

# Cottam Solar Project

## Applicant's Closing Statements

Prepared by: Lanpro Services Ltd.  
March 2024

PINS reference: EN010133  
Document reference: EX6/C8.1.37  
Rule 8(1)(b)



## Contents

<b><u>1</u></b>	<b><u>INTRODUCTION</u></b>	<b><u>4</u></b>
1.1	PURPOSE OF THIS DOCUMENT	4
1.2	THE SCHEME AND THE APPLICATION	4
1.3	THE EXAMINATION	4
<b><u>2</u></b>	<b><u>POLICY CONTEXT, NEED AND BENEFITS</u></b>	<b><u>5</u></b>
<b><u>3</u></b>	<b><u>LANDSCAPE AND VISUAL MATTERS</u></b>	<b><u>10</u></b>
<b><u>4</u></b>	<b><u>CULTURAL HERITAGE</u></b>	<b><u>11</u></b>
<b><u>5</u></b>	<b><u>CUMULATIVE EFFECTS</u></b>	<b><u>14</u></b>
<b><u>6</u></b>	<b><u>PROJECT LIFESPAN OF UP TO 60 YEARS</u></b>	<b><u>16</u></b>
<b><u>7</u></b>	<b><u>BLYTON PARK RACE TRACK</u></b>	<b><u>17</u></b>
<b><u>8</u></b>	<b><u>UPDATE ON PROTECTIVE PROVISIONS</u></b>	<b><u>18</u></b>
<b><u>9</u></b>	<b><u>CONCLUSION</u></b>	<b><u>20</u></b>
	<b><u>APPENDIX A – UPDATED SCHEDULE 16 TO THE DRAFT DCO</u></b>	<b><u>21</u></b>

## Issue Sheet

Report Prepared for: Cottam Solar Project Ltd.  
Examination Deadline 6

### Applicant's Closing Statements

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## **1 Introduction**

### **1.1 Purpose of this document**

- 1.1.1 These Closing Statements have been prepared by Cottam Solar Project Limited (the Applicant) to summarise the Applicant's position on matters that remain outstanding at the conclusion of the Examination of the application for a Development Consent Order (DCO) to construct, operate, maintain and decommission the Cottam Solar Project (the Scheme).

### **1.2 The Scheme and the Application**

- 1.2.1 The Scheme comprises a number of land parcels (the 'Site' or 'Sites') described as Cottam 1, 2, 3a and 3b for the solar arrays, grid connection infrastructure and Energy Storage; and the Cable Route Corridors. The Sites are located approximately 6.5km south-east and 4km north-east of Gainsborough. See the Site Location Plan **[REP4-003]** for the site locations.
- 1.2.2 The Scheme constitutes a Nationally Significant Infrastructure Project (NSIP). An application for a DCO for the Scheme was submitted by the Applicant on 12 January 2023. The applicant was accepted for examination on 9 February 2023.
- 1.2.3 The Applicant submitted a Change Application to modify the Order Limits on 8 December 2023. The Examining Authority (ExA) accepted the Change Application on 18 December 2023.
- 1.2.4 The likely environmental effects of the Scheme are assessed in the Environmental Statement **[APP-036 to APP-057, REP-010, REP-012, REP-014, REP2-008, REP2-010]** that accompanies the DCO application.

### **1.3 The Examination**

- 1.3.1 The Examination of the Scheme opened on 5 September 2023 and closes on 5 March 2024. Prior to and during the Examination, the Applicant has worked positively to address and resolve issues that have been raised by statutory consultees, interested parties and members of the public. The Applicant has agreed Statements of Common Ground with the key stakeholders, with positions summarised in the Statement of Commonality **[REP5-027]**. At each Examination Deadline, the Applicant has provided comprehensive commentary on the submissions of others.
- 1.3.2 There remain a number of points of disagreement that it has not been possible to resolve during the Examination. In the following sections, the Applicant sets out its position on these matters, summarising and cross-referring to previous submissions made during the course of the Examination where appropriate.

## 2 Policy Context, Need and Benefits

- 2.1.1 On 17 January 2024, the Secretary of State formally designated the suite of Energy National Policy Statements which were published in November 2023 (EN-1 to EN-5). The November 2023 NPSs replace the previous suit of NPSs, which were first designated in 2011, subject transitional provisions.
- 2.1.2 These transitional provisions, set out in paragraph 1.6.2 of the Overarching National Policy Statement for energy (EN-1) (November 2023), explain that *"any application accepted for examination before designation of the 2023 amendments, the 2011 suite of NPSs should have effect in accordance with the terms of those NPS"*.
- 2.1.3 Solar was not included within the scope of the 2011 NPSs. This is because, at that time the 2011 NPSs were designated, solar technology had not yet been proven at scale.
- 2.1.4 Paragraph 1.6.3 of NPS EN-1 (November 2023) states:  
*"The 2023 amendments will therefore have effect only in relation to those applications for development consent accepted for examination, after the designation of those amendments. However, any emerging draft NPSs (or those designated but not yet having effect) are potentially capable of being important and relevant considerations in the decision-making process. The extent to which they are relevant is a matter for the relevant Secretary of State to consider within the framework of the Planning Act 2008 and with regard to the specific circumstances of each Development Consent Order application"*.
- 2.1.5 As such, it is the Applicant's position that, whilst the 2011 and November 2023 NPSs do not have effect in relation to the DCO application for the Scheme (and section 104 of the Planning Act 2008 does not therefore apply), both are "important and relevant" considerations in the Secretary of State's decision-making process, in accordance with the provisions of section 105(2)(c) of the Planning Act 2008 (decisions in cases where no national policy statement has effect).
- 2.1.6 The Applicant has submitted that both the 2011 and 2023 NPSs are important and relevant considerations, and significant weight should be given to them, when determining the DCO Application. Since the November 2023 NPSs were designated, the Applicant has updated the Planning Statement [REP4-039], so that it now includes information explaining how the Scheme is compliant with NPS EN-1, NPS EN-3 (the National Policy Statement for Renewable Energy) and NPS EN-5 (National Policy Statement for Electricity Networks Infrastructure). For further information on the Applicant's case, please refer to section 1.3 of the Planning Statement [REP4-039]. A more detailed explanation of the legislative and policy context of the Scheme is also set out in Section 5 of the Planning Statement [REP4-039], which includes further reasoning as to why the Energy NPSs are important and relevant matters in the Secretary of State's decision.
- 2.1.7 The November 2023 NPSs represent the Government's latest energy-related policy, and reflect the urgent need, and unambiguous policy support, for low carbon

infrastructure. NPS EN-3 also includes technology specific policies relevant to solar PV and the role of energy storage as associated development. For these reasons, it is the Applicant's position that greater weight should be given to them, as compared to the 2011 NPSs (see paragraph 7.1.3 of the Planning Statement [REP4-039]).

- 2.1.8 In paragraphs 2.1.9 to 2.1.14 below, the Applicant highlights key sections of the November 2023 NPSs, which demonstrate the critical role of ground mounted solar PV and BESS in supporting the delivery of the UK's international climate change commitments, helping the UK transition to an affordable and secure carbon-free electricity system by 2035, and supporting achieving net zero in the UK by 2050. Please refer to section 4 of the Statement of Need [APP-350] for further information on how the Scheme will assist in the UK government in achieving its legal commitment to decarbonise.
- 2.1.9 Paragraph 3.1.1 of NPS EN-1 (November 2023) states that: *"Government sees a need for significant amounts of new large-scale energy infrastructure to meet its energy objectives and ... considers that the need for such infrastructure is urgent."*
- 2.1.10 Paragraph 3.3.20 of NPS EN-1 (November 2023) reiterates the Government's view that *"a secure, reliable, affordable, net zero consistent system in 2050 is likely to be composed predominantly of wind and solar."* Paragraph 3.3.60 confirms that solar schemes are *"included within the scope of this NPS"* and would be classed as NSIPs if, like the Scheme, they are above the applicable capacity threshold of 50MW.
- 2.1.11 Paragraphs 3.3.57 to 3.3.64 of NPS EN-1 (November 2023) establish the urgent need for electricity generating capacity. Paragraph 3.3.61 states that *"The need for all these types of infrastructure is established by this NPS and a combination of many or all of them is urgently required for both energy security and Net Zero"* and paragraph 3.3.62 states the Government's conclusion that *"there is a critical national priority (CNP) for the provision of nationally significant low carbon infrastructure"* including all onshore and offshore renewable generation (paragraph 4.2.5). Therefore, all large-scale, ground-mount solar projects, including the Scheme, constitute CNP infrastructure.
- 2.1.12 Paragraph 3.3.63 of NPS-EN-1 (November 2023) states that *"the urgent need for CNP Infrastructure to achieving our energy objectives, together with the national security, economic, commercial, and net zero benefits, will in general outweigh any other residual impacts not capable of being addressed by application of the mitigation hierarchy"*. This section of NPS EN-1 concludes that *"Government strongly supports the delivery of CNP Infrastructure and it should be progressed as quickly as possible"* (see paragraph 3.3.64).
- 2.1.13 Paragraph 4.1.7 of NPS EN-1 (November 2023) states that, for projects which qualify as CNP infrastructure, *"it is likely that the need case will outweigh the residual effects in all but the most exceptional cases"*.
- 2.1.14 It is the Applicant's position that, having applied the mitigation hierarchy, none of the residual adverse effects of the Scheme set out in Chapter 23: Summary of

Significant Effects of the Environmental Statement [REP2-010] can reasonably be considered to be “exceptional”. Therefore, the need case for the Scheme outweighs the residual effects that have been identified.

