

**RWE Renewables UK Dogger Bank  
South (West) Limited**

**RWE Renewables UK Dogger Bank  
South (East) Limited**

**Dogger Bank South Offshore  
Wind Farms**

**Applicants' Section 127 and 138 case - Statutory  
Undertakers**

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## Contents

1	Introduction .....	7
1.1	Section 127 of the 2008 Act.....	7
1.2	Section 138 of the 2008 Act.....	9
1.3	Planning Act 2008: Content of a Development Consent Order required for Nationally Significant Infrastructure Projects (DLUHC, April 2024) .....	9
2	Statutory Undertakers.....	10
3	Need Case .....	13
4	Proposed Works .....	14
5	Protective Provisions.....	14
5.1	Network Rail Infrastructure Limited.....	15
5.2	National Gas Transmission PLC.....	18
5.3	National Grid Electricity Transmission PLC.....	21
5.4	Northern Powergrid (Yorkshire) PLC .....	25
5.5	Environment Agency .....	25
5.6	Beverley & North Holderness Internal Drainage Board (BNHIDB) and the East Riding of Yorkshire Council (ERYC) .....	25
5.7	Dogger Bank Projcos and Orsted IPs.....	26
5.8	Orsted Hornsea Project Four Limited (Hornsea Four).....	26
5.9	Creyke Beck Solar Limited and Padero Solaer Limited .....	27
5.10	Other Parties.....	27
6	Conclusion .....	28
	Appendix 1 - Status update - Statutory Undertakers .....	29
	Appendix 2 - Comparison of Network Rail's preferred protective provisions and the Applicants' preferred protective provisions .....	36
	Appendix 3 - Comparison of NGT's preferred protective provisions and the Applicants' preferred protective provisions.....	46

Appendix 4 - Comparison of NGET's preferred protective provisions and the Applicants' preferred protective provisions.....	57
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## Tables

Table A-1 Status update - Statutory Undertakers .....	30
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## Glossary

Term	Definition
Development Consent Order (DCO)	An order made under the Planning Act 2008 granting development consent for one or more Nationally Significant Infrastructure Project (NSIP).
National Policy Statement (NPS)	A document setting out national policy against which proposals for NSIPs will be assessed and decided upon.
Nationally Significant Infrastructure Project (NSIP)	Large scale development including power generating stations which requires development consent under the Planning Act 2008. An offshore wind farm project with a capacity of more than 100 MW constitutes an NSIP.
Order Limits	The limits within which the Projects may be carried.
Temporary Construction Compound	An area set aside to facilitate construction of the Projects. These will be located adjacent to the Onshore Export Cable Corridor and within the Onshore Substation Zone, with access to the highway.
The Applicants	The Applicants for the Projects are RWE Renewables UK Dogger Bank South (East) Limited and RWE Renewables UK Dogger Bank South (West) Limited. The Applicants are themselves jointly owned by the RWE Group of companies (51% stake) and Masdar (49% stake).
The Projects	DBS East and DBS West (collectively referred to as the Dogger Bank South Offshore Wind Farms).

## Acronyms

Acronym	Definition
BNHIDB	Beverley & North Holderness Internal Drainage Board

Acronym	Definition
CAH2	Compulsory Acquisition Hearing 2
DBS	Dogger Bank South
DBSEL	Dogger Bank South (East) Limited
DBSWL	Dogger Bank South (West) Limited
DCO	Development Consent Order
DESNZ	Department for Energy Security & Net Zero
DLUHC	Department for Levelling Up, Housing & Communities
ERYC	East Riding of Yorkshire Council
IPs	Interested Parties
LLFA	Lead Local Flood Authority
NGET	National Grid Electricity Transmission PLC
NGT	National Gas Transmission PLC
NHHM	North Humber to High Marnham
NPG	Northern Powergrid (Yorkshire) PLC
NPS	National Policy Statements
NSIPs	Nationally Significant Infrastructure Projects
OHL	Overhead Line
PPs	Protective Provisions
SUs	statutory undertakers

# 1 Introduction

1. RWE Renewables UK Dogger Bank South (East) Limited (incorporated in England under company number 13656240) ("DBSEL") and RWE Renewables UK Dogger Bank South (West) Limited (incorporated in England under company number 13656525) ("DBSWL") (DBSEL and DBSWL together being referred to as the "Applicants") are applying to the Secretary of State for Energy Security and Net Zero ("SoS") for a development consent order ("DCO") for the construction, operation and decommissioning of two offshore wind power generating stations – the Dogger Bank South East Project ("DBS East") and the Dogger Bank South West Project ("DBS West").
2. The DCO includes provisions for the compulsory acquisition of land, including the acquisition of interests and rights in "statutory undertakers' land", as defined by section 127 of the Planning Act 2008 ("the 2008 Act"). As the DCO will affect statutory undertakers' interests in land, the Applicants believe that section 127 of the 2008 Act is engaged by the DCO. Section 138 of the 2008 Act is also engaged as there are relevant rights benefitting statutory undertakers and relevant apparatus belonging to those undertakers.
3. This document is being submitted in response to Action Number 11 of Compulsory Acquisition Hearing 2 (CAH2) [EV7-002] which requires the submission of a section 127 / 138 case setting out why the DCO as drafted would ensure adequate protection of the relevant statutory undertakers' assets. It is focused on statutory undertakers who have a land interest within the Order Limits, have submitted a relevant representation to the Examination (which has not been withdrawn) and have requested bespoke protective provisions to be included in the DCO.
4. This document sets out the Applicants' case to demonstrate that there is no serious detriment arising from the acquisition of any land or rights where statutory undertakers have an interest in land.

## 1.1 Section 127 of the 2008 Act

5. Where permanent acquisition of statutory undertakers' land<sup>1</sup> is sought, section 127 provides:

*(1) This section applies in relation to land ("statutory undertakers' land") if—*

*a) the land has been acquired by statutory undertakers for the purposes of their undertaking;*

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<sup>1</sup> For the purposes of section 127 "land" includes any interest in or right over land (as defined in section 159 of the 2008 Act).

*b) a representation has been made about an application for an order granting development consent before the completion of the examination of the application, and the representation has not been withdrawn; and*

*c) as a result of the representation the Secretary of State is satisfied that*

*i) the land is used for the purposes of carrying on the statutory undertakers' undertaking; or*

*ii) an interest in land is held for those purposes;*

*(2) An order granting development consent may include provision authorising the compulsory acquisition of statutory undertakers' land only to the extent that the Secretary of State is satisfied of the matters set out in subsection (3).*

*(3) The matters are that the nature and situation of the land are such that—*

*(a) it can be purchased and not replaced without serious detriment to the carrying on of the undertaking, or*

*(b) if purchased it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the carrying on of the undertaking.*

*(4) Subsections (2) and (3) do not apply in a case within subsection (5).*

6. Where permanent acquisition of a right over statutory undertakers' land is sought, section 127 also provides:

*(5) An order granting development consent may include provision authorising the compulsory acquisition of a right over statutory undertakers' land by the creation of a new right over land only to the extent that the Secretary of State is satisfied of the matters set out in subsection (6).*

*(6) The matters are that the nature and situation of the land are such that—*

*(a) the right can be purchased without serious detriment to the carrying on of the undertaking, or*

*(b) any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right, can be made good by the undertakers by the use of other land belonging to or available for acquisition by them.*



7. The above applies to plots where permanent rights are sought and it should be noted that the procedure and test under section 127(5) only applies to the compulsory acquisition of a right, so is not engaged by plots which are subject to Articles 30 and 31 of the DCO alone (relating to temporary use). Therefore, any plots which are to be temporarily possessed only, do not need to meet the test in section 127(5) and section 127(6) and accordingly there is no need for the SoS to be satisfied that there is no serious detriment.
8. If the representations have not been withdrawn and the SoS is satisfied that the land or an interest in the land is used for the purposes of carrying on a statutory undertaking, then the DCO may include provisions authorising the compulsory acquisition of land or right over statutory undertakers' land only to the extent that the SoS is satisfied that the requirements of section 127 have been met.

## 1.2 Section 138 of the 2008 Act

9. Section 138 applies to land if:
  - a) *there subsists over the land a relevant right; or*
  - b) *there is on, under or over the land relevant apparatus.*
10. Section 138 also provides that a DCO may include provision for the extinguishment of the relevant right, or the removal of the relevant apparatus only if the SoS is satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the DCO relates.
11. The DCO includes the power for the Applicants to extinguish the rights of, remove or reposition the apparatus belonging to the statutory undertakers, and as such the Applicants believes that section 138 of the 2008 Act is also engaged.

## 1.3 Planning Act 2008: Content of a Development Consent Order required for Nationally Significant Infrastructure Projects (DLUHC, April 2024)

12. Guidance from the Department for Levelling Up, Housing and Communities on the content of a development consent order required for a nationally significant infrastructure project states that:

*"Applicants should expect to agree the form of protective provisions with the relevant parties for inclusion in the Draft DCO prior to submitting the application for development consent. Where agreement on protective provisions has not been reached during the pre-application stage, applicants should include their preferred drafting taking into account the standard protective provisions commonly used by the relevant party (usually statutory undertakers) and endorsed in recent DCO decisions. [...]"*

*Most statutory undertakers have now developed their own preferred form of protective provisions which is very helpful to the preparation of the Draft DCO. However, these must be adapted as necessary, so they accurately reflect the proposed development. They should also not simply negate other provisions of the DCO, particularly concerning proposed compulsory acquisition of statutory undertakers' land.*

*Examining Authorities are expected to ensure that the final form of a recommended DCO contains protective provisions which are bespoke to the application under consideration."*

## 2 Statutory Undertakers

13. Since pre-application the Applicants have been working with various statutory undertakers ("SUs") whose interests are affected, to seek to agree protection for their interests.
14. The **Land Rights Tracker (Revision 8)** [document reference 10.4] contains a summary of the most up to date position in relation to the engagement with statutory undertakers.
15. The following SUs have a land interest within the Order Limits, have submitted a relevant representation (which has not been withdrawn) and have requested bespoke protective provisions to be included in the DCO:
  - Network Rail Infrastructure Limited ("Network Rail")
  - National Grid Electricity Transmission PLC ("NGET")
  - National Gas Transmission PLC ("NGT")
  - Northern Powergrid (Yorkshire) PLC ("NPG")
16. The following SUs have a land interest within the Order Limits but have not submitted a relevant representation. The Applicants have included standard protective provisions at Schedule 15, Part 1 and 2 of the **Draft DCO (Revision 11)** [document reference: 3.1] for the benefit of electricity, gas, water, sewerage and telecommunications undertakers which provide adequate protection for their statutory undertakings:
  - Centrica Plc
  - INEOS Manufacturing (Hull) Limited [whilst not an SU - treated as such]
  - KCOM Group Limited
  - Northern Gas Networks Limited
  - Openreach Limited
  - Yorkshire Water Services Limited
17. The Applicants propose to acquire freehold and rights in land, such land or interest in the land having been acquired by the SUs for the purposes of their undertaking. The SU land required to deliver the Projects is set out in Appendix 1.

18. The Applicants are in ongoing discussions with the SUs regarding the DCO application, but representations submitted by Network Rail, NGET, NGT and NPG have not yet been withdrawn. A summary of the latest position with each of these SUs is noted in section 5 and Appendix 1 of this document.
19. If the representations are not withdrawn and the Secretary of State is satisfied that the land or interests in the land are used for the purpose of carrying on the SUs statutory undertakings, then the DCO may include provisions authorising the compulsory acquisition of land and rights over statutory undertakers' land to the extent that the Secretary of State is satisfied that the requirements of section 127 have been met.
20. The DCO also includes the power for the Applicants to extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers, and as such the Applicants believe that section 138 of the 2008 Act is engaged by the DCO.
21. For the purposes of section 127, the Applicants' position is that, whilst this is engaged, adequate protection for the benefit of the affected statutory undertakers is provided by including protective provisions in the Draft DCO. The **Draft DCO (Revision 11)** [document reference: 3.1] submitted by the Applicants at Deadline 8 includes bespoke protective provisions for the benefit of Network Rail, NGET and NGT. These reflect the Applicants' preferred drafting and reflect the latest negotiations with the SUs. There are also protective provisions in favour of electricity, gas, water, sewerage and telecommunications undertakers included in Part 1 and Part 2 of Schedule 15 of the Draft DCO.
22. The Applicants do not consider that the powers of compulsory acquisition included in the Draft DCO would result in serious detriment to the undertaking of the statutory undertakers or their ability to carry out their undertaking. The Applicants position with regards to these statutory undertakers is included in Appendix 1.
23. It should also be noted that it is clear from previous considerations of section 127 in other DCO decisions, that what constitutes 'serious detriment' is a high bar. An adverse impact or detriment will not mean that serious detriment exists. It should also be noted that the procedure and test under section 127 (2) and 127 (5) only apply to compulsory acquisition of statutory undertakers' land and the compulsory acquisition of a right over statutory undertakers' land respectively, so any plots which are to be temporarily possessed do not need to meet the tests in sections 127 (2) and (3) in respect of compulsory acquisition of statutory undertakers' land and sections 127(5) and (6) in respect of compulsory acquisition of a right over statutory undertakers' land. Accordingly, there is no need for the SoS to be satisfied that there is no serious detriment in the case of temporary possession.

24. Section 138(4) of the PA 2008 provides that the DCO may include provisions for the extinguishment of the relevant right, or the removal of the relevant apparatus only if the Secretary of State is satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the DCO relates. Paragraphs 12.22 and 12.23 of the **Statement of Reasons (Revision 4)** [AS-146] states:
- "For all three forms of cable rights sought ((a), (b) and (c)), the rights sought are the minimum necessary to allow the construction and safe operation and maintenance of the Projects. The Applicants are seeking to acquire rights in the land and not ownership of it as the buried cables can co-exist with the existing land uses. Once the cables are installed the current use of the cable corridor plots can resume, resulting in minimal interference to the owners and occupiers.*
- The cables are intended to coexist with other infrastructure while causing the minimum interference, for example by limiting the impact to sub-surface under existing rail lines and highways and micro-siting the cables to avoid needing to alter water apparatus. Other undertakers' apparatus will only be altered where necessary and there are no proposals to remove any apparatus without a diversion being put in place. The rights sought are accordingly proportionate."*
25. In addition, the Applicants have included bespoke protective provisions to various SUs, relevant to the application under consideration within the Draft DCO to ensure that the statutory undertakers rights and apparatus are protected and there is therefore no detriment to their ability to carry out its undertaking.
26. The following documents were submitted as part of the DCO application, have been updated throughout the examination, and are relied upon to support submission under sections 127 and 138:
- **Statement of Reasons (Revision 5)** [document reference: 4.1];
  - **Draft Development Consent Order (Revision 11)** [document reference: 3.1];
  - **Land Plans (Onshore) (Revision 4)** [REP4-002];
  - **Works Plans (Onshore) (Revision 4)** [REP2-005];
  - **Book of Reference (Revision 7)** [document reference: 4.2];
  - **Land Rights Tracker (Revision 8)** [document reference 10.4].
27. The DCO, if made, would grant compulsory acquisition powers (Part 5 of the DCO). The Statement of Reasons sets out the justification for seeking compulsory acquisition powers within the DCO.

