

Land and Property

# Guidance note on the use of National Grid Electricity Transmission land

Appendices



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## Appendix 1

### Glossary of terms

| Term                                       | Definition  |
|--|---|
| <b>Business separation</b>                 | Ofgem licence requirements that are represented by a series of rules defining how engagement between group businesses can take place and a code of conduct that are there to ensure our monopoly businesses do not exploit their dominant position to gain an unfair commercial advantage in other competitive markets.   |
| <b>Biodiversity net gain</b>               | An approach to development that leaves biodiversity in a better state than before.  |
| <b>Brownfield land</b>                     | Land that has been previously developed.  |
| <b>Cadent</b>                              | Cadent is one of the gas distribution networks for the UK. Cadent also manages a plant protection service on behalf of National Grid.   |
| <b>Connection Agreement</b>                | A signed contract between National Grid ESO and a connection customer.  |
| <b>Connection Customers</b>                | Electricity generators or demand customers connecting to the electricity transmission or distribution system.   |
| <b>Connection site</b>                     | The point on the electricity system at which a connection customer connects (e.g. a substation) comprising of the land up to the security fence surrounding the substation. They may be owned by National Grid or a Distribution Network Operator.  |
| <b>Development Consent Order (DCO)</b>     | A Development Consent Order (DCO) is the means of obtaining permission for a development categorised as a Nationally Significant Infrastructure Project (NSIP). This includes energy, transport, water and waste projects.  |
| <b>Deed of Grant</b>                       | The document which grants an Easement which is executed as a deed and should be registered at the Land Registry in order to ensure that future owners of the land adhere to it.   |
| <b>Distribution Network Operator (DNO)</b> | These companies operate the local electricity distribution systems across the UK.   |
| <b>Easement</b>                            | An Easement is a right to use another person's property. This could be the grant of access rights for installing and maintaining infrastructure equipment on private land in exchange for a one-off payment to the landowner or a right to use an accessway. An easement can be granted in a deed of grant or, where the easement relates to a lease of land, the easement can be contained in the Lease. |
| <b>Electricity System Operator (ESO)</b>   | The ESO is part of National Grid and operates the electricity transmission system in England, Wales and Scotland.   |
| <b>Environmental Net Gain</b>              | An approach to development that leaves the environment in a better state than before, including both biodiversity net gain and natural capital ecosystem service provisions.  |
| <b>Environmental Value</b>                 | A combination of both biodiversity and natural capital values.  |
| <b>E Permit</b>                            | The system for requesting physical access to National Grid's non-operational land.  |
| <b>HV Compounds</b>                        | The operational compound containing high-voltage (HV) electrical equipment.   |
| <b>Interface Agreement</b>                 | An agreement which documents the basis on which a third party can retain equipment within an operational substation.  |

| <b>Term</b>  | <b>Definition</b>   |
|--|---|
| <b>Lease</b>   | A deed by which one party conveys land or property to another for a specified time, usually in return for a periodic payment.   |
| <b>Licence</b>   | A personal permission to do something on land owned by another including temporary occupation, tree felling or other works required   |
| <b>Lift and Shift Clause</b>                             | A lease clause enabling the landlord to require the tenant to relocate its plant and equipment. The clause usually deals with notice which must be served, the cost of relocation and conditions to such relocation.  |
| <b>Market Value</b>                                      | The estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion. (International Valuation Standards Council 2020)   |
| <b>Non-operational land</b>                              | The land owned by National Grid that is not currently used by the operational business; for example the land outside the operational fence of a substation.   |
| <b>National Grid Electricity Transmission plc (NGET)</b> | This is the part of National Grid that owns and maintains the electricity transmission system in England and Wales.   |
| <b>National Grid Gas plc (NGG)</b>                       | This is the part of National Grid that owns and maintains the gas transmission system in England, Scotland and Wales.   |
| <b>Natural Capital</b>                                   | Natural capital is a way of thinking about nature as a stock that provides a flow of benefits to people and the economy. It consists of natural capital assets – such as water, forests and clean air.  |
| <b>Operational land</b>                                  | The land owned by National Grid that is used by the operational part of the business; for example the land within the operational fence of a substation.  |
| <b>Option agreement</b>                                  | A legal contract between a landowner and potential purchaser or tenant of a site. The option holder has the opportunity of purchasing or acquiring a right over the land from the landowner at an agreed price within a fixed time frame, once the terms within the option have been met.   |
| <b>Planning permission</b>                               | Formal permission from a local planning authority for the use, erection or alteration of buildings or similar development.  |
| <b>Plant protection</b>                                  | A service providing guidance and support to developers who are planning to undertake works near to National Grid assets. The service is provided by Cadent on behalf of National Grid.  |
| <b>Permitted Development Rights</b>                      | National Grid has the benefit of using permitted development rights under Part 15 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GPDO) which means that they do not require planning permission for works undertaken pursuant to these rights.<br><br>These rights have been bestowed specifically on National Grid as a statutory undertaker and should not be used by other customers. |
| <b>Premises</b>  | The land which is conveyed or leased pursuant to a Lease  |
| <b>Ofgem</b>   | The Office of Gas and Electricity Markets (Ofgem) regulates National Grid and the other companies which run the gas and electricity networks. It takes decisions on price controls and enforcement, acting in the interests of consumers and helping the industries to achieve environmental improvements.  |