- 2.1.15 NPS EN-1 (November 2023) also establishes the urgent need for “*new electricity network infrastructure to be brought forward at pace to meet our energy objectives*” (paragraph 3.3.65), recognising that the current network and available connection points are not of sufficient scale to connect the capacity required. New electricity networks and connections to them also constitute CNP infrastructure (paragraph 4.2.5).
- 2.1.16 In November 2023, the Department of Energy Security and Net Zero and Ofgem (the independent energy regulator) published the Connections Action Plan. This Plan sets out six key areas of action to speed up connections to the electricity network across Great Britain, in recognition of how critical this progress is to the decarbonisation of the national grid. Action Area three is to “Better utilise existing network capacity” to reduce connection timelines. Action Area four is to “Better allocate available network capacity” to connect projects that are readier to progress and are able to quickly make use of that capacity.
- 2.1.17 The Scheme proposes to connect to an existing and available connection point on the National Electricity Transmission System (NETS), the benefits of which are described in Section 9 of the Statement of Need [APP-350]. The Scheme therefore presents an opportunity to reduce the need for new infrastructure, by utilising existing infrastructure. It is the Applicant's position that consenting the Scheme would deliver significant energy security, decarbonisation and affordability benefits to UK consumers as the Scheme can be delivered quickly and make use of an existing connection to the NETS. The Scheme is therefore in compliance with Action Areas three and four in the Connections Action Plan.
- 2.1.18 Section 12 of the Statement of Need [APP-350] summarises the Applicant's case on the urgent need for the Scheme. In oral and written submissions throughout the Examination of this application, the Applicant has reiterated this case, which it considers has been strengthened by the designation of the November 2023 Energy NPSs which clearly demonstrate the government's commitment to the delivery of ground mounted solar PV and the role of energy storage. In summary:
- “12.1.6 ...the meaningful and timely contributions offered by The Scheme to UK decarbonisation and security of supply, while helping lower bills for consumers throughout its operational life, will be critical on the path to Net Zero. Without The Scheme, a significant and vital opportunity to develop a large-scale low-carbon generation scheme will have been passed over, increasing materially the risk that future Carbon Budgets and Net Zero 2050 will not be achieved.*
- 12.1.7 This Scheme is a leading GB large -scale solar scheme, and is an essential stepping stone towards the future of efficient decarbonisation through the deployment of large -*



*scale, technologically and geographically diverse low-carbon generation schemes. This Scheme addresses all important aspects of existing and emerging government policy."*

- 2.1.19 Taking into account the context of the definition of CNP infrastructure in NPS EN-1, and the test that *"it is likely the need case will outweigh the residual effects in all but the most exceptional cases"* (paragraph 4.1.7), the Planning Statement [REP4-039] concludes that the residual adverse effects are outweighed by the Scheme's benefits. Section 4.1.2 of the Planning Statement [REP4-039] sets out that the principal need for the Scheme is centred on the significant contribution it will make to the three important national energy policy aims of:

*"Decarbonisation – achieving Net Zero carbon emissions by 2050, requiring deployment of zero-carbon electricity generation at scale. The Scheme will generate large-scale low carbon electricity which could be operational by 2029.*

*Security of supply – geographically and technologically diverse supplies. The Scheme will contribute to security of supply due to its large scale; predictable output; ability to complement other renewables; and the efficient opportunity to integrate Energy Storage.*

*Affordability - The Scheme will provide large-scale generation at low cost which will provide value for money for end-use consumers."*

- 2.1.20 In addition to these benefits, the other benefits of the Scheme are described in detail at section 4.6 of the Planning Statement [REP4-039] and include:
- 2.1.21 A significant net gain for biodiversity (BNG), with 96.09% gains provided in habitat, 70.22% gains in hedgerow and 10.69% gains in river units, in line with local and national planning policies. Provision of BNG is secured through requirement 9 of Schedule 2 to the draft DCO [REP5-005] and the approval and implementation of the measures in a Landscape and Ecological Management Plan, provision of which is secured through requirement 7 of Schedule 2 to the draft DCO [REP5-005]. This must be substantially in accordance with the Outline Landscape and Ecological Management Plan [REP4-035].
- 2.1.22 A new permissive path from Stow village to Stow Pastures that will be in place during the operational phase of the Scheme, and that will contribute to the wider network of footpaths in the area and facilitate greater public access to the countryside. This is also secured through requirement 17 of Schedule 2 to the draft DCO [REP5-005].
- 2.1.23 The temporary employment generated by the Scheme's construction is assessed to be approximately 972 FTE jobs per annum as set out within Section 18.7 of ES Chapter 18: Socio Economics, Tourism and Recreation [APP-053]. During its operational lifetime, the Scheme is also anticipated to generate a modest quantum of labour.
- 2.1.24 A Skills, Supply Chain and Employment Plan will be prepared prior to the commencement of construction. This will set out measures that the Applicant will implement to advertise and promote employment and training opportunities



associated with the Scheme in construction and operation locally. Provision of this Plan is secured through requirement 20 of Schedule 2 to the draft DCO [REP5-005]. The final Skills, Supply Chain and Employment Plan must be substantially in accordance with the Outline Skills, Supply Chain and Employment Plan [REP4-041], which has been updated during the Examination to take account of feedback received from West Lindsey District Council.

### 3 Landscape and Visual Matters

- 3.1.1 There has been a continued and positive consultation and engagement undertaken with Lincolnshire County Council (LCC) and their representatives throughout the entirety of the DCO application process.
- 3.1.2 The final agreed position with regard to ES Chapter 8 Landscape and Visual **[REP2-008]** between the Applicant and LCC is set out within Appendix B of the Statement of Common Ground (SoCG) **[EN010133/EX6/C8.3.2\_E]**. This confirms to the Examining Authority (ExA) where agreement has or has not been reached between both parties.
- 3.1.3 The SoCG sets out that both parties are in agreement, that through the iterative design process undertaken, the Scheme would lead to minimal vegetation removal to accommodate the proposals and acknowledges that establishing planting will add a positive element to this landscape. Both parties are in agreement that the Scheme will deliver landscape and ecological improvements through mitigation areas and through new planting, and that the necessary provisions are in place to secure these mitigation proposals associated with the Scheme as set out by Requirement 7 of Schedule 2 to the Draft Development Consent Order **[REP5-006]** and that no further mitigation is considered necessary from that already identified.
- 3.1.4 Following further development of the design of the Scheme post consent, more detailed planting plans including detail of areas of landscape mitigation, location and types of planting (species), as well as number, density and specification will be submitted for approval prior to any works commencing.
- 3.1.5 It is agreed by both parties that delivery of the Scheme would not result in any Significant Adverse Residual Effects to Landscape Character, and that the Scheme would be unlikely to be conspicuous in views from the Lincoln Ridge due to the intervening vegetation and distance, and subsequently would be unlikely to yield significant adverse effects to receptors from this location.
- 3.1.6 To date, LCC have not suggested there to be any additional Significant Adverse Residual Visual Effects in addition to those identified within the LVIA. LCC have not identified there to be any Significant Adverse Residual Visual Effects for Residential Receptors or users of Public Rights of Way, which is consistent with the findings of the LVIA.
- 3.1.7 Cumulatively, LCC maintain that Significant Residual Landscape Effects associated with the Scheme and the West Burton Solar Project, Tillbridge Solar and Gate Burton Solar Farm are limited to Land Use and to the Host Landscape Character Area (Regional Scale LCT - 4a Unwooded Vales) only, and again, LCC have not suggested there to be any additional Significant Adverse Residual Visual Effects beyond those identified within the LVIA.
- 3.1.8 The Applicant's position is that the need for the Scheme outweighs any residual landscape and visual effects.

## 4 Cultural Heritage

- 4.1.1 The assessment of designated heritage assets as detailed in the Heritage Statement (ES Chapter Appendix 13.5 [APP-125 to APP-128]), which was used to inform ES Chapter 13 on Cultural Heritage [APP-048] is considered by Historic England to be proportionate. Setting issues are considered by Historic England to be appropriately mitigated for all designated heritage assets, excluding Thorpe in the Fallow Scheduled Monument (1016978).
- 4.1.2 While Historic England and the Applicant agreed that the Scheme has the potential to have a 'moderate adverse' impact (Less than Substantial Harm in NPPF terms), Historic England recommended that panels were removed between the Scheduled Monument and a former historic east-west boundary recorded on the 1886 25-inch Ordnance Survey (OS) map, and that the historic field boundary should be reinstated.
- 4.1.3 The Applicant considers the east-west field boundary to quintessentially belong to a post-medieval to early modern landscape characterised by small enclosed fields, which is in direct contrast to the medieval landscape which was formed by large open field systems. Therefore, the Applicant does not consider the former east-west field boundary to contribute to the significance of the Scheduled Monument, and that embedded mitigation as stated in paragraph 13.8.10 of ES Chapter: 13 Cultural Heritage [APP-048], of setting back the proposed solar panels 50m from the northern edge of the Scheduled Area to be sufficient mitigation to reduce the impacts on the setting of the Scheduled Monument.
- 4.1.4 The Applicant has calculated that the removal of the solar panels between the Thorpe medieval settlement SM and the former field boundary, as recommended by HE, would result in the loss of approximately 4.725 MWp of installed capacity and 5.5 MWh/year energy generation loss, calculated using the indicative layouts that the Environmental Statement was based upon. The Applicant does however note that this figure is subject to change dependent upon future advances in technology which could increase the generating efficiency of panels. Full details are provided in the Statement of Common Ground with Historic England [REP5-042].
- 4.1.5 The Applicant has undertaken an extensive assessment of non-designated heritage assets to support the DCO application for the Scheme. With consideration to potential impacts on buried archaeological remains extant within the Order Limits, the Applicant completed detailed desk-based assessment and archaeological evaluation (including geophysical survey, air photo and LiDAR analysis and targeted evaluation trial trenching). The results of these assessments have been used to inform ES Chapter 13 [APP-048], and a robust mitigation strategy (Written Scheme of Investigation (WSI) provided in ES Chapter Appendix 13.7 [REP5-012]), which is secured by Requirement 12 of Schedule 2 to the draft DCO [REP5-006]. As detailed in the Cultural Heritage Position Statement appended to the Statement of Common Ground with Lincolnshire County Council (LCC) [EN010133/EX6/C8.3.2\_E], which

was produced in conjunction with Nottinghamshire County Council (NCC), the main areas of disagreement between the Applicant and LCC and NCC are:

- the extent and timing of trenching;
- the use of concrete feet as a mitigation option; and
- the approach to decommissioning.