### 3 Need Case

28. The need for the Projects has been established in the **Planning Statement** [APP-226] and **Chapter 2 Need for the Project** [APP-065].
29. The Projects would contribute towards the UK Government meeting the overarching key national policy aims of:
- Achieving Net Zero by 2050 and reducing emissions;
  - Increasing the security of energy supply;
  - Lowering the cost and increasing the affordability of generated electricity; and
  - Contributing to sustainable development and economic opportunities.
30. The UK Government recognises that electricity generation from renewable sources is an important element in the Government's development of a low-carbon economy. The need for electricity-generating Nationally Significant Infrastructure Projects (NSIPs), including offshore wind farms, is highlighted by three of the energy National Policy Statements (NPSs):
- EN-1 Overarching National Policy Statement for Energy, which highlights that there should be a presumption in favour of granting consent for projects which fall within relevant National Policy Statements and recognises that offshore wind is a key factor in meeting UK policy objectives (DESNZ, 2023a);
  - EN-3 National Policy Statement for Renewable Energy Infrastructure, which identifies the construction of offshore generating stations in excess of 100 Megawatts as Nationally Significant Infrastructure Projects (DESNZ, 2023b); and
  - EN-5 National Policy Statement for Electricity Networks Infrastructure, which covers the electrical infrastructure (including electricity cable systems and substations) in conjunction with EN-1 (DESNZ, 2023c).
31. NPS EN- 1 emphasises at section 3.3, paragraph 3.3.58, the need for the rapid development of new electricity NSIPs, stipulating that:
- "Given the urgent need for new electricity infrastructure and the time it takes for electricity NSIPs to move from design conception to operation, there is an urgent need for new (and particularly low carbon) electricity NSIPs to be brought forward as soon as possible, given the crucial role of electricity as the UK decarbonises its economy".*
32. In order to fully decarbonise the power system within such timeframes, the Government has concluded, through paragraph 4.2.4 of NPS EN-1, that *"there is a critical national priority (CNP) for the provision of nationally significant low carbon infrastructure"*.
33. Paragraph 5.5.4 of NPS EN-1 explicitly recognises windfarms as being *"an integral part of our (The Government's) plan to achieve Net Zero, as well as delivering affordable clean energy to consumers"*. The paragraph goes on to state that:

*"The Government has an ambition to deliver up to 50GW of offshore wind by 2030 and the Committee on Climate Change's 6th Carbon Budget (CB6) views offshore wind as the backbone of electricity generation across all its scenarios".*

34. At a local level, the East Riding Local Plan 2012-2029 (East Riding of Yorkshire Council (ERYC), 2016) supports the local development of the renewable and low-carbon energy sector, with the Humber placed to benefit from UK growth in these sectors. An increase in renewable generation will contribute to fuel security and create opportunities for economic growth, particularly in relation to the Humber Renewable Energy Super Cluster Enterprise Zone and the Humber Green Port Corridor Enterprise Zone. The need for renewables has been incorporated into local policy which states: *"Support necessary infrastructure developments associated with the infrastructure required to deliver offshore renewable energy developments"*.
35. Further, the ERYC published its Climate Change Strategy in 2022 (ERYC, 2022). The Strategy identifies the Humber region as *"a flagship region for wind power"* which *"will be key to achieving the Government's offshore wind power targets"*.
36. In conclusion, there is a clear and urgent need for the development of the Projects as established within the existing national policy framework through the relevant NPSs and within the various UK Government strategies, including a target of 50GW of offshore wind installed capacity by 2030 and the legally binding target of net zero emissions by 2050.

## 4 Proposed Works

37. The proposed works over each parcel of SU land is set out in the table included in Appendix 1. Further details of these works are included in the following application documents:
- Schedule 1 of **Draft DCO (Revision 11)** [document reference 3.1]
  - **Works Plans (Onshore) (Revision 4)** [REP2-005]
  - **Chapter 5 Project Description (Revision 4)** [REP7-032]

## 5 Protective Provisions

38. The Applicants have been in discussions with various statutory undertakers on bespoke protective provisions to include in the DCO. In the **Draft DCO (Revision 11)** [document reference 3.1] submitted at Deadline 8, the Draft DCO contained the Applicants included the following protective provisions in Schedule 15:
- Part 1: Protection of electricity, gas, water and sewerage undertakers
  - Part 2: Protection for operators of electronic communications code networks
  - Part 3: For the protection of the Environment Agency
  - Part 4: For the protection of the drainage authorities
  - Part 5: For the protection of Network Rail Infrastructure Limited



- Part 6: For the protection of National Gas Transmission Plc as gas undertaker
  - Part 7: For the protection of National Grid Electricity Transmission Plc as electricity undertaker
39. The Applicants consider that these protective provisions are adequate and proportionate to protect the statutory undertakers given the nature of the interaction between the Projects and the extent to which land, rights or apparatus of the statutory undertakers will be affected by the Projects. The inclusion of these protective provisions, which include works approvals mechanisms, will ensure that there will be no serious detriment to the undertaking of any of the SUs.
40. Below is an update on negotiations with the various statutory undertakers and the Applicants' position on outstanding points which are not yet agreed. In the event that no agreement is reached before the close of the examination, the parties will continue to negotiate and update the Secretary of State if agreement is reached after the close of the Examination.
41. In each case, the Applicants consider that it has taken a reasonable position to ensure each statutory undertaker is adequately protected in way which does not put at risk the delivery of the Projects.

## 5.1 Network Rail Infrastructure Limited

42. The Applicants have been in active discussions with Network Rail to agree the protective provisions and associated agreements since the pre-application stage. The parties have narrowed the areas of disagreement but there are still outstanding points to be agreed which are listed below.
43. The Applicants' note the protective provisions submitted by Network Rail at Deadline 7 and Network Rail's position on the main areas of difference [REP7-156]. The Applicants updated the protective provisions in Part 5 of Schedule 15 in the **Draft DCO (Revision 10)** [REP7-011] submitted at Deadline 7. A comparison of these protective provisions and Network Rail's preferred protective provisions is included in Appendix 2. The Applicants consider its preferred protective provisions are sufficient for the reasons set out below.
44. The main area of disagreement between the parties is in relation to paragraph 4 of the protective provisions which relates to restrictions on compulsory acquisition powers and other DCO powers.

45. Network Rail are seeking to restrict the Applicants' ability to exercise various powers in the DCO in relation to Network Rail property. This includes restrictions on the Applicants ability to use compulsory acquisition powers. The Applicants have focussed efforts to negotiate the property agreements in order to reach voluntary agreement with Network Rail and for progress to be made on the protective provisions. However there remain key areas of disagreement which are set out within the Applicants' response to Network Rail's Deadline 6 representation (Table 2-28) [REP7-131]. Therefore, in the absence of a voluntary property agreement (deed of easement), this is an unacceptable restriction on the Applicants' ability to implement and operate the Projects and the Applicants do not consider it is necessary or reasonable given that the depth of the cables beneath the railway means that the rights can co-exist without causing detriment to Network Rail's undertaking.
46. The Projects are deemed to be Critical National Priority under the NPS and the benefits to the Projects are set out in the **Planning Statement** [APP-226] submitted with the application. Network Rail's position in relation to the property agreement and with regards to restricting the Applicants' ability to rely on compulsory acquisition and other articles of the DCO is a risk to the delivery of the Projects.
47. The Applicants also note Planning Inspectorate Guidance which is clear that statutory undertakers' preferred form of protective provisions should be "adapted as necessary so they accurately reflect the proposed development" and they "should also not simply negate other provisions of the DCO, particularly concerning proposed compulsory acquisition of statutory undertakers' land". The nature of the interaction between the Projects and Network Rail land and assets means that there is no justification for including restrictions on compulsory acquisition powers. Such a restriction could have implications on the ability of the Applicants to construct and operate the Projects and deliver the benefits of the development.
48. It is hoped that agreement between the Applicants and Network Rail on the property agreement will facilitate agreement on this point. The Applicants held a call with Network Rail's asset protection team where it was confirmed that that a depth of 7.5m was safe and would not affect maintenance in their opinion and they do not foresee any emergency or maintenance requirements for going deeper than 5m below ground. In the event of piling requirements, with due diligence this can be managed around the cables.
49. The Applicants are in the process of reviewing Network Rail's latest comments on the property agreements but there are still fundamental points of disagreement in relation to termination, cutting off supply and assignment. This is set out in further detail in **The Applicants' Responses to Deadline 6 Documents** [REP7-131] (Table 2-28) and the **Network Rail Statement of Common Ground (Revision 3)** [document reference: 9.14] submitted at Deadline 8.



50. As there has been no agreement on the property agreements, the Applicants are unable to agree to the wording in respect of restriction on the Applicants' exercise of compulsory acquisition powers and other powers under the DCO as sought in Network Rail's protective provisions. The Applicants have instead proposed provision which provides that a basic asset protection agreement must be entered into prior to carrying out any works in the vicinity of the railway, this is in addition to approvals mechanisms. This is considered to be proportionate given the nature of the interface between the Projects and Network Rail's assets noted above and will ensure Network Rail's undertaking is adequately protected. The Net Zero Teeside Order 2024 is a recent example of a DCO which did not include the restrictions sought by Network Rail.
51. The Applicant considers that, absence of that agreement, those provisions and controls contained within the Draft DCO suffice insofar that they would not give rise to serious detriment to the undertaking of Network Rail, in accordance with s127 and s138 of the 2008 Act, and by according with legislation such as the Construction (Design and Management) Regulations that the works would be carried out in a safe and efficient manner to mitigate potential impacts to the operation of the railway.
52. The nature of the works proposed and the protection provided to Network Rail by other approvals provisions will ensure that the exercise of powers under the DCO will not impact upon Network Rail's duties to maintain the safe and efficient running of the railway.
53. The Applicants' position in relation to the other outstanding points is as follows:
- (a) Regulatory Consents (para 2) – The Applicants have re-inserted this wording but have made an amendment to the definition to remove reference to "and any other consents, approvals of any access or beneficiary" as this is excessively wide and uncertain.
  - (b) Railway Property (para 2) – The Applicants have included reference to tenants and licensees being noted in the book of reference to avoid a situation where the Applicants are not aware of such an interest.
  - (c) Future programme of works (para 5) - The Applicants require the inclusion of a provision which would ensure that Network Rail take into account the Applicants' proposed programme of works for the Projects. This is to ensure that the Projects can be delivered without delays caused by Network Rail.
  - (d) Electromagnetic Interference provisions (para 11) - The principle of including Electromagnetic Interference provisions is agreed but the wording is subject to ongoing discussions. The Applicants have made some amendments to this clause which is preceded by other DCOs including the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024.

(e) Indemnity (para 15) - The indemnity provision proposed by Network Rail is widely drafted so the Applicants have removed sub-paragraphs 15(1)(c) and 15(1)(d) of Network Rail's preferred drafting as they impose an uncertain, indefinite and potentially significant liability of the Applicants. The Applicants also do not consider that they should be liable for indirect and consequential loss in the protective provisions to ensure that they are not liable for indirect and consequential loss which is a principle which has been accepted in protective provisions included in other DCOs including the protective provisions in favour of Network Rail in the Net Zero Teeside Order 2024. Network Rail's position is adequately covered by sub-paragraphs 15(1)(a) and 15(1)(b) and by paragraph 9 which deals with changes that are or may be required to railway property as a consequence of the works, time limited to a period of 24 months after completion.

54. For the reasons set out above, the Applicants submit that the protective provisions included in Part 5, Schedule 15 of the Draft DCO (Revision 11) [document reference 3.1] are comprehensive and sufficient to ensure that there is no serious detriment to the undertaking of Network Rail.

## 5.2 National Gas Transmission PLC

55. The Applicants have been in active discussions with NGT to agree the protective provisions since the pre-application stage. The Applicants have identified that NGT have interests in land but does not own any land within the Order Limits, the details of these interests are set out within Appendix 1. The Applicants are not proposing to extinguish any of NGT's interests or interfere with NGT apparatus and maintain that the Projects' export cables/associated rights can co-exist. The Applicants note the protective provisions submitted by NGT at Deadline 6 and NGT's position on the main areas of difference [REP7-149]. The Applicants have included bespoke protective provisions in Part 6 of Schedule 15 in the **Draft DCO (Revision 11)** [document reference 3.1] submitted at Deadline 8. A comparison of these protective provisions and NGT's preferred protective provisions is included in Appendix 3.

56. The Applicants strongly disagree with NGT's position that the Applicants' preferred protective provisions mean that there will be a serious detriment to NGT's undertaking. The Applicants' position in relation to the outstanding points is as follows:

- a) Acceptable Security – The Applicants maintain that the requirement to provide security, in addition to the provision of insurance and the indemnification of NGT, is unnecessary and wish to draw the Examining Authority's attention to Rampion 2 DCO decision which provided justification for why both security and insurance are unnecessary and excessive. As set out within the **Funding Statement (Revision 5)** [document reference 4.4] the Dogger Bank South Offshore Wind Farms will be adequately funded and therefore that funding is no impediment to the delivery of the Projects. The Projects are being jointly

developed by RWE Renewables UK Swindon Limited ("RWE") and the Abu Dhabi Future Energy Company PJSC ("Masdar") both with substantial financial resources and stable credit ratings. In the unlikely event that liabilities are irrecoverable via the Projects' public liability insurance cover then NGT would still be able to recover losses via the indemnity however the Projects are committing to hold public liability insurance of no less than £50m when undertaking 'specified works' which are in proximity to NGT infrastructure.

- b) Definition of 'Authorised Works' – the Applicants do not consider it appropriate for the 'use and maintenance of the authorised works' to be included within the definition of 'authorised works' and consider it better placed within the Deed of Consent as required under Para 6(2). The Applicants have requested this wording to be deleted to avoid any duplication and to reduce the risk of the parties agreeing terms which are in conflict. The Applicants also consider that the definition of 'authorised development' in the Draft DCO is sufficiently wide to protect NGT in that it will cover associated development, and any other development authorised by the DCO.
- c) Acquisition of Land (para 6) – The Applicants are willing to agree to restrictions of the use compulsory acquisition powers in relation to interests / apparatus of NGT however the Applicants must be able to retain an ability to acquire or take temporary possession of land in which NGT has an interest (i.e. land not owned by NGT). Under the Applicants preferred PPs, NGT's position will still be protected as the undertaker would not be able to interfere with or extinguish NGT's interests without their consent. The Applicants also note Planning Inspectorate Guidance which is clear that statutory undertakers' preferred form of protective provisions should be "adapted as necessary so they accurately reflect the proposed development" and they "should also not simply negate other provisions of the DCO, particularly concerning proposed compulsory acquisition of statutory undertakers' land". The nature of the interaction between the Projects and NGT interests and assets means that there is no justification for including restrictions on compulsory acquisition powers to the extent sought by NGT. Such a restriction could have implications on the ability of the Applicants to construct and operate the Projects and deliver the benefits of the development.
- d) Retained apparatus (para 9(4)(a) and 9(5)) – The Applicants have programme constraints to meet connection dates. As a result, it is essential that any approvals required under the DCO are given promptly and without any unnecessary delays. The Applicants will give as much notice as possible to NGT ahead of works and will collaborate to ensure that NGT are fully aware proposed details in sufficient time to resource. The Applicants therefore consider that 42 days to review plans is adequate even as a large organisation. This will ensure that the Applicants have the certainty required to deliver the Projects.