| Term                               | Definition  |
|------------------------------------|---|
| <b>Rent Deposit Deed</b>           | A deed between a landlord and a tenant pursuant to which the tenant deposits monies with the landlord which the landlord can use to remedy breaches of the tenant's obligations under a Lease. The monies deposited with the landlord are returned at the end of the lease less any deductions the landlord has been required to make.  |
| <b>Root Protection Area</b>        | A root protection area is a layout design tool indicating the minimum area around a tree deemed to contain sufficient roots and rooting volume to maintain a tree's viability, and where the protection of the roots and soil structure is treated as a priority.   |
| <b>Land and Property (L&amp;P)</b> | Land and Property is a department within National Grid that is responsible for managing the non-operational estate and for dealing with any enquiries from customers regarding the use of this land.  |
| <b>Reinstatement Bond</b>          | A financial deposit made to a landowner by a developer to cover the costs of land reinstatement at the end of the project's lifetime should this be required.   |
| <b>Rent deposit deed</b>           | An agreement under which a landlord holds a portion of the tenant's money as a guarantee that the tenant will comply with its obligations in a lease. The landlord will have the right to draw on that money in the event of failure to pay rent or breach of other obligations by the tenant. The landlord will return the deposit plus interest less any money withdrawn at the end of the term or earlier if agreed. |
| <b>Right of way deed</b>           | A deed in which a party is granted a right of way over a private access road, usually subject to a payment towards its maintenance and repair.  |
| <b>Succession rights</b>           | These are statutory rights for the children or grandchildren or other close relatives of a tenant to take over a tenancy on the death or retirement of that tenant.   |
| <b>Wayleave</b>                    | A right over land granted by a landowner in exchange for payment and typically for purposes such as the erection of overhead equipment.   |

## Appendix 2

### Lease and easement process for connection customers: Terms and legal requirements

This appendix document contains more detailed information for connection customers regarding the process for securing a lease or easement over National Grid surplus land.

National Grid can enter into an option to grant a lease or easement if a connection customer requires the security of knowing that a lease or easement is secured. However, a connection customer can also move straight to a lease or easement if preferred.

To assist developers in understanding the process and National Grid's requirements this appendix contains three sections as follows:

**Section one** - Overview for developers requiring a lease

**Section two** - Overview for developers requiring an easement

**Section three** - Frequently asked questions (FAQs) relating to the key legal terms and requirements:

- **Part A:** Option;
- **Part B:** Lease;
- **Part C:** Easement.

### Section one - Overview for developers requiring a lease

#### Process

In the majority of cases the developer will need to carry out site investigations and secure a number of consents before they are in a position to commit to the lease. In order to accommodate this the legal package provides for the following option and lease process, although customers can (if construction details have been provided and approved) proceed direct to lease if required:

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#### 1. Option Agreement

- **Option period:** 18 month option period to carry out site investigation and obtain consents although the option period can be longer in certain circumstances (e.g. where a later connection date has been secured).
- **Extensions:** the option period can be extended by 12 months if a) planning decision is outstanding; (b) programme impact due to National Grid key milestone connection dates being altered.
- **Terminable:** the option is terminable if the developer's bilateral connection agreement is terminated.
- **Option Fee:** an option fee is payable which is calculated based on the annual rent. A further option fee is payable if the developer requires an extension.

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#### 2. Milestones

The developer must meet the following milestones before the relevant completion date. The option is terminable by National Grid if they are not met:

- **Milestone 1:** : submission of a technically competent connection application together with the fee and having received a clock start date from National Grid or the Distribution Network Operator
  - **Milestone 2:** Milestone 2: planning permission for the works, or (if not required for the works) the development connected to the cable has been granted
  - **Milestone 3:** entry into a connection agreement with National Grid or the Distribution Network Operator
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### 3. Site Investigation

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- The developer may access the premises to undertake due diligence and survey work. However access to the premises is controlled and the developer must apply for an E-Permit for access.
- The E-Permit application must be submitted at least 10 working days before access is required and the developer must comply with National Grid's terms and conditions for access.
- If the developer wishes to undertake intrusive investigations then they must agree the RAMS and enter into separate licence conditions and a separate licence fee is payable. This applies if the surface of the ground is broken.
- The construction information (i.e. the location of the cables, working strip, RAMS etc.) must be submitted and not objected to by National Grid.

