

## National Grid Standard NIA/ NIC Contracting Position

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### 1. Background

This paper sets out National Grid's standard approach to all its Network Innovation Allowance (NIA) or Network Innovation Competition (NIC) funded projects and 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 Documents" refers to NIA or NIC governance documents.

Parties considering collaborating with National Grid where NIA or NIC 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 or NIC funding the context of these funding streams should be considered. Innovation is a key aspect of RIIO (Revenue = incentives + innovation + outputs). 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 and NIC are short to mid-term funding streams 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 and the purpose of NIC is to address issues associated with the move to a low carbon economy and the wider environmental benefits to customers. NIC is for larger flagship innovation projects and is therefore a competitive process to be awarded funding, whilst NIA is to fund smaller innovation projects or the initial preparatory stages before applying for NIC funding and is therefore a set annual allowance. Both are intended to deliver benefits to customers and a key issue is the dissemination of learning to other Network Licensees so that all Network Licensees can deliver the greatest benefits to customers.

For both NIA and NIC the Network Licensees are required to comply with the NIA and NIC Governance Documents (as applicable) as though it forms part of its licence. Compliance with the Governance Documents does not remove the requirement on the parties to comply with relevant legislation such as Competition Laws or Procurement Laws. Ofgem can audit NIA and NIC 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 standard agreement position

Issue	Position Taken	Reasoning
<b>Ownership of Intellectual Property (IP) generated in project</b>	<p>For NIA projects, all IP created by any participant to a project as part of or pursuant to the project including all IP in all project outputs ("Foreground IP" or "Results") will be owned by National Grid.</p> <p>For NIC projects, all IP created by any</p>	<p>See Chapter 9 of the NIC Governance Document.</p> <p>See Chapter 7 of the NIA Governance Document.</p> <p>National Grid considers "effort" to include financial contributions. The Governance Documents do not say it will be a 50/50 split in ownership where jointly created and therefore National Grid will consider the split</p>

	<p>participant to a project as part of or pursuant to the project including all IP in all project outputs ("Foreground IP" or "Results") will be owned either:</p> <p>(a) jointly by the parties in shares proportionate to the effort and work done in its creation; or</p> <p>(b) where a project participant independently creates this Foreground IP it shall own such IP.</p>	<p>on a case by case basis.</p> <p>The key reasoning for the IP ownership position is that the funding should ensure that consumers get the best value from the money spent on these projects and therefore should not have to pay excessively for products or approaches they have paid to develop through the NIC/NIA funding. .</p>
<b>Intellectual Property sharing with Network Licensees</b>	<p>National Grid reserves the right to licence and provide access to Network Licensees to use the relevant results. Publication of relevant results is required in accordance with the Governance Document.</p>	<p>It is essential that Network Licensees not a party to the agreement can benefit from the project. This includes having sufficient details disclosed to them about the project to be able to identify whether they need a licence of the Foreground IP (or Results).</p> <p>To have sufficient details disclosed as outlined above, the Network Licensees will need a licence to sufficient IP, this is known as the 'relevant Foreground IP' or 'Relevant Results'.</p> <p>Paragraph 7.7 (NIA) and 9.17 (NIC) of the Governance Documents are clear that such Relevant Foreground IPR must be made available royalty free.</p>
<b>Intellectual Property ownership of Background IP</b>	<p>Background IP remains the property of the party that contributes it.</p>	<p>See paragraph 7.8 (NIA) and 9.6 (NIC) of the Governance Documents</p>
<b>Intellectual Property – licensing of Background IP and Results.</b>	<p>Licence to Background IP.</p>	<p>There is an enabling licence contained in the agreement so that the parties can use the other parties Background IP for the purposes of the project and to benefit from any Results it owns or has a licence to in the agreement. National Grid asks for this enabling licence for both NIA and NIC funded projects as practically it is required in order to use any Results owned by any party during and post</p>

	<p>For NIA contracts, licence to the other collaborating parties to use National Grid's Results.</p> <p>For NIC contracts, licence to use other parties' Results or the share of the Results that the other parties own.</p>	<p>project.</p> <p>It is essential that:</p> <p>(a) where joint ownership of Results occurs; or</p> <p>(b) where one party owns the Results, that the other parties have rights to use the share of the Results not owned or the Results of the other parties.</p> <p>There is a licence to ensure such Results can be used by the parties contained in the agreement.</p> <p>This licence does not cover commercial exploitation of the Results and if this is required by the parties, they need to consider carefully how this should work whilst ensuring best value for the energy bill payers.</p>
<b>Intellectual Property, exploitation of IP generated</b>	<p>Where appropriate, and particularly for the NIC agreement, there are provisions that specifically deal with exploitation of Results and how royalties are paid and determined for such licence terms that allow exploitation.</p>	<p>The NIC funding stream envisages commercial exploitation as an option. This is because this funding stream is designed for larger projects that are closer to being commercially viable. The NIC Governance Document has details on how royalties should be calculated at Chapter 10.</p> <p>The NIA guidance does not specifically consider commercial exploitation but is relevant where a product may be commercially viable.</p>
<b>Publication of Results</b>	<p>The agreement provides for publication of relevant foreground IP to Network Licensees.</p>	<p>Due to the requirement to licence such Results pursuant to paragraph 7.7 (NIA) and 9.17 (NIC) of the Governance Documents and the requirements to publish such details in accordance with schedule 6 of the Governance Documents it is a requirement to allow such publication in any agreements reached.</p>
<b>Audit</b>	<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.</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 Documents.</p> <p>NIA and NIC both provide that projects should</p>

	Essentially this provides that the following can be audited: the project and Results; compliance with confidentiality, data protection and Anti-corruption and Bribery requirements; usage of funds; comparison to show best value; check for fraud.	show customer benefits and provide value. Ofgem are likely to require access to details for how NIA or NIC funds have been spent and to check progress of the project.
<b>Background Checks</b>	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 nature of National Grid's operations. 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.
<b>Anti-corruption and Bribery</b>	There are a host of provisions in the National Grid standard form agreement that must be complied with in respect of bribery and corruption.	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 operations or impact National Grid's reputation.
<b>Equipment</b>	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/NIC 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 customers in this.
<b>Liability</b>	200% of the contract value. Several liability is applicable. Indirect and consequential losses are carved out.	

<b>Liability</b>	If the project has defined Results and is not a project that involves high levels of uncertainty, National Grid will in addition expect an indemnity for third party IP infringement. Such indemnity is to be unlimited.	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.
<b>Warranty</b>	There is a warranty that Results will not infringe a third party rights.	This is a requirement of paragraph 9.22 of the NIC Governance Document and to ensure consistency, particularly where NIC will be used for the second stage of a NIA project, National Grid ask for the same requirement regardless of the funding used.
<b>Other provisions of note.</b>	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.	The governance procedure included in the agreement is very similar to that used in other collaborative agreements funded by differing bodies (such as TSB) and as such is a market norm position.  The confidentiality provisions are market standard for research and development collaborations.