- e) Expenses (para 10) -The Applicants consider that it is not appropriate for the protective provisions to cover indirect and consequential loss. This principle is well preceded in NGT PPs in the context of indemnities and the Applicants consider that it is reasonable for this to extend to recoverable expenses. The Applicants also do not consider it is reasonable for anticipated costs to be included if indirect and consequential loss is not excluded from the protective provisions.
- f) Indemnity (para 11) –
  - a. The Applicants do not consider that they should be liable for Network Code Claims given that it is excessively broad and the exclusion of Network Code Claims is well-precedented in other DCOs.
  - b. The Applicants are also seeking to include wording which would ensure that NGT obtain the consent of the Applicants (not to be unreasonably withheld or delayed) before it settles or admits liability in relation to any claims or demands. This is considered to be reasonable on the basis that the Applicants will be liable for such costs.
- g) Arbitration (para 15) – The Applicants consider that the arbitration procedure set out in the Draft DCO is appropriate and sufficient to deal with any difference or dispute arising between the Applicants and NGT. The inclusion of provisions to which the arbitration rules will not apply is not considered necessary and adds to uncertainty with regards to dispute resolution. The Applicants note that the arbitration rules set out in Schedule 16 of the Draft DCO includes the possibility of parties referring to expert evidence which will inform the arbitrator’s decision. The Applicants also note that there is an obligation on the parties to use reasonable endeavours to settle a dispute amicably through negotiations undertaken in good faith and that the purpose of arbitration is to achieve a fair, impartial, final and binding award on the substantive difference between the parties (save as to costs) within four months from the date the arbitrator is appointed. These are well-established provisions and are considered necessary for the Applicants to deliver the project in a timely manner.
- h) Amendments replacing ‘authorised works’ with ‘specified works’ - The Applicants consider that they should only be liable to indemnify and cover expenses of NGT for ‘specified works’ given that this has been widely drafted and would include any works which would adversely affect NGT apparatus. The purpose of protective provisions is to cover the Applicants’ works which are in proximity to NGT assets or otherwise adversely affect NGT assets.
- i) Other amendments – save as set out above in relation to retained apparatus, the Applicants consider that timescales have been agreed within the protective provisions. The Applicants have also inserted wording in relation to ‘reasonableness’ in some provisions to provide certainty and clarity that the parties will act reasonably in relation to any interactions.

57. For the reasons set out above, the Applicants submit that the protective provisions included in Part 6, Schedule 15 of the **Draft DCO (Revision 11)** [document reference 3.1] are comprehensive and sufficient to ensure that there is no serious detriment to the undertaking of NGT.

### 5.3 National Grid Electricity Transmission PLC

58. The Applicants have been in active discussions with NGT to agree the protective provisions and a co-operation agreement since the pre-application stage. The Applicants note the protective provisions submitted by NGT at Deadline 6 and NGT's position on the main areas of difference [REP7-150]. The Applicants have included bespoke protective provisions in Part 7 of Schedule 15 in the **Draft DCO (Revision 11)** [document reference 3.1] submitted at Deadline 8. A comparison of these protective provisions and NGT's preferred protective provisions is included in Appendix 4.
59. The Applicants strongly disagree with NGT's position that the Applicants' preferred protective provisions mean that there will be a serious detriment to NGT's undertaking.
60. NGT's Deadline 6 representations [REP6-067] are based upon the proposition that the Projects should be subordinate to NGT's emerging proposals for grid infrastructure comprising the Birkhill Wood and Wanless Beck Substations as well as the North Humber to High Marnham (NHHM) Overhead Line (OHL) DCO.
61. This is despite:
- None of those NGT projects yet having consent or (bar one length of construction access) being the subject of a live application for consent, or
  - NGT not owning any of the land or rights needed to construct those projects.
62. NGT's Deadline 6 reference to the protections offered to statutory undertakers in sections 127 and 138 of the Planning Act 2008 (quoted at paragraph 2.3 and 2.4 of the NGT submission), providing that a DCO can only authorise compulsory acquisition affecting an SU's land or apparatus if it will not cause serious detriment and is needed for the DCO in question, are misconceived. Those provisions apply to land or rights in existence at the date the, in this case DBS, DCO is confirmed. If those rights come into existence after the DBS DCO is confirmed, sections 127 and 138 do not offer that protection. NGT is not in a position to define the extent of the land that it seeks to bring into these protections, and so seeks protection for whatever land those projects might affect in the future.
63. It is contended by NGT that this level of protection is needed by all the proposed connectees to its projects, both the Applicants and a number of other energy generation and storage projects and so that it would be in the interests of those other parties and the Applicants to agree to the protections sought by NGT.

64. The reality is however different. The Applicants do not know (nor does the Examining Authority) what arrangements exist between any other connectee projects and NGET in respect of these proposed assets. The Applicants can only speak reliably to the effect on its Projects. Affording such a level of future control to NGET would place the Applicants in a position where, at a minimum, within any as yet undefined shared access area, they can only commit to a final design and then commence construction with the approval of NGET. NGET's proposed obligation not to unreasonably withhold or delay such consent allows it ample opportunity to require the Applicant to defer detailed design and construction of a significant part of the Projects until NGET is ready to allow them to proceed. Any attempt to expedite that process by the Applicants risks NGET invoking the power it seeks to require diversion of the Applicants' works at the Applicants' own expense, potentially onto land outside the Applicants' control, to allow NGET to carry out its development in a form most convenient to it.
65. As NGET itself points out (in its Deadline 6 representation paragraph 3.4), this is not a situation of two rival projects seeking control of land or rights at the expense of another. This is a question of responsible and cooperative phasing of development that is mutually dependant. The Applicants' Projects cannot progress without a substation to connect to, and the substation's purpose is to serve projects such as the Applicants', as is the NHHM OHL. There is adequate space available to serve all proposed developments. To the Applicants' knowledge no case has been advanced by any party that its Projects cannot proceed if another is approved.
66. The most predictable outcome of the powers sought by NGET is unnecessary delay. If granted the preferential status it seeks, there is a real risk that the Applicants will be under significant pressure to delay critical parts of their construction programme, with limited incentive on NGET to avoid that delay. That is so despite the design process by which both the Applicants' works and those of NGET being in effect the same, regardless of who undertakes their construction first.
67. The appropriate approach in such cases is to recognise whatever level of certainty exists at the time decisions are being made on powers being sought. That is the approach underlying legislation such as sections 127 and 138 of the 2008 Act and should be the approach adopted here, as reflected in the Applicants' preferred form of protective provisions for NGET, as included in the **Draft DCO (Revision 11)** [document reference 3.1].
68. The same issues as outlined above in relation to design and construction of works apply to the protections sought by NGET in respect of acquisition of land or rights. The Applicants agree that any such land or rights held by NGET at the time of confirmation of the Applicants' DCO should rightly be subject to the protections of sections 127 and 138 of the 2008 Act but that protection should not extend to land and rights not yet acquired. Doing so would deprive the Applicants of the certainty in respect of their ability to deliver their consented Projects that compulsory acquisition powers within a DCO are designed to give.



69. NGET's references to other DCOs where similar rights have been granted to it do not advance its case. NGET's D6 representations do not provide any commentary on the facts applying in those cases as to why the decision by the Secretary of State on those facts is a reliable guide to what should happen in this case. Neither is the Applicants or the Secretary of State privy to any other arrangements between the parties in those other cases that may be operating alongside the protective provisions in those cases that rendered them acceptable in those situations.
70. The Applicants' position in relation to the outstanding points is as follows:
- (a) Acceptable Security / Acceptable Insurance – As noted above, the nature of the interaction between NGET and the Applicants requires an agreement to facilitate responsible and cooperative phasing of development that is mutually dependant. It is therefore not considered appropriate in the circumstances to include a requirement for the Applicants to obtain acceptable security and acceptable insurance before being able to commence works. Furthermore, the Projects will be adequately funded as set out within the **Funding Statement (Revision 5)** [document reference 4.4] and NGET will be able to recover losses via the indemnity provided in the PPs. The Applicants also note that the Rampion 2 DCO decision which provided justification for why both security and insurance is unnecessary and excessive.
  - (b) Acquisition of Land provisions – The Applicants do not consider that there should be any restrictions on the use of compulsory acquisition powers on the basis that NGET does not currently hold any land interests for the future NGET projects. The Applicants also note PINS Guidance which is clear that statutory undertakers' preferred form of protective provisions should be "adapted as necessary so they accurately reflect the proposed development" and they "should also not simply negate other provisions of the DCO, particularly concerning proposed compulsory acquisition of statutory undertakers' land". The nature of the interaction between the Projects and NGET land and apparatus means that there is no justification for including restrictions on compulsory acquisition powers. Such a restriction could have implications on the ability of the Applicants to construct and operate the Projects and deliver the benefits of the development.
  - (c) Facilities and rights (para 7) – The Applicants' position is that failure to agree facilities and rights under this provision should be settled by arbitration. This is consistent with how other differences and disputes under the PPs would be decided and would give clarity and certainty to both parties.

- (d) Retained apparatus (para 8) - The Applicants have programme constraints to meet connection dates. As a result, it is essential that any approvals required under the DCO are given promptly and without any unnecessary delays. The Applicants will give as much notice as possible to NGET ahead of works and will collaborate to ensure that NGET are fully aware proposed details in sufficient time to resource. The Applicants therefore consider that 28 days to review plans is adequate even as a large organisation. This will ensure that the Applicants have the certainty it required to deliver the scheme.
- (e) NGET guidance notes (para 8) – The Applicants have removed this sub-paragraph on the basis that NGET already have an ability to approve works in the PPs. Any works which are at risk of not complying with the guidance notes can be made subject to reasonable conditions. NGET will be better placed than the Applicants to ensure that proposed works do comply with the guidance notes.
- (f) Expenses (para 9) - The Applicants considers that it is not appropriate for the protective provisions to cover indirect and consequential loss. This principle is well preceded in NGET PPs in the context of indemnities and the Applicants consider that it is reasonable for this to extend to recoverable expenses. The Applicants also do not consider it is reasonable for anticipated costs to be included if indirect and consequential loss is not excluded from the protective provisions.
- (g) Arbitration (para 14) - The Applicants consider that the arbitration procedure set out in the Draft DCO is appropriate and sufficient to deal with any difference or dispute arising between the Applicants and NGET. The inclusion of provisions to which the arbitration rules will not apply is not considered necessary and adds to uncertainty with regards to dispute resolution. The Applicants note that the arbitration rules set out in Schedule 16 of the Draft DCO includes the possibility of parties referring to expert evidence which will inform the arbitrator's decision. The Applicants also note that there is an obligation on the parties to use reasonable endeavours to settle a dispute amicably through negotiations undertaken in good faith and that the purpose of arbitration is to achieve a fair, impartial, final and binding award on the substantive difference between the parties (save as to costs) within four months from the date the arbitrator is appointed. These are well-established provisions and are considered necessary for the Applicants to deliver the project in a timely manner.
- (h) Amendments replacing 'authorised works' with 'specified works' - The Applicants consider that they should only be liable to indemnify and cover expenses of NGET for 'specified works' given that this has been widely drafted and would include any works which would adversely affect NGET apparatus. The purpose of protective provisions is to cover the Applicants' works which are in proximity to NGET assets or otherwise adversely affect NGET assets.



71. For the reasons set out above, the Applicants submit that the protective provisions included in Part 7, Schedule 15 of the **Draft DCO (Revision 11)** [document reference 3.1] is comprehensive and sufficient to ensure that there is no serious detriment to the undertaking of NGET.

## 5.4 Northern Powergrid (Yorkshire) PLC

72. The Applicants and NPG have reached an agreed position on all outstanding points of a side agreement. This is confirmed in the NPG Statement of **Common Ground (Revision 3)** [document reference: 9.11] submitted at Deadline 8.
73. The parties will continue discussions with a view to finalising agreement so that NPG can withdraw its objection to the application before the close of the Examination. The Applicants anticipate for the agreement to be completed during the Recommendation stage and for the objection from NPG to be withdrawn prior to the start of the decision period.

The Applicants consider that the protective provisions in Part 1, Schedule 15 of the **Draft DCO (Revision 11)** [document reference 3.1] and the side agreement between the parties is sufficient to ensure there is no serious detriment to NPG's undertaking.

## 5.5 Environment Agency

74. An updated version of bespoke protective provisions for the protection of the Environment Agency are included in Part 3, Schedule 15 of the **Draft DCO (Revision 11)** [document reference 3.1]. This reflects the Environment Agency's preferred drafting of the protective provisions, as agreed with the Applicants in the **Environment Agency Statement of Common Ground (Revision 3)** [document reference: 9.3], at Deadline 8.
75. The primary purpose of these protective provisions is in relation to disapplication of flood risk activity permits. The Applicants do not consider that there will be any serious detriment to the Environment Agency's undertaking.

## 5.6 Beverley & North Holderness Internal Drainage Board (BNHIDB) and the East Riding of Yorkshire Council (ERYC)

76. Bespoke protective provisions for the protection of the drainage authorities are included in Part 4, Schedule 15 of the **Draft DCO (Revision 11)** [document reference 3.1]. These have been agreed with BNHIDB and the ERYC as the Lead Local Flood Authority (LLFA).
77. The agreement with the ERYC is documented in the **ERYC Statement of Common Ground (Revision 3)** [document reference: 9.2] (see item 65, page 59).

78. The protective provisions were discussed at a meeting with the BNHIDB on 8<sup>th</sup> April 2025, following the Applicants' responses to their comments on the DCO provided in **The Applicants' Comments on the Responses to ExQ1** [REP4-087], no further comments have been raised.
79. The inclusion of these protective provisions means that the Applicants do not consider that there will be any serious detriment to the undertaking of BNHIDB and ERYC.

## 5.7 Dogger Bank Projcos and Orsted IPs

80. The Applicants fundamentally reject on policy grounds any justification for the draft protective provisions put forward in relation to wake effects. The Applicants consider the drafting submitted to be fundamentally inappropriate and unworkable and high level comments explaining the Applicants' position was provided in response to ExQ2 IOU.2.10 [REP5-036] and are addressed in closing submissions.
81. In the circumstances, the Applicants are not proposing to submit alternative drafting or to negotiate the drafting which the Dogger Bank Projcos and Orsted IPs have submitted.

## 5.8 Orsted Hornsea Project Four Limited (Hornsea Four)

82. The Applicants and Hornsea Four have been negotiating Heads of Terms for a co-operation agreement in relation to the possible future interactions between the Projects and Hornsea Four. The Applicants note that Hornsea Four confirmed at Deadline 5 that the project is being discontinued in its current form and that it will withdraw its objection on the grounds of wake loss [REP5-074]. However, the Applicants remain committed to working with Hornsea Four to agree a co-operation agreement for other future interactions.
83. There is currently no certainty as to whether the Projects or the Hornsea Four project will be constructed first and so a co-operation agreement is the most appropriate mechanism to manage the interactions between the projects. The Applicants do not believe that bespoke protective provisions in favour of Hornsea Four are necessary or appropriate to include in the DCO and Hornsea Four have not submitted any to the Examination.
84. The Applicants also note that whilst Hornsea Four has an interest in the land, it does not currently use any land, rights or apparatus within the Order Limits for the purpose of their undertaking. The Applicants consider that in the event that the Hornsea Four project is already constructed the inclusion of protective provisions in Part 1, Schedule 15 of the **Draft DCO (Revision 11)** [document reference 3.1] is sufficient to ensure there is no serious detriment to Hornsea Four's undertaking.