- 4.1.6 While LCC and NCC agreed in principle to several proposed mitigation options, their position is that they are unable to agree site specific mitigation until further trenching is completed.
- 4.1.7 The Applicant believes that the baseline information collated to support ES Chapter 13 [APP-048] is sufficient and has demonstrated that the general conditions (i.e. geology, soil morphology, topography, and land usage) and broad archaeological chronology, type and depth of features identified within the Scheme does not warrant alternative or bespoke evaluation and mitigation techniques to those which are generally adopted for solar schemes (as evidence in the Comparison of Archaeological Evaluation Investigations on Solar Schemes report [REP3-041]).
- 4.1.8 The Applicant does not believe that there is any archaeological justification for the approach to evaluation trenching, mitigation and decommissioning requested by LCC and NCC. Sufficient information has been provided to inform the DCO application and is in line with local and national guidance (Paragraphs 5.9.10 NPS EN1, 3.10.105 of NPS EN3, 200 of NPPF, Policy S57 of the Central Lincolnshire Local Plan, The Chartered Institute for Archaeologists Standard and Universal Guidance for Archaeological Field Evaluation and the Lincolnshire County Council Archaeology Handbook). Furthermore, the proposed mitigation is considered by the Applicant to be in line with the standard approach that is adopted on other comparable solar schemes.
- 4.1.9 In the event that the Secretary of State is minded to agree with LCC and NCC that there is a requirement for further trenching to inform the mitigation measures or detailed design of the Scheme, the Applicant believes that such trenching can be undertaken post-determination of the DCO application, and in advance of the construction of the Scheme.
- 4.1.10 A without prejudice archaeological WSI [REP5-035] has therefore been prepared that includes a programme of further archaeological trenching post-determination of the DCO application, matching the percentage area sample of trenching undertaken for the nearby Gate Burton Scheme, which was considered by LCC to be sufficient to inform the Gate Burton DCO application and mitigation strategy. Full details of the Applicant's position are provided in the Cultural Heritage Position Statement appended to the Statement of Common Ground with LCC [EN010133/EX6/C8.3.2\_E].

- 4.1.11 In any event, the Applicant's position is that the need for the Scheme outweighs any residual cultural heritage effects.

## 5 Cumulative Effects

5.1.1 At Deadline 5, the Applicant submitted an Addendum to the Environmental Statement (ES) [REP5-051] that provided a compilation of the cumulative effects of schemes that were assessed within the scope of the ES at the time the DCO application was submitted together with any updates to the conclusions of the cumulative effects assessment based on further information becoming available in respect of such schemes throughout the Examination of the Scheme (and set out in more detail in the Joint Report on Interrelationships between NSIPs [REP5-025]). The Addendum also summarised the conclusions of the Technical Note on Cumulative Effects of Additional Schemes [REP4-059] which considered relevant new schemes where sufficient information has become available since the submission of the DCO application.

5.1.2 The ES Addendum on Cumulative Effects [REP5-051] found that the initial assessment of cumulative effects has not changed and remain as follows:

- Climate Change: **major beneficial** cumulative effect in terms of climate change resilience;
- Landscape and Visual: some **moderate adverse** cumulative effects at construction and operation (Year 1);
- Ecology and Biodiversity: some **moderate beneficial** cumulative effects at District Level; some **moderate adverse** cumulative effects;
- Hydrology, Flood Risk and Drainage: no significant cumulative effects;
- Ground Conditions and Contamination: no significant cumulative effects;
- Minerals: no significant cumulative effects;
- Cultural Heritage; potential for up to **moderate adverse** cumulative effects depending on final design;
- Transport and Access: no significant cumulative effects;
- Noise and Vibration: no significant cumulative effects;
- Glint and Glare: no significant cumulative effects;
- Air Quality: no significant cumulative effects;
- Socio-Economics, Tourism and Recreation: a number of **moderate adverse** cumulative effects and **moderate and major-moderate beneficial** cumulative effects;
- Soils and Agriculture: no significant cumulative effects;
- Waste: **moderate or large adverse effect** on landfill waste handling in Nottinghamshire during the decommissioning phase;

- Other Environmental Matters (Matters Scoped Out): no significant cumulative effects;
- Other Environmental Matters (Human Health): cumulative **moderate adverse effect** on long distance recreation routes during construction;
- Other Environmental Matters (Major Accidents and Disasters): no significant cumulative effects.

5.1.3 The Applicant's position is that the need for the Scheme outweighs any cumulative effects.



## 6 Project Lifespan of up to 60 Years

- 6.1.1 In order to address concerns raised about the Scheme potentially being in situ in perpetuity, a new sub-paragraph (1) was added to Requirement 21 of the draft DCO submitted at Deadline 1 **[REP-006]** to require decommissioning to take place no later than 60 years following the final commissioning date. A decommissioning plan must be submitted and approved prior to the date of decommissioning and include a timetable for its implementation.
- 6.1.2 The Applicant notes that whilst an upper limit of 40 years is typical, paragraph 2.10.149 of NPS EN-3 (November 2023) recognises that applicants may seek consent without a time period or for differing time-periods for operation. A 60-year period has been chosen to provide flexibility for the Scheme to continue operating where the solar PV panels continue to generate electricity after the average lifespan of 40 years has passed.
- 6.1.3 The Applicant considers that the environmental impacts of an operational period of up to 60 years for the Scheme has been adequately assessed and that appropriate mitigation is secured through the draft DCO **[REP5-006]**.
- 6.1.4 The Applicant's position is set out in Review of Likely Significant Effects at 60 Years **[REP2-058]** and the Written Summary of the Applicant's Oral Submissions and Responses at Issue Specific Hearing 4 **[REP3-035]**. The Applicant confirms that the assessment methodology underpinning this review is as set out in Chapter 2: EIA Process and Methodology **[APP-037]** and, where applicable, the relevant chapter of the Environmental Statement.
- 6.1.5 The Applicant has reached agreement with the Environment Agency regarding the assessment of the flood risk effects of operating for up to 60 years, as set out at reference HY-015 within the Statement of Common Ground with the Environment Agency **[REP5-044]**. An updated flood risk assessment will be submitted for approval prior to commencement of the authorised development to ensure that appropriate mitigation is in place. Requirement 22 in Schedule 2 to the draft DCO **[REP5-006]** secures this commitment. The Applicant is confident that appropriate mitigation after 40 years is already known and deliverable as in the worst case scenario the mitigation would be the decommissioning of the relevant parts of the Scheme at year 40.

## **7 Blyton Park Race Track**

- 7.1.1 The Applicant has provided substantive responses to the submissions made by the LNT Group within The Applicant's Responses to Deadline 3A and Deadline 4 Submissions **[REP5-031]** at references LNT-01 to LNT-08.
- 7.1.2 The Applicant has provided a response to the comments on the Applicant's Noise Impact Assessment at reference LNT-01 within The Applicant's Responses to Deadline 5 Submissions **[EN010133/EX6/C8.1.37]**.
- 7.1.3 The Applicant included protective provisions in Part 19 of Schedule 16 of the version of the draft DCO submitted at Deadline 5 **[REP5-005]** to ensure that the Scheme does not interfere with LNT Group's ability to implement their planning permission for the Automotive Research and Development Centre and to ensure that the Scheme will not impact upon the current or potential future operations of the Blyton Park Driving Centre complex.
- 7.1.4 The protective provisions require the undertaker to obtain LNT Group's approval of the "works details" (being the plans, section drawings and method statement to demonstrate that the Scheme and the Blyton Park Driving Centre can coexist without significant detriment to each other) prior to the commencement of Work No. 1C in any of the restricted land (being the land over which LNT Group has indicated could have an impact on its operations). Any approval may be given subject to reasonable requirements that LNT Group may require for the safe use of the Blyton Park Driving Centre operations and in accordance with the Automotive Research and Development Centre planning permission. The undertaker must carry out Work No. 1C in accordance with the approved work details including any requirements.
- 7.1.5 On 5 March 2024, the Applicant's solicitors discussed the protective provisions included in Part 19 of Schedule 16 to the draft DCO **[REP5-005]** with the solicitors acting for the LNT Group. In response to concerns raised on behalf of the LNT Group regarding reimbursement of costs, the Applicant has updated Part 19 of the Schedule 16 included at Appendix A to this Closing Statement to include an obligation on the undertaker to reimburse any professional fees, costs, charges and expenses which are reasonably and properly incurred in connection with reviewing and approving the works details.
- 7.1.6 The Applicant's position is that the Scheme can co-exist with the ongoing operation of Blyton Park Driving Centre and the implementation of the extant planning permission for the Automotive Research and Development Centre without significant detriment.

## **8 Update on protective provisions**

- 8.1.1 Since Deadline 5, the Applicant has continued discussions with the statutory undertakers identified in the Schedule of Progress regarding Protective Provisions and Statutory Undertakers [REP5-030] where agreement has not yet been reached.
- 8.1.2 In respect of Cadent Gas Limited, the side agreement was completed on 5 March 2024 and Cadent Gas Limited has now withdrawn their objection. Part 6 of Schedule 16 included at Appendix A to this Closing Statement includes the agreed protective provisions.
- 8.1.3 Further discussions have taken place with National Grid Electricity Transmission plc (NGET) since Deadline 5. The protective provisions contained in Part 3 of Schedule 16 at Appendix A to this Closing Statement have been updated to address a number of NGET's concerns but as at the close of the Examination have not been agreed by NGET. The Applicant's position is that the protective provisions are sufficient to ensure that the Scheme will not result in any serious detriment to NGET's undertaking.
- 8.1.4 In respect of Northern Powergrid, agreed protective provisions have been included in Part 5 of Schedule 16 at Appendix A to this Closing Statement. Discussions are ongoing in respect of an associated side agreement.
- 8.1.5 In respect of National Grid Electricity Distribution (East Midlands) plc, agreed protective provisions have been included in Part 4 of Schedule 16 at Appendix A to this Closing Statement. Discussions are ongoing in respect of an associated side agreement.
- 8.1.6 The protective provisions contained in Part 10 of Schedule 16 at Appendix A to this Closing Statement are agreed. The parties are currently negotiating an associated Framework Agreement. On completion of the Framework Agreement, Network Rail will formally withdraw its objection to the Scheme.
- 8.1.7 The protective provisions contained in Part 18 of Schedule 16 at Appendix A to this Closing Statement are agreed save in respect of paragraph 239(1), (2), (4) and (5) (paragraph 6 in EDF's version of the protective provision). EDF has requested provisions that place a restriction on the use of the compulsory acquisition powers in the draft DCO without EDF's prior consent. Whilst discussions are ongoing, the Applicant and EDF have not yet agreed the terms of a voluntary property agreement for the necessary rights to construct, use and maintain the grid connection across EDF's land. In the absence of voluntary agreement, any restriction on the use of the compulsory acquisition powers would result in a material impediment to the delivery of the Scheme. As the protective provisions require the technical details to be approved by EDF prior to carrying out any works that may affect EDF's apparatus, the Applicant's position is that the use of compulsory acquisition powers will not result in any serious detriment to EDF's undertaking.