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### 4. Lease

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- **Term:** typically 30 to 40 years.
- **Rent:** increased annually in line with the Consumer Price Index (CPIH) and paid quarterly in advance.
- **Rent deposit:** a 12 month rent deposit will be required on completion. A further 6 month rent deposit will be required on the 15th anniversary of the lease. This is payable as a contribution towards covering the cost of reinstatement.
- **Insurance:** the developer is required to maintain a minimum level of public and occupier's liability insurance.
- **Environmental liability:** the developer is not responsible for historic contamination. However it is responsible for any contamination it causes or exacerbates.
- **Forfeiture:** the lease can be forfeited for breach, if the connection agreement is terminated or if as-laid drawings of the cables has not been provided subject to funder protection provisions.
- **Reinstatement:** the premises must be returned, reinstated and (if applicable) remediated.

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### Heads of terms

The key terms are contained in the National Grid standard heads of terms which can be supplied upon request to interested parties.

## Section two - Overview for developers requiring an easement

### Process

In the majority of cases the developer will need to carry out site investigations and secure a number of consents before they are in a position to commit to the easement. In order to accommodate this the legal package provides for the following option and easement process, although customers can proceed direct to easement if required:

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#### 1. Option Agreement

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- **Option period:** 18 month option period to carry out site investigation and obtain consents, although the option period can be longer in certain circumstances (e.g. where a later connection date has been secured).
  - **Extensions:** the option period can be extended by 12 months if (a) planning decision is outstanding; (b) programme impact due to National Grid key milestone connection dates being altered.
  - **Terminable:** the option is terminable if the developer's bilateral connection agreement is terminated.
  - **Option Fee:** an option fee is payable. A further option fee is payable if the developer requires an extension.
  - **Option Notice:** 6 months notice must be given before exercising the option. This is so that an engineer can be scheduled to supervise the works however a shorter period may be agreed between the parties subject to availability.
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## 2. Milestones

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The developer must meet the following milestones by the completion date. The option is terminable by National Grid if they are not met:

- **Milestone 1:** submission of a technically competent connection application together with the fee and having received a clock start date from National Grid or the Distribution Network Operator
- **Milestone 2:** planning permission for the works or (if not required for the works) the development connected to the cable has been granted
- **Milestone 3:** entry into a connection agreement with National Grid or the Distribution Network Operator.

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## 3. Site Investigation

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- The developer may need to access the proposed option strip to undertake due diligence and survey work. However access is controlled and the developer must apply for an E-Permit for access.
- The E-Permit application must be submitted at least 10 working days before access is required and the developer must comply with National Grid's terms and conditions for access.
- If the developer wishes to undertake intrusive investigations then they must agree the RAMS and enter into separate survey licence and a separate fee is payable.. This applies if the surface of the ground is broken.
- The construction information (i.e. the location of the cables, working strip, RAMS etc.) must be submitted and not objected to by National Grid. This must be done before the easement is granted.

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## 4. Easement

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- **Term:** typically 30 to 40 years depending on the length of your project.
- **Easement Payment:** this must be paid on completion of the deed of grant.
- **Construction:** the cable must be constructed in accordance with the construction information within 12 weeks of the date of the easement. As laid drawings must be provided within 20 w.d. of laying the cables
- **Environmental liability:** the developer is not responsible for historic contamination. However it is responsible for any contamination it causes or exacerbates.
- **Termination:** the easement can be terminated if it is no longer in use, if the completion notice is not served within 15 weeks or the as laid drawings are not provided within three months or if the connection agreement is termination
- **Reinstatement:** the easement strip must be returned, reinstated (i.e. cable removed) and (if applicable) remediated.

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## Heads of terms

The key terms are contained in the National Grid standard heads of terms which can be supplied upon request to bona fide interested parties.

**Section three** - Frequently asked questions (FAQs) relating to the key legal terms and requirements

**Part A:** The Option (if required by the developer)

### 1. How long is the option for?

The option is typically for an initial period of 18 months , although can be longer (e.g. where the customer's connection date is later than 18 months).



## 2. Is the option conditional?

The following must be achieved before the option can be exercised:

- a. planning consent for the project has been obtained; and
- b. the milestones are met, before completion of the deed of grant or lease namely:

**Milestone 1:** The developer must have submitted a technically competent connection application, have paid the appropriate fee and received a clock start date from National Grid or the Distribution Network Operator.

**Milestone 2:** The developer must have planning permission for the works or, if planning permission is not required for the cable easement, the developer must have planning permission for the development.

**Milestone 3:** Where applicable, the developer must have entered into a connection agreement with National Grid or the Distribution Network Operator before completion.

This is required to ensure that our land is used for developments which are capable of both being developed and connecting into the grid. This applies whether the developer is connecting into a National Grid substation or into a Distribution Network Operator substation.

## 3. Can I extend the option agreement?

Yes, subject to paying an additional option fee. The maximum extension is for 12 months and can only be requested if:

- the developer is awaiting determination of a planning application or planning appeal (and any judicial review); or
- if National Grid alters the key milestone connection dates impacting the developer's programme.

