

**Relevant Representation of National Grid Electricity Transmission Plc in respect of the
H2 Teesside DCO (the “Project”)
1st July 2024**

This relevant representation is submitted on behalf of National Grid Electricity Transmission Plc (“**NGET**”) in respect of the Project, and in particular NGET’s infrastructure and land which is within or in close proximity to the proposed Order Limits.

NGET will require appropriate protection for retained apparatus including compliance with relevant standards for works proposed within close proximity of its apparatus.

NGET’s rights of access to inspect, maintain, renew and repair such apparatus must also be maintained at all times and access to inspect and maintain such apparatus must not be restricted.

Further, where the Applicant intends to acquire land or rights, or interfere with any of NGET’s interests in land or NGET’s apparatus, NGET will require appropriate protection and further discussion is required on the impact to its apparatus and rights.

NGET infrastructure within/in close proximity to the proposed Order Limits

NGET owns or operates the following infrastructure within or in close proximity to the proposed Order Limits for the Project. These assets form an essential part of the electricity transmission network in England and Wales.

Details of these electricity assets are as follows:

Substations

- Grangetown 66kV Substation
- Saltholme 275kV and 132kV Substation
- Tod Point 275kV Substation & buried fibre cables from Tod Point substation
- Associated overhead and underground apparatus including cables

Overhead Lines

ZZA 400kV OHL	Hartlepool – West Boldon Hartlepool – Hartmoor Hartlepool – Saltholme Hartlepool – Tod Point Lackenby – Norton Hartlepool – Tod Point
YYJ 400kV OHL	Lackenby – Norton 1 Norton – Saltholme
YYQ 275kV OHL	Hartlepool – Tod Point Lackenby – Tod Point
XA 400kV	Lackenby – Norton 1 Hartlepool – Tod Point

Associated underground apparatus including cables

Cable Apparatus

Grangetown - Lackenby 275kV underground cable

Protection of NGET Assets

As a responsible statutory undertaker, NGET's primary concern is to meet its statutory obligations and ensure that any development does not impact in any adverse way upon those statutory obligations.

As such, NGET has a duty to protect its position in relation to infrastructure and land which is within or in close proximity to the draft Order Limits.

As noted, NGET's rights to retain its apparatus in situ and rights of access to inspect, maintain, renew, repair and refurbishment such apparatus located within or in close proximity to the Order Limits should be maintained at all times and access to inspect and maintain such apparatus must not be restricted.

NGET requests that the Applicant continues to engage with it to provide explanation and reassurances as to how the Applicant's works pursuant to the Order (if made) will ensure protection for those NGET assets which will remain in situ, along with facilitating all future access and other rights as are necessary to allow NGET to properly discharge its statutory obligations.

Protective Provisions (including Compulsory Acquisition Powers)

NGET is aware that a form of protective provisions for the benefit of NGET (the "**Protective Provisions**") has been included by the Applicant in Part 4 of Schedule 12 to the draft Development Consent Order (the "**Order**") for the Project [APP-027].

NGET considers the current form of Protective Provisions to be materially deficient.

In particular, where the Applicant intends to acquire land or rights held by NGET compulsorily, to take temporary possession of the same, or otherwise to interfere with any of NGET's interests in land, any powers authorising such acquisition, temporary possession or interference must only ever be exercised with the prior agreement and consent of NGET. A failure to secure such prior agreement risks compromising the safety and integrity of NGET's operational assets, in addition to inhibiting the proper discharge of NGET's statutory obligations and functions.

This risk is particularly acute in the context of the Project, where it is understood that land and rights are intended to be compulsorily acquired and extinguished by the Applicant immediately to the west of NGET's existing Saltholme Substation for the purposes of Works Nos. 6A.1 and 6B.1 [APP-010] and [APP-016].

The land affected, which comprises Plots 3/17 to 3/23 and 3/24 to 3/26 (as shown on Sheet 3 of the Land Plans [APP-008]), is owned by NGET and also comprises a strategically important angle tower (Tower YYJ037) which forms part of the YYJ 400kV overhead line. It is essential that proposals do not prevent NGET from being able to maintain, repair, refurbish, replace or upgrading this tower in order to fulfil its statutory duties.

