

Statement of Common Ground between Transport for London and National Grid

November 2016

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Silvertown Tunnel

Statement of Common Ground between Transport for London and National Grid

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1. Introduction

1.1 Purpose of the document

1.1.1 This Statement of Common Ground (SoCG) is submitted to the Examining Authority in relation to the application by Transport for London (TfL) under section 37 of the Planning Act 2008 (the Act) for an order granting development consent for the construction of the Silvertown Tunnel (“the Scheme”).

1.1.2 The aim of this SoCG is to provide a clear record of the issues discussed and the current status of those discussions. The SoCG can be used as evidence of these discussions in representations to the Examining Authority as part of its examination of the DCO application.

1.2 Parties to this Statement of Common Ground

1.2.1 This Statement of Common Ground (SoCG) has been jointly prepared by TfL and National Grid. It sets out matters which are agreed between both parties, as well as matters which are not agreed and matters which are under discussion.

1.3 Structure of the Statement of Common Ground

1.3.1 This SoCG comprises six sections:

Section 1 is an introduction to the SoCG and the Scheme;

Section 2 provides an overview of consultation to date between TfL and National Grid;

Section 3 provides a summary of the main areas and topics covered by this SoCG;

Section 4 provides a list of matters agreed;

Section 5 provides a list of matters still under discussion;

Section 6 provides a list of matters not agreed; and

Section 7 contains the parties’ signatures.

1.4 The proposed scheme

- 1.4.1 The Scheme involves the construction of a twin bore road tunnel providing a new connection between the A102 Blackwall Tunnel Approach on Greenwich Peninsula (Royal Borough of Greenwich) and the Tidal Basin roundabout junction on the A1020 Lower Lea Crossing/Silvertown Way (London Borough of Newham). The Silvertown Tunnel will be approximately 1.4km long and will be able to accommodate large vehicles including double-deck buses. It will include a dedicated bus, coach and goods vehicle lane, which will enable TfL to provide additional cross-river bus routes.
- 1.4.2 The Scheme also includes the introduction of free-flow user charging at both the Blackwall Tunnel (northern portal located in London Borough of Tower Hamlets) and the new Silvertown Tunnel. This measure will play a fundamental role in managing traffic demand and supporting the financing of the construction, maintenance and operation of the Silvertown Tunnel.
- 1.4.3 On the north side, the tunnel approach road connects to the Tidal Basin Roundabout, which will be altered to create a new signal-controlled roundabout linking the Silvertown Way, Dock Road and the Lower Lea Crossing. Dock Road will be realigned to accommodate the new tunnel and approach road. On the south side, the A102 will be widened to create new slip road links to the Silvertown Tunnel. A new flyover will be built to take southbound traffic exiting the Blackwall Tunnel over the northbound approach to the Silvertown Tunnel. The Scheme includes minor changes to Tunnel Avenue including the removal of the bus-only gate allowing access for all vehicles between Blackwall Lane and Ordnance Crescent. The Boord Street footbridge over the A102 will be replaced with a pedestrian and cycle bridge.
- 1.4.4 New portal buildings will be located close to each tunnel portal to house the plant and equipment necessary to operate the tunnel.
- 1.4.5 Main construction works could commence in late 2018 and will last approximately 4 years with the new tunnel opening in 2022/23. A Tunnel Boring Machine (TBM) will be used to bore the main tunnel sections under the river with shorter sections of cut and cover tunnel at either end linking the bored sections of the tunnel to the portals. The proposal is to erect and launch the TBM from specially constructed chambers at Silvertown and Greenwich Peninsula where the bored sections and cut and cover sections of the tunnel connect. The main construction worksite will be located at Silvertown, utilising the existing barge facilities at Thames Wharf along with a new temporary jetty for the removal of spoil and delivery of materials by river. A secondary

worksite will be located adjacent to the alignment of the proposed cut and cover tunnel on the Greenwich Peninsula.

1.5 Introduction to National Grid

1.5.1 National Grid Electricity Transmission Plc (NGET) and National Grid Gas Distribution Ltd (NGGDL) (together 'National Grid') has assets and interests located within or in close proximity to the Silvertown Tunnel order limits.

These include:

- ZR 400kV Overhead Transmission Line – Barking-West Ham, which forms part of the national electricity transmission network.
- High or Intermediate pressure (above 2 bar) Gas Pipelines and associated equipment; and Low or Medium pressure (below 2 bar) gas pipes and associated equipment, both of which form part of the gas distribution network.
- Above ground gas sites and equipment has also been identified as being located within or in close proximity to the order limits.