- 8.1.8 Further discussions have taken place with Uniper since Deadline 5. The protective provisions contained in Part 14 of Schedule 16 at Appendix A to this Closing Statement have been updated to address a number of Uniper's concerns but as at the close of the Examination have not been agreed by Uniper. The Applicant's position is that the protective provisions are sufficient to ensure that the Scheme will not result in any serious detriment to Uniper's undertaking.
- 8.1.9 An updated version of Schedule 16 has been included at Appendix A to this Closing Statement and sets out the Applicant's preferred protective provisions. For the reasons set out in the Schedule of Progress regarding Protective Provisions and Statutory Undertakers [REP5-030] and Section 10.3 of the Statement of Reasons [REP4-017], the Applicant considers that the protective provisions in Schedule 16 are sufficient to ensure that the tests set out in s127 and s138 of the Planning Act 2008 are satisfied and therefore the Scheme will not result in any serious detriment to the carrying on of the statutory undertakers' undertakings.
- 8.1.10 The Secretary of State has previously determined that the use of compulsory acquisition powers in respect of statutory undertakers' land and rights can be acceptable to ensure the deliverability of a NSIP where it has not been possible to reach agreement on the terms of a voluntary property agreement provided that the technical details of any works are approved by the statutory undertaker. This principle was established in the Secretary of State's decision letter for the National Grid (Hinkley Point C Connection Project) Order 2016 (see paragraph 95 of the decision letter) and reiterated in Secretary of State's decision letter for the Immingham Open Cycle Gas Turbine Order 2020 (see paragraphs 6.6 to 6.23 of the decision letter). The Applicant's position is that the protective provisions contained within the version of Schedule 16 appended as Appendix A to this Closing Statement are sufficient and will ensure there will be no serious detriment to the carrying out of the statutory undertaker's undertaking.

## 9 Conclusion

- 9.1.1 The proposed Scheme will contribute to meeting the critical need for renewable energy identified in national and local policy, including in the National Policy Statements for Energy, published in November 2023 and designated in January 2024.
- 9.1.2 As agreed with Lincolnshire County Council, the Scheme will not result in significant adverse effects on landscape character, and that all potential landscape and visual adverse effects have been identified by the Applicant.
- 9.1.3 The points of disagreement with the local authorities on archaeological mitigation relate principally to the extent and timing of evaluation trenching, construction details and the approach to decommissioning. The Applicant's position is that sufficient and proportionate information has been provided to adequately assess the potential impacts of the Scheme and inform the mitigation measures contained in the WSI.
- 9.1.4 There are likely to be a limited number of adverse cumulative effects of the Scheme. The beneficial climate change effects of the Scheme will be major.
- 9.1.5 In response to concerns raised during the Examination, the Applicant proposed limiting the operational lifespan of the Scheme to up to 60 years. The environmental assessment provided by the Applicant found that this would not create any new or different significant environmental impacts.
- 9.1.6 The Applicant considers that suitable protective provisions have been included in Schedule 16 appended as Appendix A to this Closing Statement to address the concerns raised by the LNT Group and statutory undertakers.
- 9.1.7 In conclusion, the benefits provided by the Scheme are significant, clear and compelling, outweighing the identified and limited residual adverse effects.
- 9.1.8 The Applicant would like to thank the Examining Authority and the Planning Inspectorate case team, as well as those individuals and organisations who have contributed to the examination process.

## Appendix A – Updated Schedule 16 to the draft DCO

# SCHEDULE 1

## PROTECTIVE PROVISIONS

Article 43

### PART 1

#### FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

1. For the protection of the utility undertakers referred to in this Part of this Schedule (save for any utility undertakers which are specifically protected by any other Part of this Schedule, which will take precedence), the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertakers concerned.

2. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the ~~Electricity 1989 Act-1989(a);~~<sup>1989</sup>), belonging to or maintained by that utility undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a water undertaker—
  - (i) mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and
  - (ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991;
- (d) in the case of a sewerage undertaker—
  - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991<sup>(b)</sup>; and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus; and

- (e) any other mains, pipelines or cables that are not the subject of the protective provisions in Parts 2 to ~~47~~<sup>19</sup> of this Schedule;

“functions” includes powers and duties;

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

“utility undertaker” means—

- (f) any licence holder within the meaning of Part 1 of the ~~Electricity 1989 Act-1989;~~<sup>1989</sup>

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(a) —1989 c. 29.  
(b) 1991 c. 56.



- (g) a gas transporter within the meaning of Part 1 of the Gas Act 1986<sup>(a)</sup>;
  - (h) water undertaker within the meaning of the Water Industry Act 1991;
  - (i) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991; and
  - (j) an owner or operator of apparatus within paragraph (e) of the definition of that term,
- for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 of the 1991 Act.

4. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 11 (temporary prohibition or restriction of use of streets and public rights of way), a utility undertaker is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

5. Regardless of any provision in this Order or anything shown on the land plan, the undertaker must not acquire any apparatus otherwise than by agreement.

6.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question written notice of that requirement, together with a plan and section 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 a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of 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, the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of 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 the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 42: ~~(arbitration)~~, and after the grant to the utility undertaker 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.

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(a) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45), and was further amended by section 76 of the Utilities Act 2000 (c. 27).

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

**7.—**(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker 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 the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(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 the utility undertaker in question 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 arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

**8.—**(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 6(2), the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (3) 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 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

**9.—**(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new

apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 6(2).

(2) There is to 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, 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,

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 article 42 (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 the utility undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 6(2); 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 is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), 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 the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

**10.—**(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 6(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(3) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the 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.

**11.** Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaking in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

## PART 2

### FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

**12.** For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

**13.** In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003<sup>(a)</sup>;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“electronic communications code” has the same meaning as in section 106 (application of the electronic communications code) of the 2003 Act;

“electronic communications code network” means—

- (a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

“operator” means the operator of an electronic communications code network.

**14.** The exercise of the powers of article 31 (statutory undertakers) is subject to Part 10 (undertakers’ works affecting electronic communications apparatus) of the electronic communications code.

**15.—**(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or
- (b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the 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.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 42 (arbitration).

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(a) 2003 c. 21.

16. This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

17. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

## PART 3

### FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC AS ELECTRICITY UNDERTAKER

#### Application

18.—(1) For the protection of National Grid 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.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid, where the benefit of this Order is transferred or granted to another person under article 35 (consent to transfer the benefit of the Order)—

- (a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between National Grid 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 on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid (but without prejudice to paragraph 28(3)(b)).

#### Interpretation

19. In this Part of this Schedule—

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

“apparatus” means any electric lines or electrical plant as defined in the ~~Electricity~~1989 Act ~~1989(a),~~ belonging to or maintained by National Grid together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as given to the term “authorised development” in article 2 of this 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 Part of this Schedule;

“commence” ~~has the same meaning as is given in article of this Order~~ and “commencement” ~~will be construed to have the same meaning save that for the purposes of in this Part of this Schedule only, the terms “commence” and “commencement” will include any below ground surveys, monitoring, ground work operations foror the purposes receipt and erection of intrusive archaeological investigations construction plant and intrusive investigations of the existing~~

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(a)—1989 c. 29.

~~condition of the ground or structures within 15 metres in any direction of National Grid's apparatus~~  
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 Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, must require the undertaker to submit for National Grid'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 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” will include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid: construct, use, repair, alter inspect, renew or remove the apparatus;

“National Grid” 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~~1989 Act-1989;

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

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

“specified works” means any of the authorised works or activities undertaken in association with the authorised development 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 24 or otherwise; or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 24 or otherwise; or
- (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”;

“STC” means the System Operator Transmission Owner Code prepared by the electricity transmission owners and NGESO as modified from time to time;

“STC claims” means any claim made under the STC against National Grid 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's transmission system which arises as a result of the authorised works; and

“transmission owner” ~~means~~<sup>is</sup> as defined in the STC.

### **On Street Apparatus**

20. Except for paragraph 21 (apparatus of National Grid in streets subject to temporary prohibition or restriction of use), paragraph 26 (retained apparatus: protection of National Grid as electricity undertaker), paragraph 27 (expenses), and paragraph 28 (indemnity) of this [Part 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, the provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

### **Apparatus of National Grid in streets subject to temporary prohibition or restriction of use and public rights of way**

21. Notwithstanding the temporary prohibition or restriction of use or diversion of a street or public right of way under the powers of article [11](#) (temporary prohibition or restriction of use of streets and public rights of way), National Grid is at liberty at all times to take all necessary access across any such street or public right of way and to execute and do all such works and things in, upon or under any such street or public right of way as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction of use or diversion was in that street or public right of way.

### **Protective works to buildings**

22. The undertaker, in the case of the powers conferred by article 18 (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 Grid.

### **Acquisition of land**

23.—(1) Regardless of any provision in this Order or anything shown on the land plan or contained in the book of reference to the Order, the undertaker may not appropriate or acquire or take temporary possession of any land or apparatus or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right or apparatus of National Grid otherwise than by agreement.

(2) As a condition of an agreement between the parties in ~~sub~~-paragraph 23(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 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 or affect the provisions of any enactment or agreement regulating the relations between National Grid 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 reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and the undertaker must use reasonable endeavours to procure and 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) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this [Part of this](#) Schedule will prevail.



(4) Any agreement or consent granted by National Grid under paragraph 26 or any other paragraph of this Part of this Schedule, will not be taken to constitute agreement under ~~sub~~-paragraph 23(1).

### **Removal of apparatus**

**24.**—(1) If, in the exercise of the powers conferred by the 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 to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraphs (2) to (5).

(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 advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Grid to its satisfaction (taking into account paragraph 25(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) 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 may in its sole discretion, 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 will not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to do so.

(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 Grid and the undertaker.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Grid of any such facilities and rights as are referred to in sub-paragraphs (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**

**25.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid 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 Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

(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 less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed (in National Grid's opinion, acting reasonably), the terms

and conditions to which those facilities and rights are subject may be referred to arbitration in accordance with paragraph 32 of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case

**Retained apparatus: protection of National Grid as electricity undertaker**

**26.**—(1) Not less than 56 days before the commencement of any specified works, the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity assets.