## 5.9 Creyke Beck Solar Limited and Padero Solaer Limited

85. Protective provisions in favour of Creyke Beck Solar Limited and Padero Solaer Limited were submitted at Deadline 7 [REP7-138] and [REP7-158]. No explanation or further context is provided by either party to justify the inclusion of these bespoke protective provisions in the Draft DCO.
86. The Applicants have been engaged with Albanwise Synergy Ltd (previous owners of the Creyke Beck Solar project and land it is subject to) throughout the pre-application stages and Examination in relation to interfaces identified between the Projects and Creyke Beck Solar Farm. Albanwise Synergy Ltd have not at any time raised concerns about the viability of the proposed development and they have been happy to sign Heads of Terms for an Option to Easement for the Onshore Cable Corridor with no reference to the Solar project.
87. The Applicants acknowledge that their proposals may have an interaction with the Creyke Beck Solar project in respect of Plots 18-054, 18-055 and 19-007. Subject to further detailed design and discussion on respective construction programmes, the Applicants commit to collaborate with Creyke Beck Solar in respect of these interfaces between projects to ensure that there is no detriment to either project. There is also no explanation of whether these parties are statutory undertakers for the purposes of section 127 and section 138 of the 2008 Act.
88. The Applicants therefore consider that bespoke protective provisions in favour of these parties should not be included in the final DCO and that section 127 or section 138 are not engaged on the basis that they are not statutory undertakers. In the event that any solar farms are already constructed, the protective provisions contained in Part 1, Schedule 15 of the Draft DCO will ensure any electricity undertakers are protected.

## 5.10 Other Parties

89. The Applicants have engaged with other statutory undertakers that have land, rights and apparatus within the Order Limits or may otherwise be affected by the Projects. This engagement started at the pre-application stage and continued post submission of the application.
90. The Applicants have not received any comments or representations on the generic protective provisions included in Part 1 and Part 2 of Schedule 15 of the **Draft DCO (Revision 11)** [document reference 3.1]. The Applicants therefore consider that these protective provisions are sufficient to ensure that there is no serious detriment to the undertaking of any other statutory undertakers.

## 6 Conclusion

91. Given the need for the proposed development (as set out in the **Statement of Reasons (Revision 4)** [AS-146], **Planning Statement** [APP-226] and **Chapter 2 Need for the Project** [APP-065]), it is considered that there is a compelling case in the public interest for the inclusion of the compulsory purchase powers within the DCO.
92. The Applicants confirm that there are three SUs with whom protective provisions remain to be agreed and acknowledges that the Projects would affect them. However, the Applicants submit that these impacts would not be sufficiently significant to constitute “serious detriment” within the meaning of section 127 of the 2008 Act and furthermore, that both section 127 and section 138 is satisfied given the inclusion of suitable protective provisions within Schedule 15 of the Draft DCO.
93. In the Applicants’ view it must retain an ability to exercise compulsory acquisition rights and other powers under the DCO in relation to SU land. The SUs are adequately protected by the protective provisions included in Schedule 15 of the Draft DCO.
94. For the reasons set out in this application, it is the Applicants’ position that:
- Pursuant to section 127 of the 2008 Act, the Secretary of State can be satisfied that the prescribed tests of section 127 have been met and that the land in which the SUs have interests may be included for compulsory acquisition in the DCO.
  - Pursuant to section 138 of the 2008 Act, the Secretary of State can be satisfied that the power for the Applicant to extinguish the rights of, remove or reposition the apparatus belonging to the SUs is necessary for the purpose of carrying out the proposed development but for which each of these SUs has protection in the form of protective provisions and the Applicants seek alternative land to divert and replace their apparatus, and the test of section 138 has therefore been met.

## Appendix 1 - Status update - Statutory Undertakers

Table A-1 Status update - Statutory Undertakers

Statutory Undertaker	Nature of undertaking	Sheet Number & Land Plot no(s).	Description of rights sought	Works no(s)	Works Description	Applicability of section 127 and 138 of the 2008 Act	Status of negotiations
Beverley & North Holderness Internal Drainage Board	Drainage authority	03-001*, 03-002, 04-009*, 04-010, 10-005, 10-006, 12-011, 13-004, 13-005*, 13-009	Acquisition of Rights	14A/B, 15A/B, 17A/B	Cable Corridor	<p>Adequate protection for BNHIDB's assets and interests are included within the protective provisions at Part 4 of Schedule 15 of the Draft DCO (Revision 11) [document reference 3.1]. As a result, the Applicants consider that any interference caused will not be a serious detriment to BNHIDB carrying on its undertaking. The Applicants consider that the protective provisions will safeguard BNHIDB's interests and that the test set out in section 127 of the Planning Act 2008 is therefore satisfied.</p> <p>The Applicants are not intending to extinguish any rights or remove any apparatus belonging to BNHIDB. However, the Applicants reserve the right to do so through the DCO. The exercise of such powers will be carried out in accordance with the protective provisions which set out constraints with a view to safeguarding BNHIDB's interests. The Applicants therefore consider that the test set out in section 138 of the 2008 Act is satisfied.</p>	<p>The Applicants and BNHIDB have agreed protective provision. The protective provisions were discussed at a meeting with the BNHIDB on 8 April 2025, following the Applicants' responses to their comments on the DCO provided in <b>The Applicants' Comments on the Responses to ExQ1</b> [REP4-087]. No further comments have been raised by BNHIDB.</p>
		10-004, 13-006, 13-007, 13-008, 13-010, 13-011	Temporary Possession	17A/B, 20A/B, 18A/B, 16A/B	Temporary Construction Compound and Access		
Environment Agency	Environmental and flood risk management	10-008, 10-009*, 10-010, 10-014	Acquisition of Rights	14A/B	Cable Corridor	<p>Adequate protection for the Environment Agency are included within the protective provisions at Part 3 of Schedule 15 of the <b>Draft DCO (Revision 11)</b> [document reference 3.1]. As a result, the Applicants consider that any interference caused will not be a serious detriment to the Environment Agency carrying on its undertaking.</p>	<p>The Applicants and the Environment Agency have agreed protective provisions in relation to the disapplication of flood risk activity permits. This is confirmed in the <b>Environment Agency's Statement of Common Ground (Revision 3)</b> [document reference 9.3].</p>
		10-015, 10-016	Temporary Possession	16A/B, 17A/B, 18A/B	Temporary Construction Compound and Access		
National Gas Transmission PLC	Gas transmission network owner and operator  (Rights / Apparatus)	18-015a, 18-022	Freehold Acquisition	29A/B, 27A/B, 24A/B	Substation	<p>Adequate protection for NGT's assets and interests are included within the protective provisions at Part 6 of Schedule 15 of the <b>Draft DCO (Revision 11)</b> [document reference 3.1]. As a result, the Applicants consider that any interference caused will not be</p>	<p>The parties are continuing negotiations in respect of the protective provisions.</p> <p>A summary of the outstanding points of disagreement and a justification for the Applicants' position on the protective</p>
		04-010, 18-015, 18-017, 18-020, 18-022a, 18-023, 18-024, 18-043, 18-043d, 18-043e, 18-043g, 18-043h	Acquisition of Rights	14A/B, 30A/B, 28A/B, 17A/B, 32B, 31A/B	Cable Corridor and Substation		

Statutory Undertaker	Nature of undertaking	Sheet Number & Land Plot no(s).	Description of rights sought	Works no(s)	Works Description	Applicability of section 127 and 138 of the 2008 Act	Status of negotiations
						<p>a serious detriment to NGT carrying on its undertaking. The Applicants consider that the protective provisions will safeguard NGT's interests and that the test set out in section 127 of the Planning Act 2008 is therefore satisfied.</p> <p>The Applicants are not intending to extinguish any rights or remove any apparatus belonging to NGT. However, the Applicants reserve the right to do so through the DCO. The exercise of such powers will be carried out in accordance with the protective provisions which set out constraints with a view to safeguarding NGT's interests. The Applicants therefore consider that the test set out in section 138 of the 2008 Act is satisfied.</p>	provisions included in the Draft DCO (Revision 11) [document reference 3.1] is included in section 5 of this note, <b>The Applicants' Responses to Rule 17 letter dated 9<sup>th</sup> June 2025</b> [REP6-057], <b>The Applicants' Responses to Deadline 6 Documents</b> [REP7-131] (Table 2-14) and the <b>NGT Statement of Common Ground (Revision 3)</b> [document reference: 9.10] submitted at Deadline 8.
National Grid Electricity Transmission PLC	Electricity transmission network owner and operator  (Rights/Apparatus)	18-010	Freehold Acquisition	21A/B, 18A/B, 31A/B, 20A/B, 23A/B, 28A/B, 29A/B, 26A/B, 27A/B, 14A/B, 24A/B, 22A/B	Substation	Adequate protection for NGET's assets and interests are included within the protective provisions at Part 7 of Schedule 15 of the <b>Draft DCO (Revision 11)</b> [document reference 3.1]. As a result, the Applicants consider that any interference caused will not be a serious detriment to NGET carrying on its undertaking. The Applicants consider that the protective provisions will safeguard NGET's interests and that the test set out in section 127 of the Planning Act 2008 is therefore satisfied.	The parties are continuing negotiations on a form of agreement to facilitate agreement on the protective provisions.
		17-011, 18-002, 18-009, 18-012, 18-027, 18-029, 18-043, 18-043a, 18-043b, 18-043c, 18-043d, 18-043e, 18-043f, 18-043g, 18-043h, 18-043i, 18-050, 18-052, 18-054, 19-007, 20-004	Acquisition of Rights	14A/B, 31A/B, 17A/B, 32B, 33A/B, 15A/B, 34A/B	Cable Corridor and Substation		A summary of the outstanding points of disagreement and a justification for the Applicants' position on the agreement and protective provisions included in the <b>Draft DCO (Revision 11)</b> [document reference 3.1] is included in section 5 of this note, <b>The Applicants' Responses to Rule 17 letter dated 9<sup>th</sup> June 2025</b> [REP6-057] and <b>The Applicants' Responses to Deadline 6 Documents</b> [REP7-131] (Table 2-13).
		18-011, 18-027a, 18-042, 18-042a, 18-044, 18-044a, 18-045, 18-045a, 18-045b, 18-045c, 18-046, 18-046a, 18-047, 18-047a, 18-047b, 18-047c, 18-047d, 18-047e, 18-048, 18-048a, 18-048b, 18-049, 18-051, 18-053, 18-055, 18-055a	Temporary Possession	23A/B, 18A/B, 17A/B, 16A/B, 33A/B	Temporary Construction Compound and Access	The Applicants are not intending to extinguish any rights or remove any apparatus belonging to NGET. However, the Applicants reserve the right to do so through the DCO. The exercise of such powers will be carried out in accordance with the protective provisions which set out constraints with a view to safeguarding NGET's interests. The Applicants therefore	



Statutory Undertaker	Nature of undertaking	Sheet Number & Land Plot no(s).	Description of rights sought	Works no(s)	Works Description	Applicability of section 127 and 138 of the 2008 Act	Status of negotiations
						consider that the test set out in section 138 of the 2008 Act is satisfied.	
Network Rail Infrastructure Limited	Maintaining and operating the railway infrastructure	13-014*, 13-015, 13-017, 15-006	Acquisition of Rights	14A/B	Cable Corridor	Adequate protection for Network Rail's assets and interests are included within the protective provisions at Part 5 of Schedule 15 of the <b>Draft DCO (Revision 11)</b> [document reference 3.1]. As a result, the Applicants consider that any interference caused will not be a serious detriment to Network Rail carrying on its undertaking. The Applicants consider that the protective provisions will safeguard Network Rail's interests and that the test set out in section 127 of the Planning Act 2008 is therefore satisfied.	The parties are continuing negotiations in respect of the Property Agreement, Framework Agreement and protective provisions.
	(Rights / Apparatus)	13-010, 14-001, 14-002	Temporary Possession	17A/B, 16A/B, 18A/B	Temporary Construction Compound and Access	The Applicants are not intending to extinguish any rights or remove any apparatus belonging to Network Rail. However, the Applicants reserve the right to do so through the DCO. The exercise of such powers will be carried out in accordance with the protective provisions which set out constraints with a view to safeguarding Network Rail's interests. The Applicants therefore consider that the test set out in section 138 of the 2008 Act is satisfied.	A summary of the outstanding points of disagreement and a justification for the Applicants' position on these agreements and protective provisions included in the <b>Draft DCO (Revision 11)</b> [document reference 3.1] is included in section 5 of this note, <b>The Applicants' Responses to Rule 17 letter dated 9<sup>th</sup> June 2025 [REP6-057], The Applicants' Responses to Deadline 6 Documents [REP7-131] (Table 2-28) and the Network Rail Statement of Common Ground (Revision 3) [document reference: 9.14] submitted at Deadline 8.</b>
Northern Gas Networks Limited	Transmission of gas	08-008, 09-001, 10-010, 14-011*, 15-004*, 16-002, 17-005*, 17-009, 19-005, 20-002, 20-004	Acquisition of Rights	14A/B, 17A/B, 31A/B, 15A/B, 32B, 34A/B	Cable Corridor	Adequate protection for Northern Gas Networks' assets and interests are included within the protective provisions at Part 1 of Schedule 15 of the <b>Draft DCO (Revision 11)</b> [document reference 3.1]. As a result, the Applicants consider that any interference caused will not be a serious detriment to Northern Gas Networks carrying on its undertaking. The Applicants consider that the protective provisions will safeguard	Northern Gas Networks has not made any representation in relation to the application.
		08-007, 13-012, 14-010*, 15-002*, 17-006*, 19-006, 20-001, 20-003, 20-005	Temporary Possession	17A/B, 16A/B, 18A/B, 15A/B	Temporary Construction Compound and Access		The Applicants have included protective provisions in Part 1 of Schedule 15 of the <b>Draft DCO (Revision 11)</b> [document reference 3.1] for the protection of electricity, gas, water and sewerage undertakers. No comments on these protective