1.5.2 National Grid also possesses land interests within the application area, but these are discussed in separate Statement of Common Ground. This Statement concerns National Grid's role as a utility provider and the easements, rights of access and apparatus that relate to this role.

2. Record of engagement undertaken

2.1 Key meetings

2.1.1 A summary of the key meetings and correspondence that has taken place between TfL and National Grid is outlined in the table below.

Date	Form of correspondence	Key outcomes and points of discussion
02.10.15	TfL issued Section 42 notification to National Grid.	Notified National Grid of statutory consultation.
20.11.15	Submitted consultation response.	Discussed protection of National Grid's apparatus. National Grid expressed wish to be consulted on protective provisions.
30.11.15	Meeting between TfL and National Grid.	Discussed scheme impact on assets, exploring potential utilities diversions.
03.12.15	Assessment of apparatus received.	Sets out where National Grid's assets are located.
22.06.16	Meeting between TfL and National Grid. Inc. TfL submitted draft protective provisions proposal to National Grid.	Parties agreed to work on agreeing protective provisions as soon as possible. Discussed application for the relocation of utilities assets currently under Dock Road. Discussed safe working and access around overhead lines.
15.07.16	Meeting between National Grid and TfL.	Discussed utility diversions, and access to assets.

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		TfL agreed to provide further plans to National Grid.
29.07.16	Email from National Grid to TfL	No objection letter and profile drawings sent relating to overhead line.
31.08.16	Relevant representation submitted by National Grid.	Discussed protection of National Grid's apparatus. National Grid seeking to agree protective provisions.
08.11.16	Email from TfL to National Grid.	Issued draft protective provisions.
10.11.16 11.11.16	Emails between TfL and National Grid.	Emails to agree final protective provisions (appended) and withdrawal of Relevant Representation.

3. Topics contained within this SoCG

3.1 Topics included in SoCG

3.1.1 The following topics discussed with National Grid have been included in this SoCG.

3.1.2 Matters agreed:

- *Protective provisions (appended).*

3.1.3 Matters under discussion:

- *Rights of access.*
- *Utility diversions.*

3.1.4 There are no matters not agreed in this SoCG.

4. Matters agreed

Ref	Description of matter	Details of discussion	Record of discussions
4.1 Protective provisions			
4.1.1	DCO provisions to protect National Grid assets.	<p>TfL notified National Grid that protective provisions are included within DCO Schedule 13 to ensure that National Grid’s apparatus and land interests are adequately protected and to include compliance with National Grid’s relevant safety standards. National Grid provided detailed comments on the protective provisions.</p> <p>The provisions have been agreed prior to deadline 1 and these are included in the newly submitted draft of the DCO.</p> <p>.</p>	<p>Meetings (03.11.15, 22.06.16, 15.07.16), and relevant representation (30.08.16).</p> <p>Emails (08.11.16, 10.11.16, 11.11.16).</p>

5. Matters under discussion

Ref	Description of matter	Details of discussion	Record of discussions
5.1 Apparatus and rights of access			
5.1.1	Rights of access for the maintenance etc. of National Grid apparatus.	National Grid's noted that rights to retain its apparatus in situ and rights of access to inspect, maintain, renew and repair such apparatus located within or in close proximity to the order limits should be maintained at all times and access to inspect such apparatus must not be restricted.	Meetings (03.11.15, 22.06.16, 15.07.16), and relevant representation (30.08.16).
3.3 Utility diversions			
3.3.1	Dock Road utility lines.	Discussed diversionary routes for utilities affected by the re-alignment of Dock Road.	Meeting (22.06.16).

6. Matters not agreed

6.1.1 There are no matters not agreed in this SoCG.

7. Agreement

Signed	
Name	
Position	
Company	
Date	
Signed	
Name	
Position	
Company	
Date	

Appendix A – Agreed protective provisions

PART 3

FOR THE PROTECTION OF NATIONAL GRID

Application

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

Interpretation

16. In this Schedule—

“alternative apparatus” means appropriate alternative apparatus 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(a), belonging to or maintained by National Grid; and
- (b) 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 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 of this Order and (unless otherwise specified) for the purposes of this Schedule includes the use and maintenance of the authorised development;

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

“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 event which, if exceeded, requires TfL to submit for National Grid’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence which National Grid and TfL agree is attributable to the authorised development (or in default of agreement is settled by arbitration in accordance with article 67 (arbitration) of the Order to be attributable to the authorised development) and is 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;

(a) 1989 c.29.