## 4. Can I extend the option agreement again?

No. A developer can seek a new option agreement but any such agreement would be on National Grid's prevailing terms at the time.

## 5. Why do you want to review my planning application?

If the planning application includes our land then National Grid needs to review any application before it is submitted.

As we are a regulated body we need to ensure that any planning permission which includes National Grid land does not:

- adversely affect our reputation;
- put us in breach of our statutory or licence holder obligations under the Electricity Act;
- give rise to liabilities unless we have received an indemnity or other suitable security in respect of all potential liabilities to our satisfaction, acting reasonably;
- bind our retained land;
- oblige us to donate or use our retained land.

The above are considered "Unacceptable Conditions" to National Grid.

## 6. Will you enter into a planning agreement if it is a condition of planning consent?

We will enter into planning agreements if required to facilitate the planning consent but only in our capacity as landowner and if in a form approved by us. They must not contain any commitments on the part of National Grid (i.e. they do not contain any Unacceptable Conditions as detailed above).

## 7. What about environmental and biodiversity net gain?

We acknowledge that both parties should work co-operatively together in good faith to increase environmental value (biodiversity net gain and natural capital) but not so as to increase the usual contractual obligations of either party.

If biodiversity net gain and/or natural capital targets or contributions are imposed upon the developer as part of the planning process and if the parties agree then the developer may utilise our landholdings to meet such requirements. This may be subject to a charge. However any charge must not be greater than the cost that a developer would incur elsewhere in meeting those requirements.

## 8. How is the land identified?

Any works to be carried out on National Grid land need to comply with our usual plant protection requirements as well as be in a location / route approved by us.

In the case of easements, ideally the option area would be the easement land required (i.e. the cable run plus the working strip either side) however we understand that the final route may not be known until after planning. If this is the case then the option area will be wider but the final route must be agreed and plotted before the easements are granted.

## 9. What information is required?

Before the lease/deed of grant is entered the documentation detailing what and how works are going to be accessed and carried out need to be reviewed by National Grid and they must be in a non-objectionable form. The content of the documentation is ultimately the responsibility of the developer to deliver and therefore we will not approve the developer's documents. However if we have a reasonable objection then the documents must be modified to accommodate such objection and be resubmitted for review.

We would expect to see:

- the detailed specification including construction, design details and plans;
- the risk assessment and method statement for carrying out the works;
- site traffic management plan;
- habitat management plan; and
- any other information we reasonably require.

The above information is known as the construction information.

Two weeks before completion of the deed of grant or lease you will be required to produce a schedule of condition which we will need to approve. This is to document the condition of the land and the standard to which it needs to be reinstated. This includes any land in which cables will be laid.

## 10. How much notice is required to exercise the Option?

Given the typical nature of National Grid's non-operational land and its proximity to operational substations any works must be supervised. The option is exercisable on six months' notice in order to enable the relevant security arrangements to be put in place for the commencement of the works. Developers must ensure that they discuss any programming requirements at an early stage with National Grid's land agents.

## 11. Can we start works early?

No works will be permitted until the lease or deed of grant is completed. Once completed works can commence in line with the construction information as set out above. This is so that we have certainty of location and protection of the works being carried out on our retained land interest.

## 12. Can I assign the option to another developer?

Yes. However we have to ensure that we do not prejudice our licence. As such we need the right to refuse consent to assign if:

- the assignment would or is likely to adversely affect National Grid's reputation;
- the developer is likely to put National Grid in breach of its statutory/licence holder obligations;
- the assignee has not entered into a connection agreement and (if connecting into a National Grid substation) an interface agreement to enable the ongoing operation of the premises;
- the assignee is not of sufficient covenant strength to comply with the terms of the lease/easement (including reinstatement) and any environmental works that National Grid and the developer agree are required.

## 13. Can my funder take an assignment of the option if required?

The option agreement contains the ability to assign the option to a funder without consent provided that they are a bona fide funder of the project and they:

- are not a 'prohibited entity' (i.e. a party which is not reputable; adversely affects the Grantor's reputation, not based in the UK, could put National Grid in breach of its statutory obligations as a licence holder under the Electricity Act) and entering into the documentation with the funder does not have a material adverse impact upon us;
- the funder can enter into the connection agreement and (if connection is to a National Grid substation) an interface agreement on or before the date of the deed of grant;
- are of sufficient financial standing to comply with the obligations in the relevant document; and
- the funder enters into a direct deed of covenant or novation with us in a form we approve acting reasonably. The developer would need to pick up this cost.

## 14. When does the option agreement come to an end?

If a valid option notice is not received by 4pm on the last day of the option period or the developer notifies us that they do not wish to exercise the option then the option agreement comes to an end.

Additionally we can terminate if any of the milestones are not met by the completion date, if a satisfactory planning permission is refused and the developer does not submit an appeal/resubmit within six weeks or if the connection agreement or Interface agreement is terminated.