As part of NGET's ongoing programme of works to reinforce the electricity transmission network in England and Wales, which is being undertaken in alignment with HM Government's British Energy Security Strategy (April 2022), NGET is in the early stages of assessing the impact of a number of connection applications at Saltholme Substation. This also includes connection applications to the Northern Power Grid (NPG) distribution network, whose 132kV Grid Supply Point is also located within the extent of the site. Owing to existing geographical constraints, it is anticipated that any extension, modification, or offline replacement of either NGET's or NPG's substation may need to be brought forward on undeveloped land owned by NGET. It is reasonably foreseeable that land to both the east and to the west of the existing Substations will be required in the future to accommodate such works. Any such extension, modification or offline replacement would also likely involve the relocation of Tower YYJ037 and the realignment of the relevant section of the YYJ 400kV overhead line.

As currently drafted, the Protective Provisions permit the unfettered exercise by the Applicant of powers of compulsory acquisition and/or temporary possession. NGET considers that the Protective Provisions will, therefore, prevent the delivery of any future extension of Saltholme Substation and, in turn, hinder the effective discharge by NGET of its statutory duties at a critical location in the electricity transmission network. The exercise of those powers in the manner contemplated by the Applicant is also likely to significantly impact on NGET's ability to undertake routine maintenance to the YYJ 400kV overhead line.

No explanation has been provided by the Applicant as to the omission of the relevant elements of drafting from the Protective Provisions, noting the established line of precedent which supports the position adopted by NGET (and, indeed, other statutory undertakers) as to the need for a restriction on the actual exercise of powers of compulsory acquisition and/or temporary possession.

So far as NGET is aware, the Applicant has also failed to explain why it is necessary for Works Nos. 6A.1 and 6B.1 to be sited on land owned by NGET and, indeed, to demonstrate the absence of suitable alternative locations for constructing the relevant aspects of the Project.

It is therefore essential that the Protective Provisions contain the consent mechanism noted above and, in doing so, enable NGET to continue to deliver planned reinforcements to the electricity transmission network and to accommodate connection requests received from electricity generation customers.

NGET is liaising with the Applicant in relation to the Protective Provisions, along with any supplementary agreements which may be required.

In the absence of an agreed form of Protective Provisions, NGET strongly objects to the compulsory acquisition, temporary possession of, or interference with, its assets, land or rights over its land.

Furthermore, the Applicant is seeking compulsory purchase powers over a number of plots which include NGET assets and/or interests. These plots include access rights across plots 3/24, 3/69 to 3/76 (Marsh Lane, Cowpen Bewley). Where the Applicant intends to acquire land or rights, or interfere with any of NGET's interests in land, NGET will require further discussion

with the Applicant and NGET will require its standard Protective Provisions to be included within the Order.

Next Steps

NGET will continue to liaise with the Applicant with a view to reaching agreement on the matters documented above as soon as possible during the DCO Examination and will keep the Examining Authority updated in relation to these discussions.

NGET reserves the right to make further representations as part of the Examination process in relation to specific interactions with its assets and in respect of the Protective Provisions.

PART 4

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

Application

24. 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

25. 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 electric lines or electrical plant as defined in the 1989 Act, belonging to or maintained by National Grid; together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

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

“commence” and “commencement” has the same meaning as in article 2 (interpretation) of this Order except for the purposes of ~~paragraph 30 of~~ this Part of this Schedule where it 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;

“Incentive Deduction” means any incentive deduction National Grid Electricity Transmission plc receives under its electricity transmission licence which is caused by an event on its transmission system that causes electricity not to be supplied to a demand customer and which arises as a result of the authorised works;

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

“National Grid” means National Grid Electricity Transmission Plc (Company Number 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a licence holder within the meaning of Part 1 of the 1989 Act;

“NGESO” means as defined in the STC;