“National Grid” means either—

- (c) National Grid Electricity Transmission PLC (Company No. 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH or any of its entities or successor entities; or
- (d) National Grid Gas PLC (Company No. 200600) whose registered office is at 1-3 Strand, London, WC2N 5EH or any of its entities or successor entities; and

“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 or activities authorised by this Order and undertaken in association with the authorised development—

- (a) that will or may be situated 15m (measured in any direction) within, or which may adversely affect, any apparatus the removal of which has not been required by TfL under paragraph 20(2) or otherwise; or
- (b) that 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”).

17. This Schedule does not apply to apparatus in respect of which the relations between TfL and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of National Grid in stopped up streets

18.—(1) Without limitation on the scope of any other protection afforded to National Grid elsewhere in the Order, where any street is stopped up under article 9 (permanent stopping up of streets), if National Grid has any apparatus in the street or accessed via that street National Grid is entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and TfL 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.

(2) Notwithstanding the temporary stopping up, alteration or diversion of any street under the powers of article 10 (temporary stopping up and restriction of use of streets), National Grid is at liberty at all times to take all necessary access across any stopped up, altered or diverted 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 stopping up, alteration or diversion was in that street.

Acquisition of land

19.—(1) This Order does not authorise the acquisition or extinguishment of land or rights in land or override any interest in land owned by National Grid that is required for the retention or maintenance of any retained apparatus except with National Grid’s agreement (such agreement not to be unreasonably withheld or delayed).

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised development (or in such other timeframe as may be agreed between National Grid and TfL) 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 TfL in respect of any apparatus laid or erected in land belonging to or secured by TfL, TfL must as National Grid reasonably requires enter into such deeds of easement or consent upon such terms and conditions as may be agreed between National Grid and TfL 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 TfL 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 development.

(3) 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 Part of this Schedule prevail.

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

Removal of apparatus

20.—(1) If, in the exercise of the agreement reached in accordance with paragraph 19 or in any other authorised manner, TfL acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-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, TfL 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) TfL must, subject to sub-paragraph (3), afford to National Grid to their satisfaction (taking into account paragraph 21(1)) the necessary facilities and rights for—

- (a) the construction of alternative apparatus in other land of, or land secured by, TfL; 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, TfL, or TfL 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 TfL, 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, TfL under this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid and TfL.

(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 TfL to be removed under the provisions of this Part of this Schedule.

(6) Where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation 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 as of right or other use in relation to the apparatus then the provisions in this Part of this Schedule prevail.

Facilities and rights for alternative apparatus

21.—(1) Where, in accordance with the provisions of this Part of this Schedule, TfL affords to National Grid facilities and rights for the construction and maintenance and protection in land of

TfL 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 TfL 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 TfL 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 and the arbitrator must make such provision for the payment of compensation by TfL to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of National Grid as Gas Undertaker

22.—(1) Not less than 56 days before the commencement of any works authorised by this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by TfL under paragraph 20(2) or otherwise, TfL 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) must 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 and 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; and
- (f) details of any ground monitoring scheme if required.

(3) TfL 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); and
- (b) must not be unreasonably withheld.

(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 plan 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-paragraph (1) or (2) must be executed only in accordance with the plan, submitted under sub-paragraph (1) or (2), as amended from time to time by agreement between TfL and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (4), (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 is 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 TfL (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 work to which sub-paragraph (1) or (2) 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 TfL, reasonably requires the removal of any apparatus and gives written notice to TfL of that requirement, paragraphs 15 to 17 and 20 to 21 apply as if the removal of the apparatus had been required by TfL under paragraph 20(2).

(9) Nothing in this paragraph precludes TfL 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 apply to and in respect of the new plan.

(10) TfL 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 National Grid notice as soon as is reasonably practicable and a plan of those works and must—

- (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 this Order comply with National Grid's policies for safe working in proximity to gas apparatus enshrined in 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 guidance note "Avoiding Danger from underground services HSG47".

(12) As soon as reasonably practicable after any ground subsidence event, TfL must implement an appropriate ground mitigation scheme.

Retained apparatus: protection of National Grid as Electricity Undertaker

23.—(1) Not less than 56 days before the commencement of any specified work that does not require the removal of apparatus under paragraph 20(2) (removal of apparatus) TfL must submit to National Grid a plan and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) The plan to be submitted under sub-paragraph (1) must show—

- (a) the exact position of the specified work;
- (b) the level at which the specified work is proposed to be constructed or renewed;
- (c) the manner of the construction or renewal of the specified work including details of excavation and 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; and
- (f) details of any ground monitoring scheme if 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 include a method statement which must in addition to the matters set out in sub-paragraph (2)—

- (a) describe details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstrate that pylon foundations will not be affected prior to, during and post construction;
- (c) describe details of load bearing capacities of trenches;
- (d) describe details of cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) provide a written management plan for high voltage hazard during construction and on-going maintenance of the cable route;