## 15. How do I know the land is suitable for my use?

We do not give any warranty that the premises are suitable for use. The developer must satisfy itself that the premises are suitable. Surveys are permitted subject to obtaining an E-Permit in order to gain access. However if intrusive works are required then a licence will need to be entered into as well and a separate licence fee is payable.

Upon taking access for surveys the developer will be responsible for ensuring the land is secured and compensating any occupier (e.g. if the land is subject to a grazing licence). The developer will also need to ensure that they do not interfere with any other wayleaves/easements.

## 16. What about contamination?

The developer is not responsible for any historic contamination however if they cause contamination and/or exacerbate existing contamination then they will be liable and will need to remediate. If on a site by site basis there are specific remediation actions that are required before any works can be carried out then these will be discussed with you separately and the proposed method for carryout the works and any remediation will be agreed.

## **Part B: The lease**

### **17. How long will the lease term be?**

The lease term is typically 30 years so that the term can mirror the project period. We can also agree an option to renew for a further 15 years if required.

All leases must exclude security of tenure under the Landlord and Tenant Act 1954 so that the term of the lease is certain.

### **18. How is the rent calculated?**

The initial rent will be agreed in the heads of terms and will be based on either the acreage or the MW output of the development pursuant to the connection agreement, whichever is the greater.

The rent is payable annually in advance on the anniversary of the date of the lease. The rent will increase annually in line with the Consumer Price Index (CPIH).

### **19. Why do you require a rent deposit?**

At completion the developer must provide a rent deposit equal to 12 months of the annual rent and any VAT due thereon as protection against all breaches during the term and any extension of it.

A further sum equal to six months' rent and VAT will be required on the 15th anniversary of the term in respect of the developer's obligations to reinstate at the end of the term.

This approach is adopted to mitigate the risk of a developer failing to comply with its reinstatement obligations but without seeking 18 months' rent deposit at the start of the lease. If the tenant has an option to renew then upon taking the renewal lease a further six months' rent will be required to be deposited.

### **20. Will I be liable for other costs?**

The developer will be responsible for all rates and outgoings.

In addition, if the access road to the site is not adopted then you will be responsible for a fair proportion of the maintenance costs based on your level of use relative to the other users.

As stated in the option agreement you will also be responsible for any losses/compensation to occupiers in carrying out works and for our legal and agents' fees.

### **21. Can works be carried out before the completion of the lease?**

The lease governs how the works are carried out so works cannot be carried out prior to completion.

### **22. How will the working space required for installation be provided for?**

In relation to any cables to be constructed outside of the premises for the purpose of connecting to the substation, the developer will be permitted an additional area (typically up to 3 metres) either side of the easement strip to lay the cables and then access them for maintenance purposes.

### **23. Are there any restrictions on how the works are carried out?**

The installation works must be carried out in accordance with the construction information approved before the date of the lease (see above regarding the option agreement requirements) and this will be appended to the lease.

## 24. Are there any restrictions on when the works are carried out?

In relation to works outside of the premises, the developer must be accompanied by National Grid qualified personnel given the location of the works which is why the longer notice period is required before exercising the option/rights of entry (see above). The works must be carried out within 12 weeks of the date of the lease. This is required so that we can manage other developer's programmes where they might also need to carry out works.

The developer must serve a completion notice within 15 weeks of the date of the lease and must provide as laid drawings of the cables / apparatus within three months of the date of the Completion Notice or if earlier six months from the date of the lease. This is crucial to enable us to record accurately the location of live apparatus and manage other developers and their works and particularly given our regulated obligations pursuant to the terms of our licence under the Electricity Act.

Given the importance of this information the deed of grant does contain a termination right if the information is not required (although please note the comments below regarding funder protections).

## 25. Can the landlord forfeit / terminate the lease?

Yes, if:

- the tenant has not paid any rent within 10 working days of the due date;
- the tenant is in breach of its obligations in the lease;
- the connection agreement is terminated – the cables must be used for connection to a substation (either National Grid or the Distribution Network Operator) as this is important in terms of the use of our landholding in the vicinity of the substation;
- the developer is not entitled to carry out the permitted use as they are not a party to a connection agreement or (in the case of a National Grid substation) an interface agreement;
- where cables are laid outside of the premises, the completion notice and as laid drawings are not provided in requisite timescales

The parties can also terminate by mutual agreement.

## 26. Is there any protection for my funder?

If the developer charges the premises to a funder (please see above) then before the landlord can re-enter they must serve notice on the funder and give them at least 30 days to pay any outstanding monies and three months to remedy any breach.

If requested we will also enter into a direct agreement on terms acceptable to both parties acting reasonably.