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

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

“specified works” means any of the authorised works [or activities undertaken in association with the authorised works](#) which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 30(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 30(2) or otherwise; and/or
- (c) includes any of the activities that are referred to in development near overhead lines EN43-8 and HSE’s guidance note [6](#) “Avoidance of Danger from Overhead Lines”;

“STC” means the System Operator Transmission Owner Code prepared by the electricity Transmission Owners and NGESO as modified from time to time;

“STC Claims” means any claim made under the STC against National Grid Electricity Transmission plc arising out of or in connection with the de-energisation (whereby no electricity can flow to or from the relevant system through the generator or interconnector’s equipment) of a generator or interconnector party solely as a result of the de-energisation of plant and apparatus forming part of National Grid Electricity Transmission plc’s transmission system which arises as a result of the authorised works;

“Transmission Owner” means as defined in the STC; and

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

On Street Apparatus

26. Except for paragraphs 27 (apparatus of National Grid in affected streets), [31-32](#) (retained apparatus: protection), [35-36](#) (expenses) and [36-37](#) (indemnity) of this Part 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 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 provisions of Part 3 (street works in England and Wales) of the 1991 Act.

Apparatus of National Grid in affected streets

27.—(1) Where any street is stopped up under article 10 (power to alter layout etc. of streets), article 11 (street works), article 12 (construction and maintenance of new or altered 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 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 30 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 32.

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

Protective works to buildings

28. The undertaker, in the case of the powers conferred by article 19 (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.

Acquisition of land

29.—(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.

(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) Save where otherwise agreed in writing between National Grid and the undertaker, 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 31 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

2930.—(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 his 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 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), secure any necessary consents for the alternative apparatus and afford to National Grid to its satisfaction (taking into account paragraph [3031](#)(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~~[may in its sole discretion](#), on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances ~~in an endeavour to assist the undertaker~~ to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid 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

[3031](#).—(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 [37-38](#) (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

[3432](#).—(1) Not less than [30-56](#) 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 [any](#) 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; [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 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 and including 26 tonnes in weight.

(4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until National Grid 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 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 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 ~~24, 25, to 26, and 29~~ and to 310 apply as if the removal of the apparatus had been required by the undertaker under paragraph ~~2930~~(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 ~~30-56~~ days before commencing the execution of the works for which a plan has been ~~approved-submitted~~ pursuant to sub-paragraphs ~~(41) (2) or (3)~~, a new plan for such works, 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".

Expenses

~~3233~~—(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 ~~referred to in paragraphs 29(2) and 29(3)~~ 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 ~~2930~~(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; 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 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 [37-38](#) 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.

(6) Where reasonably anticipated charges, costs or expenses have been paid by the undertaker pursuant to sub-paragraph (1), if the actual charges, costs or expenses incurred by National Grid are less than the amount

already paid by the undertaker National Grid will repay the difference to the undertaker as soon as reasonably practicable.

Indemnity

~~3334~~—(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 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 it) 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 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 and including STC Claims or an Incentive Deduction 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 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) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workmanlike 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 act, 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 the~~ Order pursuant to section 156 of the Planning Act 2008 or article 8 (consent to transfer benefit of the Order) subject to the ~~provision proviso~~ that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-section (b) will be subject to the full terms of this Part of this Schedule including this paragraph; and

(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 third party claim or demand and no settlement, admission of liability, compromise [must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations](#) ~~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.~~

(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

[3435](#). 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.

Cooperation

[3536](#).—(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 [2930](#)(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph [3132](#), the undertaker shall use its best endeavours to coordinate 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 cooperate 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

[3637](#). If in consequence of [the agreement reached in accordance with paragraph 29\(1\) 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

[3738](#). Save for differences or disputes arising under paragraphs [2930](#)(2), [2930](#)(4), [301](#)(1) and [312](#) 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 46 (arbitration).

Notices

[3839](#). Notwithstanding article 45 (service of notices), any plans submitted to National Grid by the undertaker pursuant to paragraph [3132](#) must be submitted using the LSBUD system (<https://lsbud.co.uk/>) or to such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.