(2) The plan to be submitted to National Grid 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;
- (g) an assessment of risks of rise of earth issues; and
- (h) a ground monitoring scheme, where required.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, 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'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) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until National Grid has given written approval of the plan so submitted.

(5) Any approval of National Grid required under sub-paragraph (4)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and
- (b) must not be unreasonably withheld or delayed and National Grid must meaningfully engage with the undertaker within 28 days of the date of submission of the plan under sub-paragraph (1).

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of

securing apparatus against interference or risk of damage or for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

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

(8) Where National Grid 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 Grid's satisfaction prior to the commencement of any specified works for which protective works are required and National Grid 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).

(9) If National Grid 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) apply as if the removal of the apparatus had been required by the undertaker under paragraph 24(2), provided that such written notice is given by National Grid to the undertaker within 28 days of submission of a plan pursuant to sub-paragraph (1).

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

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with—

- (a) sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and
- (b) sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under this Order, the undertaker must comply with National Grid's policies for development near overhead lines EN43-8 and the Health and Safety Executive's guidance note 6 "Avoidance of Danger from Overhead Lines".

## **Expenses**

**27.—**(1) Save where otherwise agreed in writing between National Grid and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid within 30 days of receipt of an itemised invoice or claim from National Grid all charges, costs and expenses reasonably anticipated within the following three months or reasonably or properly incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Grid 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 as a consequence of National Grid—
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 24(3); or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;

- (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 32 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 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 Grid 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 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**

**28.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised 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 it) 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 works) or property of National Grid, or there is any interruption in any service provided, or in the supply of

any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

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

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workmanlike manner or in a manner that does not accord with the approved plan or as otherwise agreed in writing between the undertaker and National Grid.

(3) Nothing in sub-paragraph (1) will impose 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, its officers, servants, contractors or agents;
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by National Grid as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or article [35](#) (consent to transfer the benefit of the Order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this paragraph 28(3)(b) will be subject to the full terms of this Part of this Schedule including this paragraph 28; 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 Grid must give the undertaker reasonable notice of any such third party claim or demand 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 undertaker and considering its representations.

(5) National Grid 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 Grid must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Grid’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 Grid’s control and if reasonably requested to do so by the undertaker National Grid must provide an explanation of how the claim has been minimised, where relevant.

### **Enactments and agreements**

**29.** Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid and 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 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

**30.**—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 24(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 26, the undertaker will 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 works and taking into account the need to ensure the safe and efficient operation of National Grid’s undertaking and National Grid will use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Grid’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

**31.** If in consequence of the agreement reached in accordance with paragraph 23 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 Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

## Arbitration

**32.** Save for differences or disputes arising under paragraphs 24(2), 24(4), 25(1), and 26 ~~Any, any~~ difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 42 (arbitration).

## Notices

**33.** Notwithstanding article 45 (service of notices), any plans submitted to National Grid by the undertaker pursuant to paragraph 26 must be submitted using the LSBUD system (<https://lsbud.co.uk>) or to such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

# PART 4

## FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY DISTRIBUTION (EAST MIDLANDS) PLC AS ELECTRICITY UNDERTAKER

## Application

**34.** For the protection of National Grid Electricity Distribution (East Midlands) plc the following provisions, unless otherwise agreed in writing between the undertaker and National Grid Electricity Distribution (East Midlands) plc, have effect.

## Interpretation

**35.** In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable NGED to fulfil its statutory functions in a manner not less efficient than previously and where the context requires includes any part of such alternative apparatus;

“alternative rights” means all and any necessary legal easements, leases, consents, or permissions required by NGED in order to permit or authorise a diversion and to permit or authorise NGED to lay, keep, operate, maintain, adjust, repair, alter, relay, renew, supplement, inspect, examine, test and remove the alternative apparatus;

“apparatus” means electric lines or electrical plant as defined in the 1989 Act<sup>(a)</sup>, belonging to or maintained by NGED;

“diversion” means an alteration to the NGED Network in order to enable or facilitate the authorised development;

“functions” includes powers and duties;

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

“NGED” means National Grid Electricity Distribution (East Midlands) plc (company number 02366923) whose registered office is at Avonbank, Feeder Road, Bristol, BS2 0TB;

“NGED Network” means NGED’s distribution network operated pursuant to its distribution licence issued pursuant to section 6 of the 1989 Act<sup>2</sup>;

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

“specified work” means so much of any of the authorised development that is carried out within 6 metres of any apparatus.

### **Precedence of 1991 Act in respect of apparatus in streets**

**36.** This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and NGED are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

### **No acquisition except by agreement**

**37.** Regardless of any provision in this Order or anything shown on the land plan, the undertaker must not acquire any apparatus otherwise than by agreement.

### **Removal of apparatus**

**38.—**(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of NGED to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, alternative rights acquired or granted for the alternative apparatus and the alternative apparatus is in operation and access to it has been provided if necessary to the reasonable satisfaction of NGED in accordance with sub-paragraphs (2) to (10) or with such alternative or supplementary provisions as the undertaker and NGED may agree between them.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to NGED 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.

(3) If as a consequence of the exercise of any of the powers conferred by this Order NGED reasonably needs to remove or divert any of its apparatus and the removal of that apparatus has not been required by the undertaker under sub-paragraph (2) then NGED must give to the undertaker 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 this Part has effect as if the removal or diversion of such apparatus had been required by the undertaker under sub-paragraph (2).

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(a) 1989 c. 29. The definition of “electrical plant” (in section 64) was amended by paragraphs 24 and 38(1) and (3) of Schedule 6 to the Utilities Act 2000 (c.27).



(4) If as a consequence of the removal or diversion of apparatus under sub-paragraph (2) or (3) alternative apparatus is to be constructed in land owned or controlled by the undertaker then the undertaker must afford to NGED the necessary facilities, alternative rights and any necessary third party consent or approvals for the construction of alternative apparatus in the other land owned or controlled by the undertaker as reasonably required by NGED.

(5) If the undertaker or NGED requires to remove or divert any apparatus placed within the Order land and alternative apparatus is to be constructed in land not owned or controlled by the undertaker as a consequence of the removal or diversion of apparatus then NGED shall use its reasonable endeavours to obtain alternative rights in the land in which the alternative apparatus is to be constructed.

(6) If alternative apparatus is to be constructed in land not owned or controlled by the undertaker and NGED is unable to obtain such alternative rights as are mentioned in sub-paragraph (5), the undertaker and NGED shall consider whether there is an alternative engineering solution that can achieve the diversion without the need for the use of compulsory powers. Should such an alternative engineering solution not be practicable and deliverable in a reasonable timescale and at a reasonable cost (which shall be determined by the undertaker acting reasonably), NGED may but shall not be compelled to use the powers of compulsory acquisition set out in this Order or the 1989 Act to obtain the necessary facilities and rights in the land outside the Order limits in which the alternative apparatus is to be constructed in accordance with a timetable agreed between NGED and the undertaker.

(7) Any alternative apparatus required pursuant to sub-paragraphs (2) or (3) must be constructed in such manner and in such line or situation as may be agreed between NGED and the undertaker or in default of agreement settled in accordance with paragraph 43 (expert determination).

(8) NGED must, after the alternative apparatus to be provided or constructed has been agreed or settled in accordance with paragraph 43 (expert determination) and, after the acquisition by or grant to NGED of any such facilities and alternative rights as are referred to in sub-paragraphs (2) to (6), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required to be removed by the undertaker under the provisions of this Part of this Schedule.

(9) Regardless of anything in sub-paragraph (8), if the undertaker gives notice in writing to NGED that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by NGED, must be executed by the undertaker—

- (a) in accordance with plans and specifications and in such line or situation agreed between the undertaker and NGED, or, in default of agreement, determined in accordance with paragraph 43; and
- (b) without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of NGED.

(10) Nothing in sub-paragraph (9) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus or alternative apparatus, or execute any filling around the apparatus or alternative apparatus (where the apparatus or alternative apparatus is laid in a trench) within 600 millimetres of the point of connection or disconnection.

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

**39.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to NGED facilities and alternative rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and alternative rights must be granted upon such terms and conditions as may be agreed between the undertaker and NGED or in default of agreement settled in accordance with paragraph 43 (expert determination).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in the land of the undertaker, the expert must—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker;
- (b) have regard to the terms and conditions, if any, applicable to the apparatus for which the alternative apparatus is to be substituted;
- (c) have regard to NGED's ability to fulfil its service obligations and comply with its licence conditions; and
- (d) have regard to the standard form rights NGED ordinarily secures for the type of alternative apparatus to be constructed in the circumstances similar to the authorised development.

(3) If the facilities and alternative rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and alternative rights are to be granted, are in the opinion of the expert less favourable on the whole to NGED 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 expert must make such provision for the payment of compensation by the undertaker to NGED as appears to the expert to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus**

**40.**—(1) Not less than 60 days before the undertaker intends to start the execution of any specified work where the removal of the apparatus in question has not been required under paragraph 38 (removal of apparatus), the undertaker shall submit to NGED a plan of the works to be executed. Any submission must note the time limits imposed on NGED under sub-paragraph (3).

(2) Subject to sub-paragraph (3) below the undertaker shall not commence any works to which sub-paragraph (1) applies until NGED has identified any reasonable requirements it has for the alteration or protection of the apparatus, or for securing access to it.

(3) If by the expiry of 60 days beginning with the date on which a plan under sub-paragraph (1) is submitted NGED has not advised the undertaker in writing of any reasonable requirements for the alteration or protection of the apparatus, or for securing access to it, it shall be deemed not to have any such requirements and the undertaker shall be at liberty to proceed with the works.

(4) The works referred to in sub-paragraph (1) must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with any reasonable requirements as may be notified in accordance with sub-paragraph (2) by NGED and NGED shall be entitled to watch and inspect the execution of those works.

(5) At all times when carrying out the authorised development the undertaker must comply with NGED's Avoidance of Danger from Electricity Overhead Lines and Underground Cables (2014), the Energy Network Association's A Guide to the Safe Use of Mechanical Plant in the Vicinity of Electricity Overhead Lines (undated), the Health and Safety Executive's GS6 Avoiding Danger from Overhead Power Lines, and the Health and Safety Executive's HSG47 Avoiding Danger from Underground Services (Third Edition) (2014) as the same may be replaced from time to time.

