benefit of order granting development consent) or article 7 (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-paragraph (3)(b) will be subject to the full terms of this Part of this Schedule including this paragraph 28.

(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 their representations.

(5) National Grid must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands and penalties to which the indemnity under this paragraph 28 applies where it is within National Grid’s reasonable gift and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid’s control.

Enactments and agreements

29. 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 will 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

30.—(1) Where in consequence of the proposed construction of any of the authorised development, the undertaker or an undertaker requires the removal of apparatus under paragraph 23(2) or an undertaker makes requirements for the protection or alteration of apparatus under paragraph 27, the undertaker must 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 each undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

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

Access

31. If in consequence of the agreement reached in accordance with paragraph 22(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

32. Save for differences or disputes arising under paragraphs 23(2), 23(4), 24(1), 25 and 27(5) 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 42 (arbitration).

Notices

33. The plans submitted to National Grid by the undertaker pursuant to paragraphs 25(1) and 26(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.

PART 4

FOR THE PROTECTION OF PHILLIPS 66 LIMITED

Benefit of protective provisions

34. For the protection of P66, the following provisions, unless otherwise agreed in writing between the undertaker and P66, have effect.

Interpretation

35. In this Part of this Schedule—

14. The Norfolk Vanguard Offshore Wind Farm Order 2022

PART 2

For the Protection of National Grid as Electricity and Gas Undertaker

Application

12. For the protection of National Grid referred to in this Part the following provisions will, unless otherwise agreed in writing between the promoter and National Grid, have effect.

Interpretation

13. In this Part—

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

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

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by that undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply; and
- (c) 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 works” 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 includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” has the same meaning as in article 2 of this Order and commencement must be construed to have the same meaning save that for the purpose of this part only the term commence includes operations consisting site clearance, demolition work, archaeological investigations, environmental surveys, investigations for the purposes of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure and temporary hard standing;

“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;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, must require the promoter to submit for National Grid’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” include 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;

“National Grid” means, as appropriate—

- (a) National Grid Electricity Transmission PLC (Company No. 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH and any successor to their licence under Part 1 of the Electricity Act 1989; and
- (b) National Grid Gas PLC (Company No. 200600) whose registered office is at 1-3 Strand, London, WC2N 5EH and any successor to their licence under Part 1 of the Gas Act 1986 or their successor company(ies).

“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;

“promoter” means the undertaker as defined in article 2 of this Order;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which:

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the promoter under paragraph 17(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the promoter under paragraph 17(2) or otherwise; or
- (c) include any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (National Grid’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties”).

14.—(1) Except for paragraphs 15 (apparatus in stopped up streets), 20 (retained apparatus: protection), 21 (expenses) and 22 (compensation) 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 promoter and National Grid are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

(2) Notwithstanding Art 25(5) or any other powers in the Order generally, s85 of the 1991 Act in relation to costs sharing and the powers in respect of cost sharing generally including the regulations made thereunder does not apply in relation to any diversion of apparatus of National Grid under the 1991 Act.

Apparatus of Undertakers in stopped up streets

15. Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 10 (temporary stopping up of streets), National Grid will be at liberty at all times to take all necessary access across any such stopped up highway or to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Acquisition of land

16.—(1) Regardless of any provision in this Order or anything shown on the land plan or contained in the book of reference to the Order, the promoter may not acquire any land interest or apparatus or override any easement and/or other interest of National Grid otherwise than by agreement, such agreement not to be unreasonably withheld or delayed.

(2) As a condition of agreement between the parties in paragraph 16(1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between the undertaker and the promoter) that are subject to the requirements of this Part that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of the undertaker and/or affects the provisions of any enactment or agreement regulating the relations between the undertaker and the promoter in respect of any apparatus laid or erected in land belonging to or secured by the promoter, the promoter must as the undertaker reasonably and necessarily requires enter into such deeds of consent upon such terms and conditions as may be agreed between the undertaker and the promoter acting reasonably and which must be no less favourable on the whole to the undertaker unless otherwise agreed by the undertaker, and it will be the responsibility of the promoter to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The promoter and the undertaker agree that where there is any inconsistency or duplication between the provisions set out in this Part 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 the undertaker and/or other enactments relied upon by the undertaker as of right or other use in relation to the apparatus, then the provisions in this Schedule prevail.

(4) Any agreement or consent granted by the undertaker under paragraph 19 or 20 or any other paragraph of this Part, must not be taken to constitute agreement under sub-paragraph 16(1).