Statutory Undertaker	Nature of undertaking	Sheet Number & Land Plot no(s).	Description of rights sought	Works no(s)	Works Description	Applicability of section 127 and 138 of the 2008 Act	Status of negotiations
						<p>Northern Gas Networks' interests and that the test set out in section 127 of the Planning Act 2008 is therefore satisfied.</p> <p>The Applicants are not intending to extinguish any rights or remove any apparatus belonging to Northern Gas Networks. However, the Applicants reserve the right to do so through the DCO. The exercise of such powers will be carried out in accordance with the protective provisions which set out constraints with a view to safeguarding Northern Gas Networks' interests. The Applicants therefore consider that the test set out in section 138 of the 2008 Act is satisfied.</p>	provisions have been provided by Northern Gas Networks.
Northern Powergrid (Yorkshire) PLC	Electricity distribution network operator  (Rights / Apparatus)	18-010, 18-028	Freehold Acquisition	21A/B, 18A/B, 31A/B, 20A/B, 23A/B, 28A/B, 29A/B, 26A/B, 27A/B, 14A/B, 24A/B, 22A/B	Substation	Adequate protection for NPG's assets and interests are included within the protective provisions at Part 1 of Schedule 15 of <b>Draft DCO (Revision 11)</b> [document reference 3.1] and within a private agreement which has been agreed between the parties. As a result, the Applicants consider that any interference caused will not be a serious detriment to NPG carrying on its undertaking. The Applicants consider that the protective provisions and agreement will safeguard NPG's interests and that the test set out in section 127 of the Planning Act 2008 is therefore satisfied.	The parties have agreed the wording of a private agreement which is confirmed in the <b>NPG Statement of Common Ground (Revision 3)</b> [document reference: 9.11] submitted at Deadline 8.
		02-031, 02-033*, 02-034, 04-008, 04-021, 05-004, 06-018, 07-005, 08-005*, 08-017, 09-001, 09-013, 10-005, 10-008, 10-019, 11-008, 11-018, 12-011, 13-001*, 13-002, 13-004, 13-009, 13-016, 14-008, 15-006, 16-001, 17-010, 17-011, 18-001, 18-012, 18-032, 18-038, 18-043, 18-043c, 18-043d, 18-043e, 18-052, 18-054	Acquisition of Rights	15A/B, 14A/B, 17A/B, 31A/B, 32B, 33A/B	Cable Corridor	The Applicants are not intending to extinguish any rights or remove any apparatus belonging to NPG. However, the Applicants reserve the right to do so through the DCO. The exercise of such powers will be carried out in accordance with the protective provisions which set out constraints with a view to safeguarding NGT's interests. The Applicants therefore consider that the test set out in section 138 of the 2008 Act is satisfied.	The parties are continuing discussions to arrange for the agreement to be signed before the close of the examination so that NGT can withdraw its objection to the application.
		01-001*, 02-036*, 04-015*, 04-016*, 04-017, 04-020*, 06-014*, 08-006*, 10-016, 10-017, 10-018*, 11-001, 11-005, 11-009, 11-013, 11-016, 11-017, 12-001, 12-006*, 12-008, 12-009, 13-010, 13-012, 14-003*, 18-027a, 18-045, 18-045a, 18-045b, 18-045c, 18-047a, 18-055, 19-002*	Temporary Possession	10A/B, 17A/B, 15A/B, 18A/B, 19A/B, 16A/B, 33A/B	Emergency Access and Access and Temporary Construction Compound		

Statutory Undertaker	Nature of undertaking	Sheet Number & Land Plot no(s).	Description of rights sought	Works no(s)	Works Description	Applicability of section 127 and 138 of the 2008 Act	Status of negotiations
Openreach Limited	Telecommunications	02-016, 02-020, 02-024, 02-025, 02-026*, 02-027*, 02-033*, 03-006*, 04-004*, 06-001, 06-012*, 07-005, 08-005*, 08-008, 08-014*, 08-026, 10-002*, 11-004*, 11-010, 11-011*, 12-005*, 12-011, 13-017, 14-011*, 16-002	Acquisition of Rights	13A/B, 15A/B, 14A/B, 17A/B, 19A/B	Land Fall and Cable Corridor	Adequate protection for Openreach's assets and interests are included within the protective provisions at Part 2 of Schedule 15 of the <b>Draft DCO (Revision 11)</b> [document reference 3.1]. As a result, the Applicants consider that any interference caused will not be a serious detriment to Openreach carrying on its undertaking. The Applicants consider that the protective provisions will safeguard Openreach's interests and that the test set out in section 127 of the Planning Act 2008 is therefore satisfied.	Openreach has not made any representation in relation to the application.
		02-032, 02-036*, 03-003, 03-004*, 03-007, 03-008*, 04-002*, 04-006*, 06-010*, 06-014*, 08-002*, 08-003*, 08-004*, 08-006*, 08-011*, 10-003*, 10-004, 10-017, 10-018*, 11-002*, 11-003, 11-006*, 11-013, 11-014, 11-015*, 11-016, 12-006*, 12-010, 13-013*, 14-010*	Temporary Possession	15A/B, 17A/B, 16A/B, 19A/B, 20A/B, 18A/B	Temporary Construction Compound and Access	The Applicants are not intending to extinguish any rights or remove any apparatus belonging to Openreach. However, the Applicants reserve the right to do so through the DCO. The exercise of such powers will be carried out in accordance with the protective provisions which set out constraints with a view to safeguarding Openreach's interests. The Applicants therefore consider that the test set out in section 138 of the 2008 Act is satisfied.	The Applicants have included protective provisions in Part 2 of Schedule 15 of the <b>Draft DCO (Revision 11)</b> [document reference 3.1] for the protection of operators of electronic communications code networks. No comments on these protective provisions have been provided by Openreach.
Yorkshire Water Services Limited	Water supply and wastewater treatment	18-010, 18-015a, 18-025	Freehold Acquisition	21A/B, 18A/B, 31A/B, 20A/B, 23A/B, 28A/B, 29A/B, 26A/B, 27A/B, 14A/B, 24A/B, 22A/B	Substation	Adequate protection for Yorkshire Water's assets and interests are included within the protective provisions at Part 1 of Schedule 15 of the <b>Draft DCO (Revision 11)</b> [document reference 3.1]. As a result, the Applicants consider that any interference caused will not be a serious detriment to Yorkshire Water carrying on its undertaking. The Applicants consider that the protective provisions will safeguard Yorkshire Water's interests and that the test set out in section 127 of the Planning Act 2008 is therefore satisfied.	Yorkshire Water has not made any representation in relation to the application.
		02-027*, 02-033*, 04-004*, 05-005, 06-004*, 06-012*, 08-005*, 10-002*, 11-004*, 11-008, 11-010, 11-018, 13-002, 13-009, 14-011*, 15-004*, 17-005*, 17-009, 17-010, 17-011, 18-010a, 18-012, 18-015, 18-017, 18-021, 18-025a, 18-040*	Acquisition of Rights	15A/B, 14A/B, 17A/B, 19A/B, 30A/B, 31A/B, 28A/B	Cable Corridor and Substation		The Applicants have included protective provisions in Part 1 of Schedule 15 of the <b>Draft DCO (Revision 11)</b> [document reference 3.1] for the protection of electricity, gas, water and sewerage undertakers. No comments on these protective provisions have been provided by Yorkshire Water.

Statutory Undertaker	Nature of undertaking	Sheet Number & Land Plot no(s).	Description of rights sought	Works no(s)	Works Description	Applicability of section 127 and 138 of the 2008 Act	Status of negotiations
		02-028*, 02-036*, 04-002*, 04-006*, 04-020*, 06-003*, 06-005*, 06-010*, 06-014*, 08-002*, 08-004*, 08-006*, 08-007, 10-003*, 10-017, 11-002*, 11-006*, 11-014, 11-015*, 13-008, 13-010, 13-012, 14-010*, 15-002*, 17-004*, 17-006*, 17-007	Temporary Possession	15A/B, 17A/B, 19A/B, 16A/B, 18A/B	Access and Temporary Construction Compound	The Applicants are not intending to extinguish any rights or remove any apparatus belonging to Yorkshire Water. However, the Applicants reserve the right to do so through the DCO. The exercise of such powers will be carried out in accordance with the protective provisions which set out constraints with a view to safeguarding Yorkshire Water's interests. The Applicants therefore consider that the test set out in section 138 of the 2008 Act is satisfied.	

## Appendix 2 - Comparison of Network Rail's preferred protective provisions and the Applicants' preferred protective provisions

**Network Rail Infrastructure Limited**  
**Standard Protective Provisions for inclusion in Statutory Orders**

SCHEDULE { }

Article { }

**PROTECTIVE PROVISIONS**

**PART 5**

**FOR THE PROTECTION OF NETWORK RAIL INFRASTRUCTURE LIMITED**

1. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph ~~47~~18 of this Part of this Schedule any other person on whom rights or obligations are conferred by that paragraph.

2. In this Part of this Schedule—

“basic asset protection agreement” means an agreement to regulate the construction and maintenance of the specified work in a form prescribed from time to time by Network Rail;

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of their powers under section 8 (licences) of the Railways Act 1993;

“Network Rail” means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at Waterloo General Office, London, SE1 8SW) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited and any successor to Network Rail Infrastructure ~~Limited’s~~Limited’s railway undertaking;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging

proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail or a tenant or licensee of Network Rail identified in the book of reference for the purposes of such railway or works, apparatus or equipment;

“regulatory consents” means any consent or approval required under—

- (a) the Railways Act 1993;
- (b) the network licence; and/or
- (c) any other relevant statutory or regulatory provisions;

by either the Office of Rail and Road or the Secretary of State for Transport or any other competent body including change procedures ~~and any other consents, approvals of any access or beneficiary~~ that may be required in relation to the authorised development;

"specified work" means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way to adversely affect, railway property ~~and, for the avoidance of doubt, includes the maintenance of such works under the powers conferred by article 4 (maintenance of authorised project) in respect of such works;~~

"undertaker" has the same meaning as in article 2 (interpretation) of this Order.

3. ~~(4)~~ (1) Where under this Part of this Schedule Network Rail is required to give its consent, agreement or approval in respect of any matter, that consent, agreement or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) ~~(2)~~ In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

~~4. (1) The undertaker must not exercise the powers conferred by—~~

- ~~(a) article 3 (development consent granted by the Order);~~
  - ~~(b) article 4 (maintenance of authorised project);~~
  - ~~(c) article 16 (discharge of water);~~
  - ~~(d) article 18 (authority to survey and investigate the land);~~
  - ~~(e) article 20 (compulsory acquisition of land);~~
  - ~~(f) article 21 (time limit for exercise of authority to acquire land compulsorily)~~
  - ~~(g) article 22 (compulsory acquisition of rights);~~
  - ~~(h) article 23 (private rights over land)~~
  - ~~(i) article 25 (statutory authority to override easement and other rights)~~
  - ~~(j) article 26 (acquisition of subsoil and airspace only);~~
  - ~~(k) article 27 (compulsory acquisition of land: minerals);~~
  - ~~(l) article 29 (rights under or over streets)~~
  - ~~(m) article 30 (temporary use of land for carrying out the authorised project);~~
  - ~~(n) article 31 (temporary use of land for maintaining the authorised project);~~
  - ~~(o) article 32 statutory undertakers;~~
  - ~~(p) article 38 (felling or lopping of trees or shrubs);~~
  - ~~(q) article 39 (trees subject to tree preservation orders);~~
  - ~~(r) the powers conferred by section 11(3) (power of entry) of the 1965 Act;~~
  - ~~(s) the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016;~~
  - ~~(t) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 16;~~
  - ~~(u) any powers under in respect of the temporary possession of land under the Neighbourhood Planning Act 2017;~~
  - ~~(v) other provisions where the exercise of the powers under that provision would impact on railway property—to be reviewed upon receipt of draft DCO in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.~~
- ~~(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.~~
- ~~(3) The undertaker must not exercise the powers conferred by sections 271 or 272~~

~~of the 1990 Act, article 32 (statutory undertakers), article 25 (statutory authority to override easements and other rights) or article 23 (private rights over land), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.~~

~~(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over, or seek to impose any restrictive covenants over, any railway property, or extinguish any existing rights of Network Rail in respect of any third party property, except with the consent of Network Rail.~~

~~(5) The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.~~

~~(6) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions but it shall never be unreasonable to withhold consent for reasons of operational or railway safety (such matters to be in Network Rail's absolute discretion).~~

~~4. (7)~~ The undertaker must enter into ~~an~~ a basic asset protection agreement prior to the carrying out of any specified work.

~~5. (1)~~ (1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration under article 47 (~~Arbitration~~ Arbitration).

~~(2) (2)~~ The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld or delayed, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not ~~intimated~~ their communicated disapproval of those plans and the grounds of such disapproval the undertaker may serve upon the engineer written

notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not ~~intimated communicated~~ approval or disapproval, the engineer ~~shall be~~ is deemed to have approved the plans as submitted.

~~(3) (3)~~ If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the reasonable opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed (together with any adjoining part of the specified work which the undertaker reasonably requires to be constructed with that work), Network Rail must construct it without ~~unnecessary unreasonable~~ delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

~~(4) (4)~~ When signifying their approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the ~~engineer's~~ engineer's reasonable opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation ~~de-commissioning~~ de-commissioning and removal of works, apparatus and equipment necessitated by a



specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the reasonable expense of the undertaker in either case without ~~unnecessary~~unreasonable delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to ~~their~~the engineer's reasonable satisfaction.

(5) Network Rail must have regard to the proposed programme of works for the authorised development as may be made available to Network Rail by the undertaker and ensure that it does not unreasonably impede, interfere with or delay the authorised development.

(6) The undertaker is not required comply with sub-paragraph (1) in a case of emergency but in that case it must give to Network Rail notice as soon as is reasonably practicable.

6. ~~(4)~~ (1) Any specified work and any protective works to be constructed by virtue of paragraph 5(4) must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in direct consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses properly incurred to which Network Rail may be put and compensation for any direct loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its employees, servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

7. The undertaker must ~~—~~

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as ~~they~~the engineer may reasonably require with regard to a specified work or the method of constructing it.

8. Network Rail must at all times afford reasonable facilities to the undertaker and its employees, contractors or agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

9. ~~(4)~~ (1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction or completion of a specified work during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker 56 days<sup>1</sup> notice (or in the event of an emergency or safety critical issue such notice as is reasonable in the circumstances) of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable and proper cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably and properly incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) ~~(2)~~ If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the



reasonable opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 5(3), pay to Network Rail all reasonable and properly incurred expenses to which Network Rail may be put and compensation for any direct loss which it may suffer by reason of the execution by Network Rail of that specified work provided that at all times Network Rail will be under an obligation to take reasonable steps to mitigate its loss and always excluding any consequential loss or indirect loss.

(3) ~~(3)~~ The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 10(a) provide such details of the formula or method of calculation by which those sums have been calculated as the undertaker may reasonably require.

(4) ~~(4)~~ If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

**10.** The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses agreed in advance with the undertaker and reasonably and properly incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 5(3) or in constructing any protective works under the provisions of paragraph 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the reasonable approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watch-persons and other persons whom it ~~shall be~~ is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the reasonable opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

**11.** ~~(1)~~ (1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and  
“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) ~~(2)~~ This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 5(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) ~~(3)~~ Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their

effectiveness.

~~(4)~~ (4) In order to facilitate the undertaker's compliance with sub-paragraph (3) ~~—~~ —

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail's apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and

~~(e)~~ (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (a).

(5) ~~(5)~~ In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 5(1) has effect subject to the sub-paragraph.

(6) The undertaker shall use reasonable endeavours not to allow the use or operation of the authorised development in a manner that causes EMI and which introduces an intolerable risk to the operation of the railway or the safety of the track workers (such intolerable risk would include introducing exposure to electric and magnetic fields in excess of the requirements of the Control of Electromagnetic field at Work Regulations 2016, unacceptable transferred voltage potentials and interference impacting the safe operation of the signalling equipment), until measures have been taken in accordance with this paragraph to reduce the risk to tolerable levels of EMI.