(6) If NGED, in accordance with sub-paragraph (2) and in consequence of the works proposed by the undertaker, reasonably requires the removal or diversion of any apparatus and gives written notice to the undertaker of that requirement, this Part of this Schedule applies as if the removal or diversion of the apparatus had been required by the undertaker under paragraph 38(3) (removal of apparatus).

(7) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 60 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(8) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to NGED notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with any reasonable requirements stipulated by NGED under sub-paragraph (2) and with sub-paragraphs (4) and (5) in

so far as is reasonably practicable in the circumstances. Nothing in this sub-paragraph prevents NGED from exercising its rights under sub-paragraph (6).

### **Expenses and costs**

**41.—**(1) Subject to the following provisions of this paragraph, the undertaker must pay to NGED the proper and reasonable expenses incurred by NGED in, or in connection with, the inspection, removal, diversion, alteration or protection of any apparatus, the construction of any alternative apparatus and the acquisition or grant of alternative rights for the alternative apparatus, arising as a result of the powers conferred upon the undertaker pursuant to this Order.

(2) The value of any apparatus removed under the provisions of this Part of this Schedule must be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule NGED requires that alternative apparatus of better type, of greater capacity, of greater dimensions or at a greater depth is necessary in substitution for existing apparatus which for NGED's network requirements is over and above what is necessary as a consequence of and for the purpose of the authorised development, NGED shall reduce the cost of such additional requirements from the amount payable by the undertaker pursuant to sub-paragraph (1).

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the authorised development; 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 is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), 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 the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

**42.—**(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any specified work or any subsidence resulting from any of those 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 those works) or property of NGED the undertaker is to—

- (a) bear and pay the cost reasonably incurred by NGED in making good such damage or restoring the supply; and
- (b) reimburse NGED for any other expenses, loss, damages, penalty or costs reasonably and properly incurred by NGED, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of NGED, its officers, servants, contractors or agents.

(3) NGED must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the 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.

(4) NGED must act reasonably in relation to any claim or demand served under sub-paragraph (1) and use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, claims, demands, proceedings and penalties to which a claim or demand under sub-paragraph (1) applies.

(5) NGED's liability to the undertaker for negligence or breach of contract in respect of each diversion shall be limited to the value of that diversion and NGED shall not otherwise be liable to

the undertaker for any losses or costs incurred by the undertaker resulting from delays to the authorised development as a result of its failure to undertake works to deliver any alternative apparatus.

### **Expert determination**

**43.**—(1) Article 42 (arbitration) shall apply to any difference as to the legal interpretation of this Part of this Schedule and as provided for in sub-paragraph (7).

(2) Save as provided for in sub-paragraph (1) or sub-paragraph (7) any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers or the President of the Institution of RICS or the President of the Institution of Engineering and Technology (as relevant and agreed between NGED and the undertaker, both acting reasonably and without delay).

(3) All parties involved in settling any difference must use best endeavours to do so within 14 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(4) The costs and fees of the expert and the costs of NGED and the undertaker are payable by the parties in such proportions as the expert may determine. In the absence of such determination the costs and fees of the expert are payable equally by the parties who shall each bear their own costs.

(5) The expert must—

- (a) invite the parties to make submissions to the expert in writing and copied to the other party to be received by the expert within 14 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;
- (c) issue a decision within 14 days of receipt of the submissions under paragraph (b); and
- (d) give reasons for the decision.

(6) The expert must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
- (c) the nature of the power sought to be exercised by the undertaker;
- (d) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party;
- (e) NGED's service obligations and licence conditions; and
- (f) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 42 [\(arbitration\)](#).

## **PART 5**

### **FOR THE PROTECTION OF NORTHERN POWERGRID**

**44.** The following provisions apply for the protection of Northern Powergrid unless otherwise agreed in writing between the undertaker and Northern Powergrid.

**45.** In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable Northern Powergrid to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means electric lines or electrical plant (as defined in the ~~Electricity 1989 Act 1989(a)~~<sup>1989</sup>) belonging to or maintained by Northern Powergrid and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“authorised works” means so much of the works authorised by this Order which affect existing Northern Powergrid’s apparatus within the Order limits;

“functions” includes powers and duties;

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

“Northern Powergrid” means Northern Powergrid (Yorkshire) PLC (Company Number 04112320) whose registered address is Lloyds Court, 78 Grey Street, Newcastle upon Tyne NE1 6AF; and

“plan” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed and shall include measures proposed by the undertaker to ensure the grant of sufficient land or rights in land necessary to mitigate the impacts of the works on Northern Powergrid’s undertaking.

**46.** This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Northern Powergrid are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

**47.** Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 11 (temporary prohibition or restriction of use of streets and public rights of way), Northern Powergrid is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

**48.** Regardless of any provision in this Order or anything shown on the land plan, or contained in the book of reference, the undertaker shall not acquire any apparatus, or override any easement or other interest of Northern Powergrid otherwise than by agreement with Northern Powergrid, such agreement not to be unreasonably withheld or delayed.

**49.** Regardless of any provision in the Order or anything shown on the land plan or contained in the book of reference, the undertaker shall not interfere with any communications cables or equipment used by Northern Powergrid in relation to its apparatus or acquire or interfere with rights or interest supporting the use, maintenance or renewal of such equipment other than by agreement of Northern Powergrid, such agreement not to be unreasonably withheld or delayed.

**50.—(1)** If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that Northern Powergrid’s apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Northern Powergrid to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided pursuant to a completed easement which shall include rights to retain and subsequently maintain the apparatus being replaced or diverted and any access rights to it for the lifetime of that alternative apparatus, all to the reasonable satisfaction of Northern Powergrid in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Northern Powergrid 42 days’ advance written notice of that requirement, together with a plan and section 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

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(a) —1989 c. 29.

exercise of any of the powers conferred by this Order Northern Powergrid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Northern Powergrid the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of 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, Northern Powergrid must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably practicable and at the cost of the undertaker (subject to prior approval by the undertaker of its estimate of costs of doing so) use reasonable endeavours to procure the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for Northern Powergrid to use its compulsory purchase powers to this end unless—

- (a) the undertaker has first used reasonable endeavours to acquire the relevant land, rights and/or interests and provided reasonable evidence of the same to Northern Powergrid in accordance with the measures set out in the plan (in default of agreement, the reasonableness of any such measures to be determined through arbitration under article 42 (arbitration)); and
- (b) the undertaker and Northern Powergrid agree (or in default of agreement, it is determined through arbitration under article 42 ~~(arbitration)~~ (arbitration)) that the promotion of compulsory purchase powers by the undertaker would be significantly more onerous than the exercise of Northern Powergrid's own compulsory powers.

(4) Any alternative apparatus to be constructed in land of 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 Northern Powergrid and the undertaker or in default of agreement settled by arbitration in accordance with article 42 ~~(arbitration)~~ (arbitration).

(5) Northern Powergrid must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 42 ~~(arbitration)~~ (arbitration), and after the grant to Northern Powergrid of any such facilities and rights as are referred to in sub-paragraph (2) or (3) ~~(3)~~ (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.

**51.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Northern Powergrid facilities and rights for the construction and maintenance in land of the undertaker 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 Northern Powergrid or in default of agreement settled by arbitration in accordance with article 42 ~~(arbitration)~~ (arbitration).

(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 Northern Powergrid 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 arbitrator must make such provision for the payment of compensation by the undertaker to Northern Powergrid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

**52.**—(1) Not less than 48 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to (including conducting any activities whether intentionally or unintentionally, through for example ground or machinery collapse, which may affect Northern Powergrid's apparatus or encroach on safety distances to live equipment) or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 50(5), the undertaker must submit to Northern Powergrid a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be

made in accordance with sub-paragraph (3) by Northern Powergrid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Northern Powergrid is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Northern Powergrid under sub-paragraph (2) must be made within a period of 42 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If Northern Powergrid in accordance with sub-paragraph (3) 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 44 to 51 apply as if the removal of the apparatus had been required by the undertaker under paragraph (2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 35 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to Northern Powergrid notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

**53.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Northern Powergrid within 50 days of receipt of an itemised invoice or claim all reasonable and proper expenses costs or charges incurred by Northern Powergrid—

- (a) in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 50(2) including without limitation—
  - (i) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that it is agreed Northern Powergrid elects to use compulsory purchase powers to acquire any necessary rights under paragraph 50(3) all costs reasonably incurred as a result of such action;
  - (ii) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
  - (iii) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
  - (iv) the approval of plans;
  - (v) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
  - (vi) 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); and
- (b) in assessing and preparing a design for its apparatus to address and accommodate the proposals of the undertaker whether or not the undertaker proceeds to implement those proposals or alternative or none at all,

provided that if it so prefers Northern Powergrid may abandon apparatus that the undertaker does not seek to remove in accordance with paragraph 50(1) having first decommissioned such apparatus.

(2) Where any payment falls due pursuant to this paragraph, Northern Powergrid must—

- (a) provide an itemised invoice or reasonable expenses claim to the undertaker;

- (b) provide “reminder letters” to the undertaker for payment to be made within the 50 day term on the following days after the invoice or reasonable expenses claim was provided to the undertaker—
  - (i) 15 days, being “reminder letter 1”;
  - (ii) 29 days, being “reminder letter 2”;
  - (iii) 43 days, being “reminder letter 3; and
- (c) provided that sub-paragraphs (a) and (b) have been complied with and the invoice or expenses have not been referred to arbitration pursuant to paragraph 56, be entitled to commence debt proceedings to recover any unpaid itemised invoice or reasonable expenses claim 51 days after receipt of the same by the undertaker where payment has not been made.

(3) There is to 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, that value being calculated after removal and for the avoidance of doubt, if the apparatus removed under the provisions of this Part of this Schedule has nil value, no sum will be deducted from the amount payable under sub-paragraph (1) 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 placed,

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 article 42 (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 Northern Powergrid by virtue of sub-paragraph (1) is to be reduced by the amount of that excess save where it is not possible on account of project time limits and/or supply issues to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs shall 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 is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 50(2); 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 is to be treated as if it also had been agreed or had been so determined.

**54.—**(1) Subject to sub-paragraphs (2) and (3) if by reason or in consequence of the construction of any of the works referred to in in paragraph 50(2), or in consequence of the, maintenance or failure of any of the authorised 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 it) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Schedule or any subsidence resulting from any of these works any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Northern Powergrid, or there is any interruption in any service provided by Northern Powergrid, or Northern Powergrid becomes liable to pay any amount to a third party as a consequence of any default, negligence or omission by the undertaker in carrying out the authorised works, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Northern Powergrid in making good such damage or restoring the supply; and



(b) indemnify Northern Powergrid for any other expenses, loss, damages, penalty, proceedings, claims or costs incurred by or recovered from Northern Powergrid,

by reason or in consequence of any such damage or interruption or Northern Powergrid becoming liable to any third party.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of Northern Powergrid, its officers, employees, servants, contractors or agents.