## 27. What happens at the end of the lease?

When the lease ends (however it ends) the property must be reinstated to no worse condition than the schedule of condition which is produced in the 2 weeks before lease completion (see Option above). If the developer has caused or exacerbated any contamination then they will need to remediate the land. Once this has occurred the rent deposit monies will be returned to the developer. We can apply the rent deposit monies in reinstating the premises and removing the cables if the developer does not do so.

### **28. Can I assign the lease?**

As with the assignment of the option, the lease can be assigned in whole with National Grid's consent (acting reasonably), but as with assignment of the option, National Grid can refuse consent where:

- the assignment would or is likely to adversely affect its reputation;
- the developer is likely to put National Grid in breach of its statutory/licence holder obligations;
- the assignee has not entered into a connection agreement and (in the case of a connection to a National Grid substation) an interface agreement to enable the ongoing operation of the premises;
- the assignee is not of sufficient covenant strength to comply with the terms of the lease (including reinstatement) and any environmental works that National Grid/the developer agree are required.

Any assignee will also need to enter into a rent deposit deed on the same terms and enter into a direct deed of covenant. There must be no arrears or material subsisting breaches of the deed of grant at the date of assignment.

### **29. Can I sublet?**

A developer can sublet a substation located on the premises to a Distribution Network Operator. No other subletting is permitted.

### **30. Can I charge the lease?**

Yes, but only to a funder which is not a prohibited entity (see above). Advance notice must be given of when the charge will complete. This is required due to the protections afforded to funders under the terms of the lease.

### **31. What if I need to lay additional cables or service media?**

If service media/cables are required to connect the premises to the substation then the lease will contain rights to construct and thereafter use such cables over a defined route. If other services need to be laid and/or if a Distribution Network Operator wishes to be granted an easement then a separate deed will be required.

If the service media/cables are required for a third party (i.e. a private wire) then we can grant a further easement in a route approved by us and for which there will be an additional easement fee.

Please discuss any requirements up front with National Grid so that any rights over land outside of the premises can be assessed and considered as to whether they can be accommodated. Any specific rights over land outside of the premises (other than access and laying the cable to the substation) will need to be agreed in the Heads of Terms.

### **32. What if a cable is to be adopted by a Distribution Network Operator?**

If a Distribution Network Operator is to adopt the cable and requires its own easement then we will, at your cost, enter into a deed of easement with the Distribution Network Operator provided that as a result the protections we have are not adversely affected and our liabilities are not increased.

### **33. Why do you need the right to relocate?**

National Grid may need to realign or relocate the access route and/or service media outside of the premises (e.g. in order to comply with its regulatory requirements).

If this requires the relocation of the cables then the developer will be required to do this subject to a mechanism for determining the appropriate alternative location and with suitable notice to enable the works to be carried out. A relocation is at your cost.

### **34. What rights does the landlord reserve over the premises?**

We reserve out rights from the premises to enable us to deal with our surrounding land as we need to ensure that we do not fetter our ability to accommodate other developers.

Additionally the lease is granted subject to any existing overhead cables and the associated easements.

As detailed below in relation to the deed of grant we need to make sure that we can lay conduits for other customers and to connect to any Earthing System within the premises although any rights requiring access onto the premises are subject to protective measures in favour of the tenant.

### **35. Who is responsible for insurance?**

The developer is required to maintain public and occupier's liability insurance for at least £10m per claim. This level is reviewed on any renewal to ensure that it is still sufficient.

### **36. What happens if we disagree?**

If there is a dispute in relation to the lease then we have provided that either party can refer disputes to arbitration so that any matters can be resolved swiftly.

### **37. I need a water supply for the site, can I use National Grid's supply?**

Given the nature of the sites, there is no water supply (water supply used for the substations can only be used for the substation itself). If a separate water supply is required please discuss any requirements up front with National Grid so that any rights over land outside of the premises can be assessed and considered as to whether they can be accommodated. Any specific rights over land outside of the premises will need to be agreed in the Heads of Terms.



## Part C: The deed of Grant/Easement

### 38. Why do I need an easement when I have to enter into an interface agreement?

The deed of grant governs the cable easement up to the security perimeter of the substation. The land inside the security perimeter of the substation is known as the 'connection site' and the rights for the cables in that area will be governed by the relevant 'interface agreement' which will be with National Grid or the Distribution Network Operator (depending on who is the operator of the substation).

The interface agreement does not identify specific assets given the proximity to the connection point and the number of assets in the vicinity. However outside of the connection site it is imperative that designated easement strips are identified so that the land can be efficiently used for the benefit of the maximum number of developers.

### 39. Do the cables need to be in a specific location?

Yes. The extent of the easement strip will be identified on a plan and attached to the deed of grant.

The location of the the cable is subject to formal approval by National Grid via the Use of National Grid non-operational land process, to be obtained before entering into the option agreement. The option area needs to reflect the final position and a wide option area will not be acceptable as we need to ensure that our landholdings can accommodate as many connection customers as possible.

The final position of the cable needs to be within the option area and documented before the deed of grant is entered into.