~~(6) Prior to the commencement of operation of the authorised development the undertaker shall test the use of the authorised development in a manner that shall first have been agreed with Network Rail and if, notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.~~

(7) ~~(7)~~ In the event of EMI having occurred ~~—~~ —

- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
- (b) (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI;
- (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI; and
- ~~(d) the undertaker shall not allow the use or operation of the authorised development in a manner that has caused or will cause EMI until measures have been taken in accordance with this paragraph to prevent EMI occurring.~~

(d) ~~(8)~~ Where Network Rail approves modifications to Network Rail's apparatus pursuant to ~~sub-paragraphs~~ sub-paragraphs (5) or (6) –

(i) ~~(a)~~ Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;

(ii) ~~(b)~~ any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 6.

(8) ~~(9)~~ To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which ~~sub-paragraph~~ sub-paragraph (6) applies.

(9) ~~(10)~~ For the purpose of paragraph 10(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(10) ~~(11)~~ In relation to any dispute arising under this paragraph the reference in article ~~[x]47~~ (Arbitration) to the ~~Institution of Civil Engineers~~ Secretary of State shall be read as a reference to the Institution of Engineering and Technology.

12. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as to not adversely ~~to~~ affect railway property.

13. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network ~~Rail's~~ Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

14. Any additional expenses which Network Rail may reasonably and properly incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

15. ~~(1)~~ (1) The undertaker must pay to Network Rail all reasonable and properly incurred costs, charges, damages and expenses (but always excluding any consequential or indirect loss) not otherwise provided for in this Part of this Schedule (subject always to the remaining provisions of this paragraph and to article 51 (no double recovery)) which may be occasioned to or reasonably incurred by Network Rail—

(a) by reason of the construction, maintenance or operation of a specified work or the failure thereof; or

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

~~(c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to or egressing from the authorised development;~~

~~(d) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others;~~

(c) ~~(e)~~ in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the carrying out or operation of the authorised development; and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission provided Network Rail will be under an obligation to take reasonable steps to mitigate its loss and always excluding any consequential loss or indirect loss; and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the ~~engineer's~~ engineer's supervision ~~shall~~ does not (if it was done without negligence on the part of Network Rail or ~~of any person in its employ or of its~~ employees, contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must—

- (a) give the undertaker reasonable written notice of any such claims or demands as soon as reasonably practicable after Network Rail became aware of any such claims or demands;
- (b) not admit liability or make any ~~settlement~~ offer to settle or compromise ~~of any~~ such ~~a~~ claim or demand without the prior consent of the undertaker; ~~and (which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand);~~
- (c) take ~~such steps as are within its control and are reasonable in the circumstances~~ all reasonable steps to mitigate any liabilities relating to such claims or demands; ~~and~~
- (d) keep the undertaker informed in relation to the progress of any such claims and demands and have due regard to the undertaker's representations in relation to them.

(3) The sums payable by the undertaker under sub-paragraph (1) ~~shall~~ must if relevant include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums

which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs ~~shall~~ is, in the event of default, ~~be~~ enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to ~~sub-paragraph~~ paragraph (4).

(6) In this paragraph—

"the relevant costs" means the costs, direct losses and expenses (including loss of revenue) properly and reasonably incurred by each train operator as a consequence of any specified work including but not limited to any restriction of the use of Network ~~Rail's~~ Rail's railway network as a direct result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in subparagraph (1); and

"train operator" means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

**16.—(1)** Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph ~~45~~ 14) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

(2) Network Rail must provide an itemised invoice to the undertaker of all charges, costs, fees damages and expenses which are claimed under this Part of this Schedule and any payment due to Network Rail under this Part of this Schedule must be made within 30 days of receipt of the itemised invoice.

17. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

18. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the works and land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

19. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.

~~20.~~<sup>20</sup> The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of ~~State's~~<sup>State's</sup> consent, under article 5 (~~transfer of~~ benefit of Order) of this Order and any such notice must be given no later than ~~28~~<sup>14</sup> days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

~~21.~~<sup>21</sup> The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 42 (certification of plans and documents, etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in a~~the~~ format ~~specified by Network Rail~~of a USB stick or download link.

22. Any difference under the provisions of this Part of the Schedule must be, unless otherwise agreed in writing between the undertaker and Network Rail, determined by arbitration in accordance with article 47 (arbitration).

~~22 In relation to any dispute arising under this part of this Part of this Schedule (except for those disputes referred to in paragraph [11](11)) [the provisions of article 47 (Arbitration) shall not apply and] any such dispute, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) to the President of the Institution of Civil Engineers.~~

## Appendix 3 - Comparison of NGT's preferred protective provisions and the Applicants' preferred protective provisions

**NATIONAL GAS TRANSMISSION PLC**  
**SCHEDULE ~~[●]~~**  
**PROTECTIVE PROVISIONS**

**PART ~~[●]~~6**

**FOR THE PROTECTION OF NATIONAL GAS TRANSMISSION PLC AS GAS  
UNDERTAKER**

**Application**

~~1.1.(1)~~ 1.1. ~~(1)~~—(1) For the protection of National Gas as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Gas.

(2) ~~(2)~~ Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Gas, where the benefit of this Order is transferred or granted to another person under article 5 (benefit of Order) –

- (a) any agreement of the type mentioned in subparagraph (1) has effect as if it had been made between National Gas and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to National Gas on or before the date of that transfer or grant.

(3) ~~(3)~~ Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Gas (but ~~without prejudice to~~ see paragraph 11(3)b).

**Interpretation**

2. In this Part of this Schedule—

~~“1991 Act” means the New Roads and Street Works Act 1991;~~

“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than: (i) “A-” if the rating is assigned by Standard & Poor’s Ratings Group or Fitch Ratings; and “A3” if the rating is assigned by Moody’s Investors Services Inc.;

“acceptable insurance” means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained (a) during the construction period of the authorised works; and (b) after the construction period of the authorised works in respect of any use and maintenance of the authorised development by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/credit rating meets the same requirements as an “acceptable credit provider”, such insurance shall include (without limitation):

- (a) a waiver of subrogation and an indemnity to principal clause in favour of National Gas
- (b) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate;

~~“acceptable security” means either:~~

~~(a) a parent company guarantee from a parent company in favour of National Gas to cover the undertaker’s liability to National Gas to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Gas and where required by National Gas, accompanied with a legal opinion confirming the due capacity and~~



~~authorisation of the parent company to enter into and be bound by the terms of such guarantee); or~~

~~(b) a bank bond or letter of credit from an acceptable credit provider in favour of National Gas to cover the undertaker's liability to National Gas for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Gas);~~

“alternative apparatus” means appropriate alternative apparatus to the reasonable satisfaction of National Gas to enable National Gas to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any gas mains, pipes or other apparatus belonging to or maintained by National Gas for the purposes of gas supply, together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Gas for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

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

“commence” and “commencement” has the same meaning as in article 2(1) (interpretation) of this Order save that for the purposes of this Part of this Schedule shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Gas (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National ~~Gas's~~Gas's approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to

apparatus or alternative apparatus under, over, across, along or upon such land;

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

“National Gas” means National Gas Transmission plc (Company Number 02006000) whose registered office is at National Grid House, Warwick Technology Park, Gallows Hill, Warwick, CV34 6DA or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

~~“Network Code” means the network code prepared by National Gas pursuant to Standard Special Condition A11(3) of its Gas Transporter's Licence, which incorporates the Uniform~~

~~Network Code, as defined in Standard Special Condition A11(6) of National Gas's Gas Transporters Licence, as both documents are amended from time to time;~~

~~“Network Code Claims” means any claim made against National Gas by any person or loss suffered by National Gas under the Network Code arising out of or in connection with any failure by National Gas to make gas available for off take at, or a failure to accept gas tendered for delivery from, any entry point to or exit point from the gas national transmission system as a result of the authorised works or any costs and/or expenses incurred by National Gas as a result of or in connection with, it taking action (including purchase or buy back of capacity) for the purpose of managing constraint or potential constraint on the gas national transmission system which may arise as a result of the authorised works;~~

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

“parent company” means a parent company of the undertaker acceptable to and which shall have

been approved by National Gas acting reasonably;

“specified works” means any of the authorised works ~~or activities undertaken in association with the authorised works~~ which:

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise; and/or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise; and/or
- (c) includes any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (National Gas's Gas's policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Gas, High pressure Gas pipelines and associated installation requirements for third parties”.

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

## On Street Apparatus

3. Except for paragraphs 4 (apparatus in streets subject to temporary closure), ~~[9]~~ (retained apparatus: protection of National Gas as gas undertaker), 10 (expenses) and 11 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Gas, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Gas are regulated by the provisions of Part 3 of the 1991 Act.

## Apparatus of National Gas in streets subject to temporary closure

4.—~~(1)~~ (1) Where any street is ~~stopped-up~~closed under article 10 (temporary closure of streets), if National Gas has any apparatus in the street or accessed via that street National Gas has the same rights in respect of that apparatus as it enjoyed immediately before the ~~stopping-up~~closure and the undertaker must grant to National Gas, or procure the granting to National Gas of, legal easements reasonably satisfactory to National Gas in respect of such apparatus and access to it prior to the ~~stopping-up~~closure of any such street ~~or highway~~ but nothing in this paragraph affects any right of the undertaker or National Gas to require the removal of that apparatus under paragraph 7 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 9.

(2) ~~(2)~~ Notwithstanding the temporary ~~stopping-up~~closure or diversion of any ~~highway~~street under the powers of article 10 (temporary closure of streets), National Gas is at liberty at all times to take all necessary access across any such ~~stopped-up~~highway~~closed~~street and to execute and do all such works and things in, upon or under any such ~~highway~~street as may be reasonably necessary or

desirable to enable it to maintain any apparatus which at the time of ~~the stopping-up~~ closure or diversion was in that ~~highway~~ street.

### **Protective works to buildings**

5. The undertaker, ~~in the case of~~ must exercise the powers conferred by article 17 (protective work to buildings), ~~must exercise those powers~~ so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Gas (such consent not to be unreasonably withheld or delayed).

### **Acquisition of land**

~~6.(1)~~ (1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not ~~(a) appropriate or acquire or take temporary possession of any land or apparatus or (b)~~ appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Gas otherwise than by agreement (such agreement not to be unreasonably withheld or delayed).

(2) ~~(2)~~ As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Gas and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Gas or affect the provisions of any enactment or agreement regulating the relations between National Gas and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Gas reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Gas and the undertaker acting reasonably and which must be no less favourable on the whole to National Gas unless otherwise agreed by National Gas, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) ~~(3)~~ Save where otherwise agreed in writing between National Gas and the undertaker, the undertaker and National Gas agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Gas and/or other enactments relied upon by National Gas as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) ~~(4)~~ Any agreement or consent granted by National Gas under paragraph 9 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

### **Removal of apparatus**

7.—~~(1)~~ (1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Gas 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 Gas in accordance with sub-paragraph

(2) to (5).

(2) ~~(2)~~ If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Gas ~~56 days'~~ Gas 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 Gas reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Gas to its reasonable satisfaction (taking into account paragraph 8(1)-~~below~~) the necessary facilities and rights==

- (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

~~(3)~~ ~~(3)~~ If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Gas ~~may in its sole discretion~~ must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to assist the undertaker to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that National Gas shall not be in any way obliged to facilitate the obtaining of any necessary facilities and rights in land as a result of its reasonable assistance to the undertaker and this obligation ~~shall~~ does not extend to the requirement for National Gas to use its compulsory purchase powers to this end unless it elects to so do.

~~(4)~~ ~~(4)~~ Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Gas and the undertaker or in default of agreement settled by arbitration in accordance with this Order.

~~(5)~~ ~~(5)~~ National Gas must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with this Order, and subject to a written diversion agreement having been entered into between the parties (on reasonable terms) and the grant to National Gas of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

### Facilities and rights for alternative apparatus

8.—~~(1)~~ ~~(1)~~ Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Gas facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Gas and must be no less favourable on the whole to National Gas than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Gas, acting reasonably.

(2) Where the terms and conditions referred to in sub-paragraph (1) cannot be agreed between the undertaker and National Gas or where the facilities and rights to be granted to National Gas are in National Gas's reasonable opinion less favourable on the whole to National Gas than the existing facilities and rights enjoyed by it, the matter will be settled by arbitration in accordance with paragraph 15 (Arbitration) of this Part of the Schedule.

~~(3)~~ ~~(2)~~ If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to National Gas than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject ~~the matter may be referred to arbitration in accordance with paragraph 15 (Arbitration) of this Part of this Schedule and~~, the arbitrator must make such provision for the payment of compensation by the undertaker to National Gas as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

## **Retained apparatus: protection of gas undertaker**

9.—~~(1)~~ (1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Gas a plan and, if reasonably required by National Gas, a ground monitoring scheme in respect of those works.

(2) ~~(2)~~ In relation to specified works the plan to be submitted to National Gas under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc;
- (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) any intended maintenance regimes.

(3) ~~(3)~~ The undertaker must not commence any specified works to which sub-paragraphs (1) and (2) apply until National Gas has given written approval of the plan so submitted.

(4) ~~(4)~~ Any approval of National Gas required under sub-paragraph (3)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (6) provided that any conditions are communicated to the undertaker within a period of 42 days beginning with the date on which a plan is submitted to National Gas in accordance with sub-paragraph (1); and,

~~(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (6); and,~~

(b) must not be unreasonably withheld or delayed.

(5) ~~(5)~~ In relation to any ~~work~~ specified works to which ~~sub-paragraphs~~ sub-paragraphs (1) and/or (2) ~~apply~~ applies, National Gas may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus and National Gas must notify the undertaker of such modifications within a period of 42 days beginning with the date on which the plan required under sub-paragraph (1) has been submitted to National Gas.

(6) ~~(6)~~ Works executed under sub-paragraphs (1) or (2) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub paragraph (5), as approved or as amended from time to time by agreement between the undertaker and National Gas and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by National Gas for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Gas will be entitled to watch and inspect the execution of those works.

(7) ~~(7)~~ Where National Gas requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National ~~Gas~~ Gas' reasonable satisfaction prior to the commencement of any specified works for which protective works are required and National Gas must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) ~~(8)~~ If National Gas in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(9) ~~(9)~~ Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified



works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

~~(10)~~ ~~(10)~~ The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in [section 52 of](#) the 1991 Act but in that case it must give to National Gas notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub paragraph (11) at all times;

~~(11)~~ ~~(11)~~ At all times when carrying out any works authorised under the Order National Gas must comply with National ~~Gas's~~ [Gas's](#) policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Gas, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(~G)47 Avoiding Danger from underground services".

~~(12)~~ ~~(12)~~ As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that National Gas retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 10.

## Expenses

~~10.10.(1)~~ ~~(1)~~ Save where otherwise agreed in writing between National Gas and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Gas within 30 days of receipt of an itemised invoice or claim from National Gas all charges, costs and expenses [\(but always excluding any consequential or indirect loss\)](#) reasonably anticipated within the following three months or reasonably and properly

incurred by National Gas in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any ~~authorised~~ [specified](#) works including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Gas in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Gas as a consequence of National Gas;
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 7(3); or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Gas;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which 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 the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph ~~45~~14 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Gas by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Gas in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National

Gas 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**

**11.—**~~(1)~~(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any specified works authorised by this Part of this Schedule or in consequence of the construction, use maintenance or failure of any of the ~~authorised~~specified works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the ~~authorised~~specified works) or property of National Gas, or there is any interruption in any service ~~provided, or in the supply of any goods or energy,~~gas provided by National Gas, or National Gas becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from National Gas the cost reasonably and properly incurred by National Gas in making good such damage or restoring the supply; and
- (b) indemnify National Gas for any other expenses, loss, demands, proceedings, damages, claims, ~~penalty penalties~~ or costs incurred by or recovered from National Gas, by reason or in consequence of any such damage or interruption or National Gas becoming liable to any third party ~~and including Network Code Claims as aforesaid~~ other than arising from any default of National Gas.