(3) Northern Powergrid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the 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.

(4) Northern Powergrid must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 9 applies. If requested to do so by the undertaker, Northern Powergrid must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 9 for claims reasonably incurred by Northern Powergrid.

(5) Subject to sub-paragraphs (3) and (4), the fact that any act or thing may have been done by Northern Powergrid on behalf of the undertaker or in accordance with a plan approved by Northern Powergrid or in accordance with any requirement of Northern Powergrid as a consequence of the authorised development or under its supervision will not, unless sub-paragraph (2) applies, excuse the undertaker from liability under the provisions of this paragraph where the undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and workmanlike manner or in a manner that does not materially accord with the approved plan or as otherwise agreed between the undertaker and Northern Powergrid.

**55.** Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Northern Powergrid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

**56.** Any difference under the provisions of this Part of this Schedule, unless otherwise agreed, is to be referred to and settled by arbitration in accordance with article 42 [\(arbitration\)](#).

**57.** Where in consequence of the proposed construction of any of the authorised development, the undertaker or Northern Powergrid requires the removal of apparatus under paragraph 50~~5~~ or otherwise or Northern Powergrid makes requirements for the protection or alteration of apparatus under paragraph 52, the undertaker shall use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the need to ensure the safe and efficient operation of Northern Powergrid's undertaking taking into account the undertaker's desire for the efficient and economic execution of the authorised development and the undertaker and Northern Powergrid shall use reasonable endeavours to co-operate with each other for those purposes.

**58.** If in consequence of an agreement reached in accordance with paragraph 48 or the powers granted under this Order the access to any apparatus or alternative apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus or alternative apparatus as will enable Northern Powergrid to maintain or use the said apparatus no less effectively than was possible before such obstruction.

**59.** The plans submitted to Northern Powergrid by the undertaker pursuant to this Part of the Schedule must be sent to Northern Powergrid at [property@northernpowergrid.com](mailto:property@northernpowergrid.com) or such other address as Northern Powergrid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

**60.—**(1) Where practicable, the undertaker and Northern Powergrid will make reasonable efforts to liaise and cooperate in respect of information that is relevant to the safe and efficient construction, operation and maintenance of the authorised development.

(2) Liaison under sub-paragraph (1) shall be carried out where any works are—

- (a) within 15 metres of any above ground apparatus; or
- (b) to a depth of up to 4 metres below ground level under any apparatus.

## PART 6

### FOR THE PROTECTION OF CADENT GAS LIMITED AS GAS UNDERTAKER

#### Application

**61.** For the protection of Cadent the following provisions will, unless otherwise agreed in writing between the undertaker and Cadent, have effect.

#### Interpretation

**62.** In this Part of this Schedule—

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

“apparatus” means any gas mains, pipes, pressure governors, ventilators, cathodic protections (including transformed rectifiers and any associated groundbeds or cables), cables, marker posts, block valves, hydrogen above ground installations or other apparatus belonging to or maintained by Cadent for the purposes of Cadent’s undertaking together with any replacement apparatus and such other apparatus constructed pursuant to this Order that becomes operational apparatus of Cadent for the purposes of Cadent’s undertaking 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 of this 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;

“Cadent” means Cadent Gas Limited and includes its successors in title or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986(a);

“Cadent’s undertaking” means the rights, duties and obligations of Cadent Gas Limited as a public gas transporter within the meaning of Section 7 of the Gas Act 1986 (as amended by the Gas Act 1995(b));

“commence” has the same meaning as in article 2 of this Order and “commencement” will be construed to have the same meaning save that for the purposes of this Part of this Schedule only the terms “commence” and “commencement” include operations for the purposes of intrusive archaeological investigations and intrusive ~~investigation~~[investigations](#) of the existing condition of the ground or of structures within 15 metres in any direction of Cadent’s apparatus;

“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 Cadent (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

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(a) 1989 c. 29.  
(b) 1995 c. 45.

and the extent of ground subsidence which, if exceeded, must require the undertaker to submit for Cadent'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" will include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of Cadent including retain, lay, construct, inspect, maintain, protect, use, access, enlarge, replace, renew, remove, decommission or render unusable or remove the apparatus;

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

"rights" includes rights and restrictive covenants, and in relation to decommissioned apparatus the surrender of rights, release of liabilities and transfer of decommissioned apparatus; and

"specified works" means any of the authorised works or activities (including maintenance) 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 ~~sub~~-paragraph 67(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under ~~sub~~-paragraph 67(2) or otherwise; and
- (c) include any of the activities that are referred to in CD/SP/SSW/22 (Cadent's policies for safe working in the vicinity of Cadent's Assets).

### **On street apparatus**

#### **63.—(1) Except for—**

- (a) paragraph 64 (apparatus of Cadent in stopped up streets);
- (b) paragraph 67 (removal of apparatus) insofar as sub-paragraph (2) applies;
- (c) paragraph 68 (facilities and rights for alternative apparatus) insofar as sub-paragraph (2) applies;
- (d) paragraph 69 (retained apparatus: protection of Cadent);
- (e) paragraph 70 (expenses); and
- (f) paragraph 71 (indemnity),

of this Part 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 Cadent, the other provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and Cadent are regulated by the provisions of Part 3 of the 1991 Act.

(2) Paragraphs 67 and 68 of this Part of this Schedule will apply to diversions even where the diversion is carried out under the 1991 Act, in circumstances where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within existing adopted public highway.

(3) Notwithstanding article 11 (temporary prohibition or restriction of use of streets and public rights of way), or any other powers in the Order generally, section 85 of the 1991 Act in relation to cost sharing and the regulations made thereunder will not apply in relation to any diversion of apparatus of Cadent under the 1991 Act.

### **Apparatus of Cadent in stopped up streets**

**64.**—(1) Notwithstanding the temporary prohibition, diversion or restriction of use of any highway under the powers of article 11 (temporary prohibition or restriction of use of streets and public rights of way), Cadent will be at liberty at all times to take all necessary access across any such restricted or prohibited highway or to execute and do all such works and things in, upon or under any such highway as it would have been entitled to do immediately before such temporary prohibition, diversion or restriction in respect of any apparatus which at the time of the prohibition, diversion or restriction was in that highway.

(2) The Protective Provisions in this Part of this Schedule apply and take precedence over article 32 (apparatus and rights of statutory undertakers in stopped up streets) which shall not apply to Cadent.

### **Protective works to buildings**

**65.**—(1) The undertaker, in the case of the powers conferred by article 18 (protective works 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 Cadent and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of Cadent or any interruption in the supply of gas by Cadent, as the case may be, is caused, the undertaker must bear and pay on demand the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and, subject to sub-paragraph (2), will—

- (a) pay compensation to Cadent for any loss sustained by it; and
- (b) indemnify Cadent against all claims, demands proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred ~~from~~by Cadent, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of Cadent or its contractors or workers; and Cadent will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made by Cadent, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

### **Acquisition of land**

**66.**—(1) Regardless of any provision in this Order or anything shown on the land plan or contained in the book of reference to the Order, the undertaker may not appropriate or acquire any land interest or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right or apparatus of Cadent otherwise than by agreement.

(2) As a condition of 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 Cadent and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of Cadent or affect the provisions of any enactment or agreement regulating the relations between Cadent and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Cadent reasonably requires enter into such deeds of consent and variations upon such terms and conditions as may be agreed between Cadent and the undertaker acting reasonably and which must be no less favourable on the whole to Cadent unless otherwise agreed by Cadent and the undertaker must use reasonable endeavours 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) The undertaker and Cadent agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus including but not limited to the payment of costs and expenses relating to such relocation or removal

of apparatus and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Cadent or other enactments relied upon by Cadent as of right or other use in relation to the apparatus, then the provisions in this Part of this Schedule will prevail.

(4) Any agreement or consent granted by Cadent under paragraph 69 or any other paragraph of this Part of this Schedule, will not be taken to constitute agreement under sub-paragraph (1).

(5) As a condition of an agreement between the parties in sub-paragraph (1) that involves decommissioned apparatus being left in situ in land owned by the undertaker, the undertaker must accept a surrender of any existing easement or other interest of Cadent in such decommissioned apparatus and consequently acquire title to such decommissioned apparatus and release Cadent from all liabilities in respect of such decommissioned apparatus from the date of such surrender but excluding any liabilities that exist prior to the date of such surrender.

(6) Where the undertaker acquires the freehold of any land which is subject to any Cadent right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 68 do not apply, the undertaker must—

- (a) retain any notice of Cadent's easement, right or other interest on the title to the relevant land when registering the undertaker's title to such acquired land; and
- (b) (where no such notice of Cadent's easement, right or other interest exists in relation to such acquired land or any such notice is registered only on the Land Charges Register) include (with its application to register title to the undertaker's interest in such acquired land at the Land Registry) a notice of Cadent's easement, right or other interest in relation to such acquired land.

### **Removal of apparatus**

**67.**—(1) If, in the exercise of any agreement reached in accordance with paragraph 66, or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed under this Part of this Schedule and any right of Cadent to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, is in operation, and the rights and facilities referred to in sub-paragraph (2) have been provided, to the satisfaction of Cadent and in accordance with sub-paragraphs (2) to (5) inclusive.

(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 Cadent advance written notice of that requirement, together with a plan and section 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 Cadent reasonably needs to move or remove any of its apparatus) the undertaker must afford to Cadent to its satisfaction (taking into account paragraph 69(1)) the necessary facilities and rights—

- (a) for the construction of alternative apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus);
- (b) subsequently for the maintenance of that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus); and
- (c) to allow access to that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus).

(3) If 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, Cadent may, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation will not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to so do.

(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 Cadent and the undertaker.

(5) Cadent must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to Cadent of such facilities and rights as are referred to in sub-paragraph (2) or (3) have been afforded to Cadent to its satisfaction, then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Part of this Schedule.