### 40. Are there restrictions on what can be installed in the easement strip?

Developers will need to agree in the heads of terms what apparatus they wish to install in the easement strip (e.g. the cables, manhole covers, markers etc.). These will then be specified in the deed of grant and no further apparatus will be permitted. This is to ensure that our landholdings can be used efficiently for all developers and suitable protections can be included. Developers are requested to engage early with us to discuss their requirements.

If apparatus is to be located under an access route then additional reinforcement works will be required.

### 41. Is the access included in the deed of grant?

If an access route is required from the public highway to the easement strip then this will also be identified on a plan. If there is no existing access route in situ then developers may be required to construct one. Any access routes must be shared in common with other users. We must reserve the right to realign the access route if required. However we will always ensure that an access to the easement strip is maintained so that the rights can be exercised in accordance with the terms of the deed of grant.

If an access route is not agreed or specified then the developer must access the easement strip from the public highway via its adjoining landholdings.



**42. Can the cables be installed before entering into the deed of grant?**

As stated above, this is not permitted as the deed of grant contains the necessary provisions governing the carrying out of the works.

**43. How will the working space required for installation be provided for?**

During the initial construction phase developers will be permitted an additional area (typically up to three metres) either side of the easement strip to lay the cables.

After construction access rights for inspection, maintenance etc must be exercised over the easement strip.

If an additional laydown area is required then, subject to there being land available, we may be able to grant a temporary laydown licence. An additional fee will be payable in relation to the licence which will be determined by reference to the duration required.

**44. Are there any restrictions on how the works are carried out?**

The installation works must be carried out in accordance with the construction information approved before the date of the deed of grant (see above regarding the option agreement requirements) and this will be appended to the deed of grant.

**45. Are there any restrictions on when the works are carried out?**

Developers must be accompanied by National Grid qualified personnel given the location of the works which is why the longer notice period is required before exercising the option / rights of entry (see above). The works must be carried out within 12 weeks of the date of the deed of grant. This is required so that we can manage other developers' programmes where they might also need to carry out works.

Developers must serve a completion notice within 15 weeks of the date of the deed of grant and must provide as laid drawings of the cables/apparatus within three months of the date of the Completion Notice or if earlier six months from the date of the deed of grant. This is crucial to enable us to record accurately the location of live apparatus and manage other developers and their works and particularly given our regulated obligations pursuant to the terms of our licence under the Electricity Act.

Given the importance of this information the deed of grant does contain a termination right if the information is not required (although please note the comments below regarding funder protections).

**46. Do you have vacant possession of the land?**

In some instances the land in which the easement strip is located will be let on an agricultural tenancy or subject to a grazing licence. The land might also have wayleaves/easements or other interests crossing the land. The deed of grant will be subject to these interests and in carrying out works/exercising rights the developer needs to ensure that they do not interfere with these rights. Additionally if any compensation is payable to any tenant then the developer will be responsible for the cost as this is not factored into the deed of grant payment.

Where there is a specific occupier, we will provide the developer with details.

**47. Will the easement be permanent?**

No it will be for a term of years commensurate with the project which will benefit from the easement (typically 30 to 40 years).

**48. Is there a payment?**

Yes, a one off payment will be payable upon entering into the deed of grant which is determined by the length and width of the easement strip required and the market value of the land. The payment is non-refundable.

The developer will also need to be responsible for our legal and agents fees.

**49. Can the deed of grant come to an end earlier than at the end of the term?**

Yes, if:

- The developer is in breach of its obligations in the deed of grant;
- the connection agreement is terminated – the cables must be used for connection to a substation (either National Grid or the Distribution Network Operator) as this is important in terms of the use of our landholding in the vicinity of the substation;
- the cables are not used for 24 months or longer – again, we need to ensure that the land is being used efficiently and not being wasted;
- the Completion Notice and as laid drawings are not provided in requisite timescales – for the reasons stated above regarding the importance of knowing that the works are completed and the precise location of the apparatus.

The parties can also terminate by mutual agreement.

**50. Is there any protection for my funder?**

If a funder is a party to the deed of grant then they will have express rights to step in in the event of a breach.

If the funder is not a party to the deed of grant but the developer notifies us of a bona fide funder (please note the criteria in the option agreement regarding a funder) then they will be notified before steps are taken to terminate and will be provided with an opportunity to step in and remedy the breach.

**51. What happens on termination?**

When the deed is terminated all apparatus must be removed and the land must be reinstated to no worse condition than the schedule of condition which is produced in the 2 weeks before the lease completion (see Option above).. If the developer has caused or exacerbated any contamination then they will need to remediate the land.

**52. Can I assign my easement?**

As the deed of grant is an easement it will run with the project land which has the benefit of the deed of easement provided that the assignee or transferee:

- enters into a direct deed of covenant;
- has entered into a connection agreement and (if the substation is a National Grid substation) an interface agreement;
- will not put National Grid in breach of its statutory/licence holder obligations;
- does not cause operational risk to the grantor and/or affect the integrity of the grantor's land or the equipment in it.