(2) The fact that any act or thing may have been done by National Gas on behalf of the undertaker or in accordance with a plan approved by National Gas or in accordance with any requirement of National Gas or under its supervision this will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Gas 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 accord with the approved plan.

(3) Nothing in sub-paragraph (1) ~~shall impose~~imposes any liability on the undertaker in respect of —

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Gas, its officers, servants, contractors or agents;
- (b) any ~~authorised~~specified works and/or any other works authorised by this Part of this Schedule carried out by National Gas as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article ~~85~~85 (~~consent to transfer~~ benefit of Order) subject to the proviso that once such works become apparatus (“new apparatus”), any ~~authorised~~specified works yet to be executed and not falling within this ~~sub-section~~sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 11; and/or
- (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable;

(4) National Gas must give the undertaker reasonable written notice of any such third party claim or demand as soon as reasonably practicable after National Gas became aware of any such claims or demands, and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without ~~first consulting the prior consent of~~ the undertaker ~~and considering their representations (such consent not to be unreasonably withheld or delayed)~~ (which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceeding necessary to resist the claim or demand).

(5) National Gas must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Gas must use ~~its~~all 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 applies where it is within National Gas’s reasonable ability and control to do so and which expressly excludes any

obligation to mitigate liability arising from third parties which is outside of National Gas’s control and if reasonably requested to do so by the undertaker If requested to do so by the undertaker, National Gas must provide an explanation of how the claim has been minimised, where relevant. The undertaker will only be liable under this paragraph for claims reasonably and properly incurred by National Gas.

~~(7) Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Gas or in respect of which National Gas has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Gas’s apparatus until the following conditions are satisfied:~~

~~(a) unless and until National Gas is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Gas has confirmed the same to the undertaker in writing; and~~

(7) (b) Not to commence any specified works unless and until National Gas is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Gas that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Gas has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with ~~Paragraph~~paragraph 11(7) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent National Gas from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

### **Enactments and agreements**

12. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Gas and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Gas in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

### **Co-operation**

~~13.13.(1)~~(1) Where in consequence of the proposed construction of any part of the ~~authorised~~specified works, the undertaker or National Gas requires the removal of apparatus under paragraph 7(2) or National Gas makes requirements for the protection or alteration of apparatus under paragraph ~~98~~, the undertaker ~~shall~~must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the ~~authorised~~specified works and taking into account the need to ensure the safe and efficient operation of National Gas's undertaking and National Gas ~~shall~~must use its best endeavours to co-operate with the undertaker for that purpose.

~~(2)~~(2) For the avoidance of doubt whenever National Gas's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

### **Access**

14. If in consequence of the agreement reached in accordance with paragraph 6(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Gas to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Arbitration**

15. ~~Save for differences or disputes arising under paragraph 7(2), 7(4) 8(1) and 9 any~~Any difference or dispute arising between the undertaker and National Gas under this Part of this Schedule must,

unless otherwise agreed in writing between the undertaker and National Gas, be determined by arbitration in accordance with article 47 (arbitration).

### **Notices**

16. Notwithstanding article 46 (service of notices), any plans submitted to National Gas by the undertaker pursuant to paragraph 9 must be submitted using the LSBUD system (~~<https://lsbud.co.uk/>~~<https://lsbud.co.uk/>) or such other address as National Gas may from time to time appoint instead for that purpose and notify to the undertaker in writing.

## Appendix 4 - Comparison of NGET's preferred protective provisions and the Applicants' preferred protective provisions

~~NATIONAL GRID ELECTRICITY TRANSMISSION PLC~~  
~~Schedule 1~~**SCHEDULE 1**  
**PROTECTIVE PROVISIONS**

**PART ~~1~~7**

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

**Application**

~~1. ~~1.1~~—(1)~~ For the protection of National Grid Electricity Transmission Plc as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Grid Electricity Transmission Plc.

~~(2) (2)~~ Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid Electricity Transmission Plc, where the benefit of this Order is transferred or granted to another person under article ~~{5}~~ (benefit of Order) ~~—~~

- (a) ~~any~~Any agreement of the type mentioned in subparagraph (1) has effect as if it had been made between National Grid Electricity Transmission Plc and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to National Grid Electricity Transmission Plc on or before the date of that transfer or grant.

~~(3) (3)~~ Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid Electricity Transmission Plc (~~but without prejudice to~~see paragraph ~~16~~10(3)~~b~~c).

**Interpretation**

**2. In this Part of this Schedule—**

~~“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than: (i) “A ” if the rating is assigned by Standard & Poor’s Ratings Group or Fitch Ratings; and “A3” if the rating is assigned by Moody’s Investors Services Inc.;~~

~~“acceptable insurance” means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than~~

~~£50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained (a) during the construction period of the authorised works; and (b) after the construction period of the authorised works in respect of any use and maintenance of the authorised works by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/credit rating meets the same requirements as an “acceptable credit provider”; such insurance shall include (without limitation):~~

~~(a) a waiver of subrogation and an indemnity to principal clause in favour of National Grid Electricity Transmission Plc~~

~~(b) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate;~~

~~“acceptable security” means either:~~

~~(a) a parent company guarantee from a parent company in favour of National Grid Electricity Transmission Plc to cover the undertaker’s liability to National Grid Electricity Transmission Plc to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Grid Electricity Transmission Plc and where required by National Grid Electricity Transmission Plc;~~

~~accompanied with a legal opinion confirming the due capacity and authorisation of the parent~~

~~company to enter into and be bound by the terms of such guarantee); or~~

~~(b) a bank bond or letter of credit from an acceptable credit provider in favour of National Grid Electricity Transmission Plc to cover the undertaker's liability to National Grid Electricity Transmission Plc for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Grid Electricity Transmission Plc);~~

~~"access works" means any part of Work Nos. [33A/B, 18A/B] described in Schedule 1 of this Order (authorised development);~~

"alternative apparatus" means appropriate alternative apparatus to the [reasonable](#) satisfaction of National Grid Electricity Transmission Plc to enable National Grid Electricity Transmission Plc to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means:

~~(a)~~ [\(a\)](#) electric lines or electrical plant as defined in the 1989 Act, belonging to or maintained by National Grid Electricity Transmission Plc together with any replacement apparatus; and

~~(b)~~ [\(b\)](#) such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid Electricity Transmission Plc for the purposes of transmission, distribution ~~and/or~~ supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus. ~~and~~

~~(c) any electrical lines or electrical plant as defined in the 1989 Act, any mains, pipes, plant or other apparatus belonging to, operated or maintained by National Grid Electricity Transmission Plc for the purposes of the construction, operation and maintenance of the Birkhill Wood Project, whether temporary or permanent, and includes, where the context so requires, apparatus constructed as part of the authorised works and intended for the beneficial use by National Grid Electricity Transmission Plc ("Birkhill Wood apparatus"); and~~

~~(d) any electrical lines or electrical plant as defined in the 1989 Act, any mains, pipes, plant or other apparatus belonging to, operated or maintained by National Grid Electricity Transmission Plc for the purposes of the construction, operation and maintenance of the North Humber to High Marnham Project, whether temporary or permanent, and includes, where the context so requires, apparatus constructed as part of the authorised works and intended for the beneficial use by National Grid Electricity Transmission Plc ("North Humber to High Marnham apparatus"); and~~

~~(e) any electrical lines or electrical plant as defined in the 1989 Act, any mains, pipes, plant or other apparatus belonging to, operated or maintained by National Grid Electricity Transmission Plc for the purposes of the construction, operation and maintenance of the Wanlass Beck Project, whether temporary or permanent, and includes, where the context so requires, apparatus constructed as part of the authorised works and intended for the beneficial use by National Grid Electricity Transmission Plc ("Wanlass Beck apparatus");~~

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

~~(b) "Birkhill Wood Project" means [the proposed new substation to be known as Birkhill Wood Substation to be located at Creyke Beck in the East Riding of Yorkshire, construction of access road from the A1079, overhead line works, utilities and waterecourse crossings and associated works to be undertaken by National Grid Electricity Transmission Plc and any temporary construction compounds and laydown areas for such works];~~

~~(c) "Birkhill Wood Site" includes—~~

~~(a) land on which any Birkhill Wood apparatus is situated; and~~

~~(b) land on which Birkhill Wood apparatus is anticipated to be situated which is necessary for the construction, use or maintenance of the Birkhill Wood Project (in so far as the same has been notified by National Grid Electricity Transmission Plc in writing to the undertaker);~~

~~(d)~~ "commence" and "commencement" in [paragraph 8 of](#) this Part of this Schedule ~~shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment~~ [has the same meaning as in article 2 \(interpretation\) of this Order;](#)

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid Electricity Transmission Plc (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Grid Electricity Transmission ~~Plc's~~Plc's approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

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

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

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

~~“Dogger Bank South project works” means any part of Work Nos. 15A/B, 18A/B, 31A/B, 32A/B, 34A/B described in Schedule 1 of this Order (authorised development)~~

~~“NGESO” means as defined in the STC;~~

~~(e) “North Humber to High Marnham Project” means the proposed new high voltage electricity transmission line and associated works between a new substation at Creyke Beek in the East Riding of Yorkshire and a new substation at High Marnham in Nottinghamshire to be undertaken by National Grid Electricity Transmission Plc;~~

~~“North Humber to High Marnham Site” includes—~~

~~(a) land on which any North Humber to High Marnham apparatus is situated; and~~

~~(b) land on which North Humber to High Marnham apparatus is anticipated to be situated which is necessary for the construction, use or maintenance of the North Humber to High Marnham Project (in so far as the same has been notified by National Grid Electricity Transmission Plc in writing to the undertaker);~~

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

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

~~“shared area works” means:~~

~~(a) the Dogger Bank South project works;~~

~~(b) the access works; and~~

~~(c) any part of the authorised works taking place on any land associated with the Birkhill Wood Project, the North Humber to High Marnham Project, the Wanlass Beek Site and/or any access thereto;~~

*[Different first page setting changed from off in original to on in modified.]*

~~(f)~~ “specified works” means any of the authorised works ~~or activities undertaken in association with the authorised works~~ which:

~~(g)~~ (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph ~~7~~6(2) or otherwise; and/or

~~(h)~~ (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph ~~7~~6(2) or otherwise.; ~~and/or~~

~~(i)~~ (c) includes any of the activities that are referred to in development near overhead lines EN43-8 and HSE’s guidance note 6 “Avoidance of Danger from Overhead Lines”.

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

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

~~(l)~~ “Transmission Owner” means as defined in the STC;

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

~~(m)~~ “Wanlass Beek Project” means [the proposed extension of the existing Wanlass Beek Substation, construction of access road from the A1079, overhead line works, utilities and watercourse crossings and associated works to be undertaken by National Grid Electricity Transmission Plc and any temporary construction compounds and laydown areas for such works]<sup>1</sup>;

“Wanlass Beek Site” includes—

(a) land on which any Wanlass Beek apparatus is situated; and

(b) land on which Wanlass Beek apparatus is anticipated to be situated which is necessary for the construction, use or maintenance of the Wanlass Beek Project (in so far as the same has been notified by National Grid Electricity Transmission Plc in writing to the undertaker);

**Interaction with the North Humber to High Marnham Project, Wanlass Beek Project and/or the Birkhill Wood Project**

~~3. Without limiting any other provision of this Part of this Schedule, the undertaker must use reasonable endeavours to avoid any conflict arising between the construction, maintenance and operation of the authorised works and the North Humber to High Marnham Project, the Wanlass Beek Project and/or the Birkhill Wood Project. For the purposes of this paragraph, “reasonable endeavours” means—~~

~~(a) undertaking consultation on the detailed design and programming of the shared area works and all works associated with or ancillary to the shared area works to ensure that the design and programme for the Dogger Bank South project works does not unreasonably impede or interfere with the North Humber to High Marnham Project, the Wanlass Beek Project and/or the Birkhill Wood Project;~~

~~(b) having regard to the proposed programme of works for the North Humber to High Marnham Project, the Wanlass Beek Project and/or the Birkhill Wood Project as may be made available to the undertaker by National Grid Electricity Transmission Plc and facilitating a co-ordinated approach to the programme, land assembly, and the carrying out of the shared area works and the North Humber to High Marnham Project, the Wanlass Beek Project and/or the Birkhill Wood Project;~~

~~(c) providing a point of contact for continuing liaison and co-ordination throughout the construction and operation of the authorised works; and~~

~~(d) keeping National Grid Electricity Transmission Plc informed on the programme of works for the authorised works.~~

**Shared area works**

*[Different first page setting changed from off in original to on in modified.]*



4. The undertaker must not except with the prior written agreement of National Grid Electricity Transmission Plc carry out the shared area works, or any part of it.

5.—

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(1) Before beginning to construct any shared area works, or any part of it, the undertaker must submit to National Grid Electricity Transmission Plc plans of the relevant shared area works (or part of it) and such further particulars available to it as National Grid Electricity Transmission Plc may request within 21 days of receipt of the plans reasonably requested.

(2) Any shared area works must not be constructed except in accordance with such plans as may be approved in writing by National Grid Electricity Transmission Plc.

6.—(1) Any approval of National Grid Electricity Transmission Plc required under this Schedule—

(a) must not be unreasonably withheld or delayed;

(b) in the case of a refusal must be accompanied by a statement of grounds or refusal; and

(c) may be given subject to such reasonable requirements as National Grid Electricity Transmission Plc may have in connection with the safe, economic and efficient construction, commissioning, operation, maintenance and future decommissioning of the North Humber to High Marnham Project, the Wanlass Beck Project and/or the Birkhill Wood Project or otherwise for the protection of the North Humber to High Marnham apparatus, the Wanlass Beck apparatus and/or the Birkhill Wood Project apparatus;

(d) provided always that in relation to a refusal under sub paragraph (b) or any requirements requested pursuant to sub paragraph (c) the undertaker shall be permitted to refer such matters to dispute resolution pursuant to paragraph [20]

(e) (2) National Grid Electricity Transmission Plc must employ reasonable endeavours to respond to the submission of any plans within a period of 56 days from the date of submission of the plans. If National Grid Electricity Transmission Plc require further particulars, such particulars must be requested by National Grid Electricity Transmission Plc no later than 21 days from the submission of plans and thereafter National Grid Electricity Transmission Plc must employ reasonable endeavours to respond to the submission within 56 days from receipt of the further particulars.

(f) —

7.—(1) The undertaker must give to National Grid Electricity Transmission Plc not less than 14 days' notice in writing of its intention to commence construction of any shared area works and notice in writing of its completion not later than 7 days after the date on which it is completed and National Grid Electricity Transmission Plc will be entitled by its officer to watch and inspect the construction of such works.

(2) If any part of the shared area works is constructed otherwise than in accordance with paragraph 5(2) above National Grid Electricity Transmission Plc may by notice in writing identify the extent to which the shared area works do not comply with the approved details and request the undertaker at the undertaker's own expense carry out remedial works so as to comply with the requirements of paragraph 5(2) of this Schedule or such alternative works as may be agreed with National Grid Electricity Transmission Plc or as otherwise may be agreed between the parties.

