

National Grid RIIO-2 Contracting Position – JOINT IP OWNERSHIP

1. Background

This paper sets out National Grid's approach to Network Innovation Allowance (NIA) funded projects under the RIIO-2 framework. (RIIO -2 is the Revenue = incentives + innovation + outputs network price control framework commencing 1 April 2021). This paper includes details of why National Grid assumes this approach as well as including details of all National Grid's "must have" positions. For the purposes of this paper "Governance Document" refers to the RIIO-2 NIA governance document.

Parties considering collaborating with National Grid where NIA funding will be used for the project, should consider these positions and notify National Grid as soon as possible with any concerns and challenges it sees in respect of these positions.

Before entering into contracts using NIA funding the context of these funding streams should be considered. Innovation is a key aspect of RIIO-2. The model is designed to ensure Network Licensees innovate as business as usual. However, due to the nature of innovation, some research and development has a level of business or investment risk which means some Network Licensees may be unwilling to fund such research and development. Therefore, NIA is a short to mid-term funding stream designed to embed innovation as a cultural change.

The purpose of NIA is to encourage Network Licensees to innovate by addressing issues associated with the development of their networks. NIA is to fund smaller innovation projects or the initial preparatory stages. It is intended to deliver benefits to consumers and a key issue is the dissemination of learning to other Network Licensees so that all Network Licensees can deliver the greatest benefits to consumers.

For NIA the Network Licensees are required to comply with the RIIO-2 NIA Governance Document as though it forms part of its licence. Compliance with the Governance Document does not remove the requirement on the parties to comply with relevant legislation such as Competition Laws or Procurement Laws. Ofgem can audit NIA projects at any time. Consequences for the Network Licensees of not complying may result in loss of funding, fines and loss of licence.

2. National Grid agreement position

Issue	Position Taken	Reasoning
Ownership of Intellectual Property (IP) generated in project	For NIA projects, all IP created, acquired or otherwise developed by any participant to the project as part of or pursuant to the project including all IP in all project outputs ("Foreground IP" or "Results") will be owned by	See Chapter 7 of the NIA Governance Document.

	<p>a) The party that independently creates it:</p> <p>b) National Grid and specific parties in accordance with their funding and contribution to the project.</p> <p>Also if the party appoints a sub-contractor, the agreement with that sub-contractor should have similar IP provisions to those in this agreement and which at least achieve the same aims as the agreement regarding IP.</p>	<p>Where IP is generated, or used, by third parties the IP needs to be protected in the same way as this agreement and, more importantly, if third parties (e.g. a sub-contractor) are used to create IP as part of the project, it is necessary to ensure the provisions of the agreement with that other party (particularly around ownership and licensing) reflect those in this agreement.</p>
Intellectual Property sharing with Network Licensees	<p>National Grid reserves the right to license and provide access to Network Licensees or other third parties to use the Relevant Results.</p> <p>Publication of Relevant Results (or a least a high level summary of them which discloses sufficient details about the project to enable Network Licensees to decide whether they would like to take a licence of the Relevant Results is required in accordance with the Governance Document.</p> <p>Additionally, each party is required to license their Background IP to the Network Licensees or other third parties to enable them to use the Relevant Results.</p>	<p>It is essential that Network Licensees or other third parties not a party to the agreement can benefit from the project. The 'Relevant Results' are any Results to which a Network Licensee requires access in order to implement in its network the solution developed.</p> <p>Paragraph 7.7 (NIA) of the Governance Document is clear that such Relevant Results (referred to in the Governance Document as "Relevant Foreground IP") must be made available for use in a Network Licensee's network system royalty-free.</p> <p>The agreement has a standardised licence (attached as a schedule) for the licensing of such Background IP or Relevant Results to the Network Licensees or other third parties. For the avoidance of doubt, Results contained within off the shelf commercial products generally available on commercial terms are not "Relevant Results". However, such commercial products must be made available for purchase by National Grid after the project.</p>

Intellectual Property ownership of Background IP	Background IP remains the property of the party that contributes it.	See Paragraph 7.8 (NIA) of the Governance Document.
Intellectual Property – licensing of Background IP	There is an enabling licence contained in the agreement so that the parties can use the other parties' Background IP for the purposes of: (i) the project and (ii) to be able to use and exploit any Results it owns or has a licence to use under the agreement.	<p>National Grid asks for this enabling licence for NIA funded projects as practically it is required in order to ensure National Grid and the other Parties are not blocked from exploiting their rights in relation to Results under the agreement where such Results rely on another party's Background IP.</p> <p>These licences will last after the project has been completed to enable the parties to use the Results after the project's completion.</p>
Intellectual Property – licensing of Results/Foreground IP (non-commercial)	The parties each grant to the other parties a licence to use their Foreground IP/Results for: (i) the purposes of the Project; (ii) that party's own internal R&D projects; and (iii) that party's and its group's internal business purposes.	<p>Foreground IP / Results generated in the course of the project are owned as stated above. These licences are required to enable the project to be completed and for the parties' internal and R&D purposes. This licence does not cover commercial exploitation of the Results by the other parties.</p> <p>The licence is royalty free, non-exclusive and lasts for the term of the agreement.</p>
Intellectual Property – licensing of Results / Foreground IP (commercial exploitation)	<p>National Grid is granted a royalty free licence to use the Results /Foreground IP that it owns commercially. This includes the right to grant sub-licences.</p> <p>Where appropriate, and subject to the agreement of a royalty, a licence may be granted to the other parties to permit the commercial exploitation of the Results in a specific</p>	This licence to National Grid is viewed as necessary to meet the two overriding objectives of the NIA scheme i.e. (i) ensuring that consumers get the best value from the public money spent on these projects and therefore should not have to pay excessively for products or approaches they have already paid to develop through the NIA funding; and (ii) dissemination of the knowledge generated by the Project (essentially the Relevant Results) amongst Network Licensees.