A restriction on title must be entered onto the title of the project land to ensure that these obligations are complied with.

**53. Can an easement be entered into with a Distribution Network Operator?**

If the developer knows who the Distribution Network Operator is we can grant the easement to the Distribution Network Operator instead of the developer. However we will need the same protections, including the obligation to remove the cable upon termination. This is so that other developers can use the land. If the Distribution Network Operator cannot agree to these terms then the deed of grant must be a tripartite deed so that the developer complies with the obligations.

If the Distribution Network Operator is not known we will agree to enter into an obligation to enter into a tripartite agreement on terms acceptable to us acting reasonably, at the developers cost and provided that our position is not adversely affected and/or our liabilities increased.

**54. Why do you need the right to relocate my Cable?**

National Grid may need to realign or relocate the access route and/or service media (e.g. in order to comply with its regulatory requirements).

If this requires the relocation of a developer's cable then they will be required to do this subject to a mechanism for determining the appropriate alternative location and with suitable notice to enable the works to be carried out. Any such works are at the developer's cost.

**55. Can you cross the easement strip once we have laid our cable?**

National Grid must reserve the right to cross the easement strip with other cables subject to protective measures to protect the developer's cable. This flexibility is required so that we can manage the land effectively to maximise the number of developers that can connect into the substation.

The deed of grant will however contain the usual protections as to not erecting or planning anything on the easement strip that would damage the cables so that the developer is protected.

**56. What happens if we disagree?**

If there is a dispute in relation to the deed of grant then we have provided that either party can refer disputes to arbitration so that any matters can be resolved swiftly.

## Appendix 3

### Policy and guidance links

The Electricity Safety, Quality and Continuity Regulations (ESQCR) 2002.

<https://www.legislation.gov.uk/ukxi/2002/2665/contents/made>

Design Guidelines for Development near Pylons and High Voltage Overhead Power Lines

<https://www.nationalgrid.com/sites/default/files/documents/Sense%20of%20Place%20-%20National%20Grid%20Guidance.pdf>

National Grid's commitments when undertaking works in the UK: Our stakeholder, community and amenity policy

<https://www.nationalgrid.com/uk/electricity-transmission/document/81026/download>

Third party guidance for working near National Grid electricity transmission equipment

<https://www.nationalgrid.com/uk/electricity-transmission/document/82926/download>

Energy Networks Association (ENA) TS 43-8

<https://www.ena-eng.org/ena-docs/Index?Action=ViewDetail&EID=99969&PEID=95721>

British Standard BS EN 50341-1:2012 Overhead Electrical Lines exceeding AC 1kV

<https://shop.bsigroup.com/ProductDetail/?pid=000000000030260571>

HSE Guidance Note GS6 (Avoiding Danger from Overhead Power Lines)

<https://www.hse.gov.uk/pubns/g6.htm>

HSG 47 (Avoiding Danger from Underground Services)

<https://www.hse.gov.uk/pubns/books/hsg47.htm>

British Standard BS 5837:2012 Trees in relation to design, demolition and construction – Recommendations

<https://shop.bsigroup.com/en/ProductDetail/?pid=000000000030213642>

## Appendix 4

### Authorisation process to access National Grid land (E-Permit)

If a developer needs to visit site, to undertake surveys for example, they will need to agree this with National Grid in advance through an authorisation process known as E-Permit. The link to request an e-permit is provided below:

<https://nationalgridlive.e-permits.co.uk/>

Whenever a contractor, surveyor or other interested party wishes to gain access to the National Grid non-operational estate then an E-Permit to access the property is required. The one exception to this is where there is a designated CDM area.

Interested parties will be sent:

- an RFI;
- a brief overview of the e permits system;
- a blank statement of facts form; and
- an e permits arrangement summary.

The RFI provides the information required to set a company and users up on the system to provide them with log-in details. Once logged in, the user will need to upload a set of RAMS. The RAMS can include up to five documents and the minimum requirement is:

- risk assessment;
- method statement;
- plan of the work area showing access and egress routes; and
- a completed statement of facts (blank copy will be provided).

Any additional documents can be sent for review by email.

Dependent upon the type of works, the length of time to review will vary. Non-intrusive works normally take up to five working days, whilst intrusive works can take up to 15 working days. In situations where breaking ground will occur adherence to HSG47 is mandatory and evidence must be provided of contractors having undertaken EAGLES and Linesearch enquiries and that they have contacted all affected asset owners.

Once the RAMS have been reviewed, the applicant will receive an automated email and they can then request an E-permit for the date they wish to attend a specific site. National Grid's appointed land agents (Dalcour Maclaren) will review and issue the permit as soon as they are satisfied that all criteria have been met. The time frame for issuing E-Permits is up to five working days with a minimum request timeline of three working days.

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