Removal of apparatus

17.—(1) If, in the exercise of the agreement reached in accordance with paragraph 16 or in any other authorised manner, the promoter acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part and any right of an undertaker 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 question in accordance with sub-paragraph (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the promoter requires the removal of any apparatus placed in that land, it must give to National Grid 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 promoter must, subject to sub-paragraph (3), afford to National Grid to its reasonable satisfaction (taking into account paragraph 18(1) below) the necessary facilities and rights:

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

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the promoter, or the promoter 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 promoter, as soon as possible 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, with the promoter's assistance if required by National Grid, save that this obligation does not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

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

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the 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 promoter to be removed under the provisions of this Part.

Facilities and rights for alternative apparatus

18.—(1) Where, in accordance with the provisions of this Part, the promoter 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 promoter 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, acting reasonably

(2) If the facilities and rights to be afforded by the promoter and agreed with National Grid under paragraph 18(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 may be referred to arbitration in accordance with paragraph 26 (Arbitration) of this Part and the arbitrator may make such provision for the payment of compensation by the promoter to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case

Retained apparatus: protection Gas Undertakers

19.—(1) The promoter must provide technical information relevant to any specified works to National Grid as soon as reasonably practicable after it becomes available, and will seek to liaise with National Grid as early as reasonably practicable regarding the specified works.

(2) Not less than 56 days before the commencement of any specified works the promoter must submit to National Grid a plan and, if reasonably required by National Grid, a ground monitoring scheme in respect of those works.

(3) The plan to be submitted to National Grid under sub-paragraph (2) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc;
- (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; and
- (f) any intended maintenance regimes.

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

(5) Any approval of National Grid required under sub-paragraph (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.

(6) In relation to any work to which sub-paragraphs (2) and/or (3) apply, 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 provided that such modifications

are requested by National Grid within a period of 56 days, unless otherwise agreed between the parties, beginning with the date on which the plan under sub-paragraph (2) is submitted to it. For the avoidance of doubt, provided that any further iterations of the plan submitted to National Grid for approval as a result of modifications required under this paragraph are not materially different to the modifications previously made by National Grid, any further required modifications will be made by the promoter as soon as reasonably practicable thereafter and in any event within 56 days of receipt of any further plans.

(7) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (2) or as relevant sub paragraph (6), as approved or as amended from time to time by agreement between the promoter and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) 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 requires any protective works to be carried out by itself or by the promoter (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 Grids' reasonable satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required and National Grid must give 56 days' notice of such works from the date of submission of a plan pursuant to sub-paragraph (2) or (3) (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 promoter, reasonably requires the removal of any apparatus and gives written notice to the promoter of that requirement, paragraphs 12 to 14 and 17 to 19 apply as if the removal of the apparatus had been required by the promoter under paragraph 17(2).

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

(11) The promoter will not be required to comply with sub-paragraph (2) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to 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 promoter must comply with National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(-G)47 Avoiding Danger from underground services".

(13) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the promoter must implement an appropriate ground mitigation scheme save that National Grid retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 21.

Retained apparatus: protection Electricity Undertakers

20.—(1) The promoter must provide technical information relevant to any specified works to National Grid as soon as reasonably practicable after it becomes available, and will seek to liaise with National Grid as early as reasonably practicable regarding the specified works.

(2) Not less than 56 days before the commencement of any specified works, the promoter 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.

(3) In relation to 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 describe—

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

(4) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

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

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

(6) Any approval of National Grid required under sub-paragraphs (3) or (4)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (7) or (9); and
- (b) must not be unreasonably withheld.

(7) In relation to any work to which sub-paragraphs (3) or (4) apply, 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

(8) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (2) or as relevant sub-paragraph (3), (4) or (7), as approved or as amended from time to time by agreement between the promoter and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (7) 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.

(9) Where National Grid requires any protective works to be carried out by itself or by the promoter (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 works (or any relevant part thereof) for which protective works are required and National Grid must give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(10) If National Grid in accordance with sub-paragraphs (7) or (9) and in consequence of the works proposed by the promoter, reasonably requires the removal of any apparatus and gives written notice to the promoter of that requirement, paragraphs 12 to 14 and 17 to 19 apply as if the removal of the apparatus had been required by the promoter under paragraph 17(2).

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

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

- (a) comply with sub-paragraphs (7), (8) and (9) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (13) at all times.

(13) At all times when carrying out any works authorised under the Order, the promoter 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

21.—(1) Subject to the following provisions of this paragraph, the promoter must pay to National Grid on demand all charges, costs and expenses reasonably and properly anticipated or incurred by National Grid in or in connection with the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part including without limitation—

- (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 17(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 necessary 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; and
- (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.

(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 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—

- (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 promoter or, in default of agreement, is not determined by arbitration in accordance with article 38 (arbitration) of the Order to be necessary, then, if such placing involves cost in the construction of works under this Part 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 save where it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the promoter.