	territory, for a specific purpose over a specific period of time.	<p>The NIA guidance does not specifically consider commercial exploitation but is relevant where a product may be commercially viable.</p> <p>If such a licence is required by any other party, a licence will be negotiated in good faith. The licence may be royalty-bearing, in light of the governance requirement to ensure best value for consumers. Where royalties are payable, National Grid passes such royalties back to Ofgem in accordance with the governance requirements.</p> <p>The terms of a commercialisation licence to another party must be agreed on a case by case commercial basis.</p>
Publication of Results	The agreement provides for publication of certain Relevant Results.	<p>Chapter 6 of the RIIO-2 NIA Governance Document requires certain Relevant Results to be published on the ENA Smarter Networks Portal (or an alternative dissemination method) each year. Overall the information published should be sufficient to enable third parties to understand what has been learned from the project and to enable other Network Licensees to replicate the project and minimise duplication in the future. The agreement obliges the parties to assist each other to comply with these publication requirements.</p> <p>Where the Relevant Results are confidential, the governance documents require a high-level summary to be published which discloses sufficient details about the project to enable Network Licensees to decide whether they would like to take a licence of the Relevant Results.</p>
Audit	<p>The levels of audit access are required by National Grid to accord with its own internal Governance procedures. The provision is mutual so benefits all parties. Essentially this provides that the following can be audited: the project and Results; compliance with confidentiality, data protection and Anti-corruption and Bribery</p>	<p>These provisions are standard across National Grid contracts. However, there is a secondary need in this case. Ofgem can audit at any time for compliance with the Governance Document.</p> <p>NIA provides that projects should show consumer benefits and provide value. Ofgem are likely to require access to details for how NIA funds have been spent and to check progress of the project.</p>

	requirements; usage of funds; comparison to show best value; check for fraud.	
Background Checks	The agreement provides for a level of background checks to be carried out on all personnel of the parties that have a role in the project.	These provisions are standard across all National Grid contracts. The reason for these provisions is due to the fact that National Grid's operations relate to essential national infrastructure. It is imperative that no party could jeopardise National Grid operations or impact National Grid's reputation. These provisions are of even more significance if any parties have unsupervised access to any National Grid sites and premises.
Anti-corruption, Bribery, and Slavery	There are a host of provisions in the National Grid standard form agreement that must be complied with in respect of bribery, corruption and modern slavery.	These provisions are standard across all National Grid contracts. The reason for these provisions is due to the nature of National Grid's operations plus legislative requirements that all parties contracting in the UK must comply with. It is imperative that no party could jeopardise National Grid's operations or impact National Grid's reputation.
Equipment	National Grid will provide or procure specified equipment for use in the project and will retain all rights and title to that equipment.	In the event that NIA funding is used to buy equipment for use in the project then the equipment must vest in National Grid. Otherwise regulated money is being used to fund purchases of equipment for third parties and National Grid is unlikely to be able to show value for consumers in this.
Liability	200% of the contract value. Several liability is applicable. Indirect and consequential losses are carved out.	
Liability	If the project has well-defined Results and is not a project that involves high levels of uncertainty, National Grid will expect an indemnity against liability for third party IP infringement.	It is a market norm position in a situation where you are using and relying on another party's IP to request a third party claims IP indemnity of this nature. This is especially important to National Grid where it is relying on the expertise and know-how of a partner who is an expert in the field of the IP in question.

	<p>National Grid also expects an indemnity for any loss caused by a party's personnel on National Grid's premises, a breach of anti-bribery, the data protection and the anti-tax evasion schedules.</p> <p>Liability under such indemnities is to be unlimited.</p>	<p>The other indemnities are focused on key risks and concerns for National Grid and which are standard in contracts.</p>
Warranty	<p>There is a warranty that Results will not infringe a third party rights.</p>	<p>This is a standard requirement in any collaboration to ensure that the parties are aware of the Results they will potentially use and exploit.</p>
Other provisions of note.	<p>Given the collaborative nature of these projects there are detailed provisions to deal with the governance of the projects and confidentiality. This is to ensure that the projects can progress as efficiently as possible and that all relevant decisions can be taken.</p>	<p>The governance procedure included in the agreement is very similar to that used in other collaborative agreements funded by differing bodies and as such is a market norm position.</p> <p>The confidentiality provisions are market standard for research and development collaborations.</p>