(3) Subject to sub paragraph (4), if within a reasonable period, being not less than 28 days beginning with the date when a notice under sub paragraph (2) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, National Grid Electricity Transmission Plc may execute the works specified in the notice and any reasonable expenditure incurred by National Grid Electricity Transmission Plc in so doing will be recoverable from the undertaker.

(4) In the event of any dispute as to whether sub paragraph (2) is properly applicable to any work in respect of which notice has been served under that sub paragraph, or as to the reasonableness of any requirement of such a notice, National Grid Electricity Transmission Plc will not, except in the case of an emergency, exercise the powers conferred by sub paragraph (3) until the dispute has

~~been finally determined in accordance with paragraph [20]~~

## On Street Apparatus

~~3. 8.-~~ Except for paragraphs ~~[9]4~~ (apparatus of National Grid Electricity Transmission Plc in streets subject to temporary closure), ~~[13]8~~ (retained apparatus: protection of National Grid Electricity Transmission Plc as Electricity Undertaker), ~~[15]9~~ (expenses) and

~~10 [16]~~ (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid Electricity Transmission Plc, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid Electricity Transmission Plc are regulated by the provisions of Part 3 of the 1991 Act.

## Apparatus of National Grid Electricity Transmission Plc in streets subject to temporary closure

~~4. 9.- (1) (1)~~ Where any street is closed under article ~~[10]1~~ (temporary closure of streets), if National Grid Electricity Transmission Plc has any apparatus in the street or accessed via that street National Grid Electricity Transmission Plc has the same rights in respect of that apparatus as it enjoyed immediately before the closure and the undertaker must grant to National Grid Electricity Transmission Plc, or procure the granting to National Grid Electricity Transmission Plc of, legal easements reasonably satisfactory to National Grid Electricity Transmission Plc in respect of such apparatus and access to it prior to the closure of any such street but nothing in this paragraph affects any right of the undertaker or National Grid Electricity Transmission Plc to require the removal of that apparatus under paragraph ~~[11]6~~ or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph ~~[14]8~~.

~~(2) (2)~~ Notwithstanding the temporary closure or diversion of any street under the powers of article ~~[10]1~~ (temporary closure of streets), National Grid Electricity Transmission Plc is at liberty at all times to take all necessary access across any such closed 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 closure or diversion was in that street.

## Protective works to buildings

~~5. 10.-~~ The undertaker, ~~in the case of~~ must exercise the powers conferred by article ~~[17]1~~ (protective work to buildings), ~~must exercise those powers~~ so as not to obstruct or render less convenient the access to any apparatus ~~, the Wanlass Beck Site, the North Humber to High Marnham Site or to the Birkhill Wood Site~~ without the prior written consent of National Grid Electricity Transmission Plc (such consent not to be unreasonably withheld or delayed).

### Acquisition of land

~~11. (1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Grid Electricity Transmission Plc otherwise than by agreement.~~

~~(2) Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not unless otherwise agreed in writing with National Grid Electricity Transmission Plc appropriate, acquire or take temporary possession of any land forming part of the North Humber to High Marnham Site, the Wanlass Beck Site, the Birkhill Wood Site (such agreement not to be unreasonably withheld or delayed) and/or any access thereto.~~

~~(3) As a condition of an agreement between the parties in sub paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid Electricity Transmission Plc and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid Electricity Transmission Plc or affect the provisions of any enactment or agreement regulating the relations between National Grid Electricity Transmission Plc and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid~~

~~Electricity Transmission Plc reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid Electricity Transmission Plc and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid Electricity Transmission Plc unless otherwise agreed by National Grid Electricity Transmission Plc, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.~~

~~(4) Save where otherwise agreed in writing between National Grid Electricity Transmission Plc and the undertaker the undertaker and National Grid Electricity Transmission Plc agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid Electricity Transmission Plc and/or other enactments relied upon by National Grid Electricity Transmission Plc as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.~~

~~(5) Any agreement or consent granted by National Grid Electricity Transmission Plc under paragraph 15 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).~~

## **Removal of apparatus**

~~6. 12.~~ ~~(1)~~ (1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid Electricity Transmission Plc 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 Electricity Transmission Plc in accordance with sub-paragraph (2) to (5).

~~(2)~~ ~~(2)~~ If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid Electricity Transmission Plc ~~a minimum of 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 Electricity Transmission Plc reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph

~~(3)~~ (3), ~~secure any necessary consents for the alternative apparatus and~~ afford to National Grid Electricity Transmission Plc to its reasonable satisfaction (taking into account paragraph ~~8~~7(1)) the necessary facilities and rights —

- (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

~~(3)~~ ~~(4)~~ If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid Electricity Transmission Plc must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to assist the undertaker to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation does not extend to the requirement for National Grid Electricity Transmission Plc to use its compulsory purchase powers to this end unless it elects to so do.

~~(4)~~ ~~(5)~~ Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid Electricity Transmission Plc and the undertaker or in default of agreement settled by arbitration in accordance with this Order.

~~(5)~~ ~~(6)~~ National Grid Electricity Transmission Plc must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with this Order, and subject to a-

~~written diversion agreement having been entered into between the parties and~~ the grant to National Grid Electricity Transmission Plc of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

#### **Facilities and rights for alternative apparatus**

7. 13. ~~(1)~~ (1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid Electricity Transmission Plc facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National ~~and must be no less favourable on the whole to National~~ Grid Electricity Transmission Plc ~~than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid Electricity Transmission Plc or in default of agreement settled by arbitration in accordance with this Order.~~

(2) ~~(2)~~ If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to National Grid Electricity Transmission Plc than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the ~~matter may be referred to arbitration in accordance with paragraph 20 (Arbitration) of this Part of this Schedule and the~~ arbitrator must make such provision for the payment of compensation by the undertaker to

National Grid Electricity Transmission Plc as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

#### **Retained apparatus: protection of National Grid Electricity Transmission Plc as Electricity Undertaker**

8. 14. ~~(1)~~ (1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid Electricity Transmission Plc a plan of the works to be executed and seek from National Grid Electricity Transmission Plc details of the underground extent of their electricity assets.

(2) ~~(2)~~ In relation to specified works the plan to be submitted to National Grid Electricity Transmission Plc under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes; and
- (g) an assessment of risks of rise of earth issues.
- (h) a ground monitoring scheme, where required.

(3) ~~(3)~~ In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing:—

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;

- (d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;
- (f) written details of the operations and maintenance regime for any cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid Electricity Transmission Plc's engineers; and
- (h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of up to and including 26 tonnes in weight.

~~(4)~~ ~~(4)~~ The undertaker must not commence any specified works to which sub-paragraphs (2) or (3) apply until National Grid Electricity Transmission Plc has given written approval of the plan so submitted.

~~(5)~~ ~~(5)~~ Any approval of National Grid Electricity Transmission Plc required under sub-paragraph ~~(4)~~—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or ~~(7)~~ provided that any conditions are communicated to the undertaker within a period of 28 days beginning with the date on which a plan is submitted to National Grid Electricity Transmission Plc in accordance with sub-paragraph (1); and,

~~(7) and,~~

~~may be given subject to such reasonable requirements as National Grid Electricity Transmission Plc may have in connection with the safe and efficient construction, commissioning, operation and maintenance of the North Humber to High Marnham Project, the Wanlass Beck Project and/or the Birkhill Wood Project; and~~

- (b) must not be unreasonably withheld or delayed.

~~(6)~~ ~~(6)~~ In relation to any specified works to which sub-paragraphs (2) or (3) applies, National Grid Electricity Transmission Plc may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus and National Grid Electricity Transmission Plc must notify the undertaker of such modifications within a period of 28 days beginning with the date on which the plan required under sub-paragraph (2) or (3) has been submitted to National Grid Electricity Transmission Plc.

~~(7)~~ ~~(7)~~ Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by

agreement between the undertaker and National Grid Electricity Transmission Plc and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid Electricity Transmission Plc for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid Electricity Transmission Plc will be entitled to watch and inspect the execution of those works.

~~(8)~~ ~~(8)~~ Where National Grid Electricity Transmission Plc requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, ~~such protective works~~ must be carried out to National Grid Electricity Transmission Plc's reasonable satisfaction prior to the commencement of any ~~authorised~~ specified works ~~(or any relevant part thereof)~~ for which protective works are required and National Grid Electricity Transmission Plc ~~shall~~ must give notice of its requirement for such works within ~~42~~ 28 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

~~(9)~~ ~~(9)~~ If National Grid Electricity Transmission Plc in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to ~~8~~ 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

~~(10)~~ ~~(10)~~ Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the ~~authorised~~ specified

works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph ~~shall~~will apply to and in respect of the new plan.

~~(11) (11)~~ The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in section 52 of the 1991 Act but in that case it must give to National Grid Electricity Transmission Plc notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances ~~and comply with sub-paragraph [(12)] at all times.~~

~~At all times when carrying out any works authorised under the Order, the undertaker must comply with National Grid Electricity Transmission Plc's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".~~

## Expenses

~~9. 15.(1)~~ ~~—(1)~~ Save where otherwise agreed in writing between National Grid Electricity Transmission Plc and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid Electricity Transmission Plc within ~~30~~60 days of receipt of an itemised invoice or claim from National Grid Electricity Transmission Plc all charges, costs and expenses ~~reasonably anticipated within the following three months or~~ (but always excluding any consequential or indirect loss) reasonably and properly incurred by National Grid Electricity Transmission Plc in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any ~~authorised~~specified works including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Grid Electricity Transmission Plc in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid Electricity Transmission Plc as a consequence of National Grid Electricity Transmission Plc: —
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph ~~[7]~~6(3); or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid Electricity Transmission Plc;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which 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 the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph ~~[14]~~ (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which



would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid Electricity Transmission Plc by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Grid Electricity Transmission Plc in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid Electricity Transmission Plc 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**

~~10.16.~~ ~~(1)~~ (1) Subject to sub-paragraphs (2) and (3) and to article 51 (no double recovery), if by reason or in consequence of the construction of any specified works authorised by this Part of this Schedule or in consequence of the construction, use maintenance or failure of any of the specified works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule, or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the specified works) or property of National Grid Electricity Transmission Plc, or there is any interruption in any service provided by National Grid Electricity Transmission Plc, or National Grid Electricity Transmission Plc becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from National Grid Electricity Transmission Plc the cost reasonably and properly incurred by National Grid Electricity Transmission Plc in making good such damage or restoring the supply; and
- (b) indemnify National Grid Electricity Transmission Plc for any other expenses, loss, demands, proceedings, damages, claims, penalties or costs incurred by or recovered from National Grid Electricity Transmission Plc, by reason or in consequence of any such damage or interruption or National Grid Electricity Transmission Plc becoming liable to any third party as aforesaid other than arising from any default of National Grid Electricity Transmission Plc.

(2) The fact that any act or thing may have been done by National Grid Electricity Transmission Plc on behalf of the undertaker or in accordance with a plan approved by National Grid Electricity Transmission Plc or in accordance with any requirement of National Grid Electricity Transmission Plc or under its supervision this will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Grid Electricity Transmission Plc 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 accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid Electricity Transmission Plc, its officers, servants, contractors or agents;
- (b) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable;



- (c) any specified works and/or any other works authorised by this Part of this Schedule carried out by National Grid Electricity Transmission Plc as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article ~~[5]~~ (benefit of Order) subject to the proviso that once such works become apparatus (“new apparatus”), any specified works yet to be executed and not falling within this sub-section 3(c) will be subject to the full terms of this Part of this Schedule including this paragraph 10;

(4) National Grid Electricity Transmission Plc must give the undertaker reasonable written notice of any such third party claim or demand as soon as reasonably practicable after National Grid Electricity Transmission Plc became aware of any such claims or demands, and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without the prior consent of the undertaker (which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand).

(5) National Grid Electricity Transmission Plc must use all reasonable steps to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies. If requested to do so by the undertaker, National Grid Electricity Transmission Plc must provide an explanation of how the claim has been minimised. The undertaker will only be liable under this paragraph for claims reasonably and properly incurred by National Grid Electricity Transmission Plc.

(6) National Grid Electricity Transmission Plc must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

~~(7) Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Grid Electricity Transmission Plc or in respect of which National Grid Electricity Transmission Plc has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Grid Electricity Transmission Plc’s apparatus until the following conditions are satisfied:~~

~~(a) unless and until National Grid Electricity Transmission Plc is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid Electricity Transmission Plc has confirmed the same to the undertaker in writing; and~~

~~(b) unless and until National Grid Electricity Transmission Plc is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Grid Electricity Transmission Plc that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid Electricity Transmission Plc has confirmed the same in writing to the undertaker.~~

~~(8) In the event that the undertaker fails to comply with 11(7) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent National Grid Electricity Transmission Plc from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.~~

## **Enactments and agreements**

~~11.17.~~ Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid Electricity Transmission Plc and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid Electricity Transmission Plc in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

## **Co-operation**

~~12.18.(1)~~ (1) Where in consequence of the proposed construction of any part of the ~~authorised~~specified works, the undertaker or National Grid Electricity Transmission Plc requires the

removal of apparatus under paragraph ~~12~~6(2) or National Grid Electricity Transmission Plc makes requirements for the protection or alteration of apparatus under paragraph ~~14~~8, the undertaker ~~shall~~must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the ~~authorised~~specified works and taking into account the need to ensure the safe and efficient operation of National Grid Electricity Transmission Plc's undertaking and National Grid Electricity Transmission Plc ~~shall~~must use its best endeavours to co-operate with the undertaker for that purpose.

~~(2) (2) Whenever~~For the avoidance of doubt whenever National Grid Electricity Transmission Plc's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

### **Access**

~~13.19.~~ If in consequence of the ~~agreement reached in accordance with paragraphs 11(1) and 11(2) or the powers granted under this Order the access to any apparatus, the North Humber to High Marnham Site, the Wanlass Beck Site and/or the Birkhill Wood Site~~ is materially obstructed, the undertaker must use reasonable endeavours to provide such alternative means of access over the Order land to such apparatus ~~, the North Humber to High Marnham Site, the Wanlass Beck Site and/or the Birkhill Wood Site~~ as will enable National Grid Electricity Transmission Plc to access, maintain or use the apparatus ~~, the North Humber to High Marnham Site, the Wanlass Beck Site and/or the Birkhill Wood Site~~ no less effectively than was possible before such obstruction.

### **Arbitration**

~~14.20.~~ ~~Save for differences or disputes arising under paragraph 12(2), 12(4) 13(1) and 14 any~~Any difference or dispute arising between the undertaker and National Grid Electricity Transmission Plc under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid Electricity Transmission Plc, be determined by arbitration in accordance with article ~~{47}~~ (arbitration).

### **Notices**

~~15.21.~~ ~~Any~~Notwithstanding article 46 (service of notices), any plans submitted to National Grid Electricity Transmission Plc by the undertaker pursuant to this Part must be submitted using the LSBUD system (~~https://lsbud.co.uk/~~https://lsbud.co.uk/) or ~~to~~ such other address as National Grid Electricity Transmission Plc may from time to time appoint instead for that purpose and notify to the undertaker in writing.

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South (West) Limited

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