(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 an undertaker 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.

Compensation

22.—(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 or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the promoter or in consequence of any act or default of the promoter (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the promoter under this Part or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid, 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 or National Grid incurs any liability as a result of the transfer of undertaking under article 5, the promoter 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) compensate 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 promoter or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid or under its supervision will not (unless sub-paragraph (3) applies), excuse the promoter from liability under the provisions of 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.

- (3) Nothing in sub-paragraph (1) imposes any liability on the promoter 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 works or any other works authorised by this Part carried out by National Grid as an assignee, transferee or lessee of the promoter with the benefit of this Order pursuant to section 156 (benefit of order granting development consent) of the Planning Act 2008 or article 6 (benefit of the order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part including this paragraph 22; and
 - (c) National Grid must give the promoter 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 promoter and considering their representations.

Enactments and agreements

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

Co-operation

24.—(1) Where in consequence of the proposed construction of any of the authorised works, the promoter or an undertaker requires the removal of apparatus under paragraph 17(2) or an undertaker makes requirements for the protection or alteration of apparatus under paragraph 19, the promoter must 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 must use its best endeavours to co-operate with the promoter for that purpose.

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

Access

25. If in consequence of the agreement reached in accordance with paragraph 16(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the promoter 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

26. Save for differences or disputes arising under paragraph 17(2), 17(4), 18(1), 19 and 20 any difference or dispute arising between the promoter and National Grid under this Part must, unless otherwise agreed in writing between the promoter and National Grid, be determined by arbitration in accordance with article 38 (arbitration).

Notices

27. The plans submitted to National Grid by the promoter pursuant to paragraph 19 and 20 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 promoter in writing.

15. The Hornsea Three Offshore Wind Farm Order 2020

(3) An affected undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise may be made without the consent of the undertaker which, if it withholds such consent, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

10. Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and an affected undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 2

FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICITY AND GAS UNDERTAKER

Application

1. For the protection of National Grid referred to in this Part the following provisions will, unless otherwise agreed in writing between the undertaker and National Grid, have effect.

Interpretation

2. In this Part—

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

“apparatus” means—

- (a) electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid; and
- (b) any mains, pipes or other apparatus belonging to or maintained by National Grid for the purposes of gas supply,

together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of the undertaker for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or must be lodged or which gives or will give access to apparatus;

“authorised development” has the same meaning as in article 2 (interpretation) of this Order (unless otherwise specified) for the purposes of this Part shall include the use and maintenance of the authorised development and construction of any works authorised by this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Grid’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

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

“National Grid” means either—

- (a) National Grid Electricity Transmission PLC (Company No. 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH; or
- (b) National Grid Gas PLC (Company No. 2006000) whose registered office is at 1-3 Strand, London, WC2N 5EH,

or their successor company(ies) as the context requires;

“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; and

“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; or
- (c) include any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (National Grid’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties”).

3. Except for paragraphs 4 (apparatus of National Grid in streets subject to temporary stopping up), 9 (retained apparatus: protection of National Grid as gas undertaker), 10 (retained apparatus: protection of National Grid as electricity undertaker), 11 (expenses) and 12 (indemnity) this Schedule does not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

Apparatus of National Grid in streets subject to temporary stopping up

4.—(1) Without prejudice to the generality of any other protection afforded to National Grid elsewhere in the Order, where any street is stopped up under article 10 (temporary stopping up of streets), if National Grid has any apparatus in the street or accessed via that street National Grid will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker will grant to National Grid, or will procure the granting to National Grid of, legal easements reasonably satisfactory to National Grid in respect of such apparatus and access to it prior to the stopping up of any such street or highway.

(2) Notwithstanding the temporary stopping up under the powers of article 10), National Grid will be at liberty at all times to take all necessary access across any such street or to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that street.

Protective works to buildings

5.—(1) The undertaker, in the case of the powers conferred by article 16 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid which will not unreasonably be withheld and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of National Grid or any interruption in the supply of electricity or gas,

as the case may be, the undertaker must bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

- (a) pay compensation to National Grid for any loss sustained by it; and
- (b) indemnify National Grid against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by National Grid, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of National Grid or its contractors or workmen; and National Grid will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made by National Grid, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

Acquisition of land

6.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not acquire any land interest or apparatus or override any easement or other interest of National Grid otherwise than by agreement (such agreement not to be unreasonably withheld).

(2) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part 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 as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(3) Any agreement or consent granted by National Grid under paragraphs 9 or 10 or any other paragraph of this Part, shall not be taken to constitute agreement under subparagraph 6(1).