- (f) provide written details of the operations and maintenance regime for the cable, including frequency and method of access;
 - (g) assess earth rise potential if reasonably required by National Grid’s engineers; and
 - (h) provide evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of overhead line construction traffic.
- (4) TfL must not commence any works requiring the submission of a plan under sub-paragraph (1) until National Grid has given written approval of the plan so submitted.
- (5) Any approval of National Grid required in relation to a plan submitted under sub-paragraph (1)—
- (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 requiring the submission of a plan under sub-paragraph (1), National Grid may require such modifications to be made to the plan 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.
- (7) Works requiring the submission of a plan under sub-paragraph (1) must be executed only in accordance with the plan, as amended from time to time by agreement between TfL and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (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 is to be entitled to watch and inspect the execution of those works.
- (8) Where National Grid require any protective works to be carried out either themselves or by TfL (whether of a temporary or permanent nature) such protective works must be carried out to National Grid's satisfaction prior to the commencement of works requiring the submission of a plan under sub-paragraph (1) and National Grid must give 56 days’ notice of such works from the date of submission of the plan (except in an emergency).
- (9) If National Grid in accordance with sub-paragraph (6) or (8) and in consequence of the works proposed by TfL, reasonably requires the removal of any apparatus and gives written notice to TfL of that requirement, paragraphs 15 to 17 and 20 to 21 apply as if the removal of the apparatus had been required by TfL under paragraph 20(2).
- (10) Nothing in this paragraph precludes TfL 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 apply to and in respect of the new plan.
- (11) TfL 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 National Grid notice as soon as is reasonably practicable a plan of those works and must—
- (a) comply with sub-paragraph (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 specified works TfL must comply with National Grid’s policies for development near or over headlines enshrined in ENA TA 43-8 and the Health and Safety Executive’s guidance note 6 “Avoidance of Danger from Overhead Lines”.
- (13) As soon as reasonably practicable after any ground subsidence event, TfL must implement an appropriate ground mitigation scheme.

Protective works to buildings

24. TfL must not exercise the powers conferred by article 15 (protective work to buildings), so as to obstruct or render less convenient the access to any apparatus without the written consent of National Grid.

Expenses

25.—(1) Subject to the following provisions of this paragraph, TfL must repay to National Grid on demand all charges, costs and expenses reasonably incurred or in the case of sub-paragraph (a) compensation properly paid 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 such works as are referred to in this Part of this Schedule including without limitation—

- (a) 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 20 sub-paragraph (3) all costs incurred as a result of such action;
- (b) carrying out any diversion work or providing alternative apparatus;
- (c) cutting off any apparatus from any other apparatus or making safe 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 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 TfL or in default of agreement settled by arbitration in accordance with article 67 (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) must be reduced by the amount of that excess except 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 the full costs must be borne by TfL.

(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 National Grid in respect of works by virtue of sub-paragraph (1) must, 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

26.—(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 TfL or in consequence of any act or default of TfL (or any person employed or authorised by him) in the course of carrying out such works (including without limitation works carried out by TfL 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, TfL 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 or in consequence of any such damage or interruption or National Grid becoming liable to any third party.

(2) The fact that any act or thing may have been done by National Grid on behalf of TfL 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 does not (unless sub-paragraph (3) applies) excuse TfL 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 TfL and National Grid.

(3) Nothing in sub-paragraph (1) imposes any liability on TfL 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 works authorised by this Part of this Schedule carried out by National Grid as an assignee, transferee or lessee of TfL with the benefit of this Order pursuant to section 156 of the 2008 Act or under article 58 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 (b) are subject to the full terms of this Part of this Schedule including this paragraph 26 in respect of such new apparatus.

(4) National Grid must give TfL reasonable notice of any such claim or demand and no settlement or compromise is to be made without National Grid first consulting TfL 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 26 applies. If requested to do so by TfL, National Grid must provide an explanation of how the claim has been minimised. TfL is only liable under this paragraph 26 for claims reasonably incurred by National Grid.

Enactments and agreements

27. 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 TfL, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between TfL and National Grid in respect of any apparatus laid or erected in land belonging to TfL on the date on which this Order is made.

Co-operation

28. National Grid and TfL must use their best endeavours to co-ordinate with each other on the timing and method of execution of any works carried out under this Order or this Part of 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

29. If in consequence of the agreement reached in accordance with paragraph 19 or the powers granted under this Order the access to any apparatus is materially obstructed, TfL 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

30. Any difference or dispute arising between TfL and National Grid under this Schedule must, unless otherwise agreed in writing between TfL and National Grid, be determined by arbitration in accordance with article 67 (arbitration) of this Order.