Removal of apparatus

7.—(1) If, in the exercise of the agreement reached in accordance with paragraph 6 or in any other authorised manner, the undertaker acquires any interest in any Order land in which any apparatus is placed, that apparatus must not be removed under this Part 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-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works comprised in the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid 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), afford to National Grid to its satisfaction (taking into account paragraph 8(1) below) the necessary facilities and rights

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

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid 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 shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part 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 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.

Facilities and rights for alternative apparatus

8.—(1) Where, in accordance with the provisions of this Part, the undertaker affords to or secures National Grid facilities and rights in land for the construction, use, maintenance and protection in land of the undertaker 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 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 under paragraph 16 (arbitration) 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. In respect of the appointment of an arbitrator under this sub-paragraph, article 37 (arbitration) of the Order shall apply.

Retained apparatus: protection of National Grid as Gas Undertaker

9.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan and, if reasonably required by National Grid, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
- (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; and
- (f) intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) applies until National Grid has given written approval of the plan so submitted.

(4) Any approval of National Grid required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7); and,

(b) must not be unreasonably withheld.

(5) In relation to a work to which sub-paragraphs (1) and (2) applies, 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.

(6) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraphs (1) and (2) or as relevant sub-paragraph (5), 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), (7) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid shall be entitled to watch and inspect the execution of those works.

(7) Where National Grid requires protective works to be carried out either by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, must be carried out to National Grid's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) to which sub-paragraph (1) applies and National Grid must give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraph (1) or (2) (except in an emergency).

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

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

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

(a) comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and

(b) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order the undertaker must comply with National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and the Health and Safety Executive's "HSG47 Avoiding danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that National Grid retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraphs 11 and 12.

Retained apparatus: Protection of National Grid as Electricity Undertaker

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

(2) In relation to works which will or may be situated on, over, under or within—

(a) 15 metres measured in any direction of any apparatus, or

(b) 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 describe—

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

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must in addition to the matters set out in sub-paragraph (2) include a method statement describing-

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of the cable route;
- (f) written details of the operations and maintenance regime for the cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid's engineers; and
- (h) 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-paragraph (1), (2), or (3) applies until National Grid has given written approval of the plan so submitted.

(5) Any approval of National Grid required under sub-paragraph (1), (2), or (3)—

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

(6) In relation to a work to which sub-paragraph (1), (2), or (3) applies, 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.

(7) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (2), (3) or (6) 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 require any protective works to be carried out either by themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to National Grid's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) to which sub-paragraph (1) applies and National Grid must give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraphs (1),(2), (3)or (6) (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, paragraphs (1) to (3) and (6) to (7) shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

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

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid 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 ENA TA 43-8 and the Health and Safety Executive's guidance note 6 "Avoiding danger from overhead power lines".

Expenses

11.—(1) Subject to the following provisions of this paragraph, the undertaker shall pay to National Grid on demand all charges, costs and expenses reasonably anticipated or incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus or alternative apparatus which may be required in consequence of the execution of any such works as are referred to in this Part including without limitation—

- (a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that National Grid elects to use compulsory purchase powers to acquire any necessary rights under paragraph 7(3);
- (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; and
- (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.

(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 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—

- (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 settled by arbitration in accordance with article 37 (arbitration) of the Order to be

necessary, then, if such placing involves cost in the construction of works under this Part 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 save where it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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

(a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) 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

12.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part 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 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 purpose of those works) or property of National Grid, 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.

(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 as a consequence of the authorised development or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (2) where the undertaker 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 materially accord with the approved plan or as otherwise agreed between the undertaker and National Grid.

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

(a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents; and

(b) any authorised development or any other works authorised by this Part carried out by National Grid as an assignee, transferee or lessee of the undertaker with the benefit of this Order pursuant to section 156 of the 2008 Act or article 5(b) (benefit of the Order) of this Order subject to the proviso that once such works become apparatus (“new apparatus”),

any works yet to be executed and not falling within this sub-paragraph 12(3)(b) will be subject to the full terms of this Part including this paragraph 12 in respect of such new apparatus.

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

Enactments and agreements

13. Save to the extent provided for to the contrary elsewhere in this Part or by agreement in writing between the undertaker and National Grid, nothing in this Part 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

14.—(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 7(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraphs 9 or 10, National Grid 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 National Grid is required, it must not be unreasonably withheld or delayed.

Access

15. If in consequence of the agreement reached in accordance with paragraph 6 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

16. Save for differences or disputes arising under paragraphs 7(2), 7(4), 8(1), 9 and 10 any difference or dispute arising between the undertaker and National Grid under this Part must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 37 (arbitration).

Notices

17. The plans submitted to National Grid by the undertaker pursuant to paragraphs 9(1) and 10(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.