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

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

(2) If the facilities and rights to be afforded by the undertaker and agreed with Cadent under sub-paragraph (1) in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed (in Cadent's opinion, acting reasonably), then the terms and conditions to which those facilities and rights are subject in the matter will be referred to arbitration in accordance with paragraph 75 (arbitration) of this Part of this Schedule and the arbitrator will make such provision for the payment of compensation by the undertaker to Cadent as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus: protection of Cadent**

**69.**—(1) Not less than 56 days (or such time period as may be agreed in writing between Cadent and the undertaker) before the commencement of any specified works the undertaker must submit to Cadent a plan and, if reasonably required by Cadent, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to Cadent 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) The undertaker must not commence any specified works until Cadent has given written approval of the plan so submitted (and the ground monitoring scheme if required).

(4) Any approval of Cadent required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and
- (b) must not be unreasonably withheld or delayed ~~and Cadent must meaningfully engage with the undertaker within 28 days of the date of submission of the plan under sub-paragraph~~.



(5) In relation to any specified works to which sub-paragraph (1) applies, Cadent may require such modifications to be made to the plan as may be reasonably necessary for the purpose of securing apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraphs (1) and (2) or, as relevant, sub-paragraph (4), as approved or as amended from time to time by agreement between the undertaker and Cadent, and in accordance with all conditions imposed under sub-paragraph (4)(a), and Cadent ~~is~~will be entitled to watch and inspect the execution of those works.

(7) Where Cadent 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 Cadent's satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required prior to commencement.

(8) If Cadent, 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, sub-paragraphs (1) to (3) and (6) to (8) apply as if the removal of the apparatus had been required by the undertaker under paragraph 67(2) provided that such written notice must be given by Cadent to the undertaker no later than as part of the approval of a plan submitted pursuant to sub-paragraph (1).

(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) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to Cadent notice as soon as is reasonably practicable and a plan of those works and must comply with—

- (a) the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances; and
- (b) sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order the undertaker must comply with Cadent's policies for safe working in proximity to gas apparatus "CD/SP/SSW/22 (Cadent's policies for safe working in the vicinity of Cadent's Assets<sup>22</sup>)" and HSE's "HS(~G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised works the undertaker must implement an appropriate ground mitigation scheme save that Cadent 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 70.

## Expenses

**70.**—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Cadent on demand, all charges, costs and expenses reasonably anticipated or incurred by Cadent 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 works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by Cadent in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) incurred by Cadent as a consequence of Cadent—
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 67(3) if it elects to do so; or

- (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting Cadent;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (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;
- (g) any watching brief pursuant to ~~sub~~-paragraph 69(6).

(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 75 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 Cadent by virtue of sub-paragraph (1) will be reduced by the amount of that excess, save where it is not possible or appropriate in the circumstances (including due to statutory or regulatory changes) 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) An amount which apart from this sub-paragraph would be payable to Cadent 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 Cadent 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

**71.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised 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 it) 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 works) or property of Cadent, or there is any interruption in any service provided, or in the supply of any goods, by Cadent, or Cadent 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 Cadent, the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and
- (b) indemnify Cadent for any other expenses, loss, demands, proceedings, damages, claims, penalty, or costs incurred by or recovered from Cadent, by reason or in consequence of any such damage or interruption or Cadent becoming liable to any third party as aforesaid other than arising from any negligence or default of Cadent.

(2) The fact that any act or thing may have been done by Cadent on behalf of the undertaker or in accordance with a plan approved by Cadent or in accordance with any requirement of Cadent or under its supervision including under any watching brief will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless Cadent 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 or in a manner as may otherwise be agreed between the undertaker and Cadent.

(3) Nothing in sub-paragraph (1) will impose 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 Cadent, its officers, servants, contractors or agents; and
- (b) any authorised works or any other works authorised by this Part of this Schedule carried out by Cadent as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or article 35 (consent to transfer the benefit of the Order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this paragraph (b) will be subject to the full terms of this Part of this Schedule including this paragraph in respect of such new apparatus.

(4) Cadent must give the undertaker reasonable notice of any such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering its representations.

## **Enactments and agreements**

72. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule ~~provides otherwise~~, or by agreement in writing between Cadent and the undertaker, nothing in this Part of this Schedule will affect the provisions of any enactment or agreement regulating the relations between the undertaker and Cadent 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**

73.—(1) Where in consequence of the proposed construction of any of the authorised works, the undertaker or Cadent requires the removal of apparatus under paragraph 67(2)) or Cadent makes requirements for the protection or alteration of apparatus under paragraph 69, the undertaker will 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 works and taking into account the need to ensure the safe and efficient operation of Cadent’s undertaking and Cadent will use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever Cadent’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, Cadent’s consent must not be unreasonably withheld or delayed.

## Access

74. If in consequence of any agreement reached in accordance with paragraph 66(1) or the powers granted under this Order the access to any apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect ~~to~~<sup>of</sup> the apparatus) is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction.

## Arbitration

75. Save for differences or disputes arising under ~~sub~~-paragraphs 67(2), 67(4), 68(1) and paragraph 69, any difference or dispute arising between the undertaker and Cadent under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Cadent, be determined by arbitration in accordance with article 42 (arbitration) and in settling any difference or dispute, the arbitrator must have regard to the requirements of Cadent for ensuring the safety, economic and efficient operation of Cadent's apparatus.

## Notices

76. The plans submitted to Cadent by the undertaker pursuant to ~~sub~~-paragraph 69(1) must be sent to Cadent Gas Limited Plant Protection by e-mail to [plantprotection@cadentgas.com](mailto:plantprotection@cadentgas.com) copied by e-mail to [landservices@cadentgas.com](mailto:landservices@cadentgas.com) and sent to the General Counsel Department at Cadent's registered office or such other address as Cadent may from time to time appoint instead for that purpose and notify to the undertaker in writing.

# PART 7

## FOR THE PROTECTION OF ANGLIAN WATER SERVICES LIMITED

## Application

77. The following provisions have effect for the protection of Anglian Water unless otherwise agreed in writing between the undertaker and Anglian Water.

## Interpretation

78. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in no less efficient a manner than previously;

“Anglian Water” means Anglian Water Services Limited;

“apparatus” means—

- (a) works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage;
- (b) any drain or works vested in Anglian Water under the Water Industry Act 1991(a);
- (c) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of the Water Industry Act 1991 or an agreement to adopt made under section 104 of that Act;
- (d) any drainage system constructed for the purpose of reducing the volume of surface water entering any public sewer belonging to Anglian Water; and
- (e) includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works (within the

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(a) 1991 c. 57.

meaning of section 219 of the Water Industry Act 1991), and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus, and for the purpose of this definition, where words are defined by section 219 of that Act, they shall be taken to have the same meaning;

“functions” includes powers and duties;

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

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

### **On street apparatus**

**79.** This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Anglian Water are regulated by the provisions of Part 3 of the 1991 Act.

### **Apparatus in stopped up streets**

**80.—**(1) Where any street or public right of way is subject to temporary prohibition or restriction of use under article 11 (temporary prohibition or restriction of use of streets and public rights of way), where Anglian Water has apparatus in the street or accessed by virtue of that street, it has the same powers and rights in respect of that apparatus as it enjoyed immediately before the prohibition or restriction of use and the undertaker must grant to Anglian Water legal easements reasonably satisfactory to Anglian Water in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of Anglian Water to require the removal of that apparatus under paragraph 83 or the power of the undertaker to carry out works under paragraph 85.

(2) Regardless of the temporary prohibition or restriction of use or diversion of any highway under the powers conferred by article 11 (temporary prohibition or restriction of use of streets and public rights of way), Anglian Water is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction of use or diversion was in that highway.

### **Protective works to buildings**

**81.** The undertaker, in the case of the powers conferred by article 18 (protective works to buildings), must not exercise those powers so as to obstruct or render less convenient the access to any apparatus without the written consent of Anglian Water (such consent not to be unreasonably withheld or delayed).

### **Acquisition of land**

**82.** Regardless of any provision in this Order or anything shown on the land plan, the undertaker must not acquire any apparatus otherwise than by agreement.

### **Removal of apparatus**

**83.—**(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that Anglian Water’s apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Anglian Water to maintain that apparatus in that land must not be extinguished, until

- (a) alternative apparatus has been constructed and is in operation to the reasonable satisfaction of Anglian Water in accordance with sub-paragraphs (2) to (8); and
- (b) facilities and rights have been secured for that alternative apparatus in accordance with paragraph 84.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Anglian Water 28 days' 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 an undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Anglian Water the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of 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 Anglian Water must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of 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 Anglian Water and the undertaker or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(5) Anglian Water must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 42 ([arbitration](#)), and after the grant to Anglian Water of any such facilities and rights as are referred to in sub-paragraphs (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.

(6) Regardless of anything in sub-paragraph (5), if Anglian Water gives notice in writing to the undertaker that it desires the undertaker to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker or to the extent that Anglian Water fails to proceed with that work in accordance with sub-paragraph (5) or the undertaker and Anglian Water otherwise agree, that work, instead of being executed by Anglian Water, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Anglian Water.

(7) If Anglian Water fails either reasonably to approve, or to provide reasons for its failure to approve along with an indication of what would be required to make acceptable, any proposed details relating to required removal works under sub-paragraph (2) within 28 days of receiving a notice of the required works from the undertaker, then such details are deemed to have been approved. For the avoidance of doubt, any such "deemed consent" does not extend to the actual undertaking of the removal works, which shall remain the sole responsibility of Anglian Water or its contractors.

(8) Whenever alternative apparatus is to be or is being substituted for existing apparatus, the undertaker shall, before taking or requiring any further step in such substitution works, use best endeavours to comply with Anglian Water's reasonable requests for a reasonable period of time to enable Anglian Water to—

- (a) make network contingency arrangements; or
- (b) bring such matters as it may consider reasonably necessary to the attention of end users of the utility in question.

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

**84.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and Anglian Water or in default of agreement settled by arbitration in accordance with article [42](#) (arbitration).

(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 Anglian Water 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 arbitrator must make such provision for the payment of compensation by the undertaker to Anglian Water as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

(3) Such facilities and rights as are set out in this paragraph are deemed to include any statutory permits granted to the undertaker in respect of the apparatus in question, whether under The Environmental Permitting (England and Wales) Regulations 2010<sup>(a)</sup> or other legislation.

### **Retained apparatus**

**85.**—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus (or any means of access to it) the removal of which has not been required by the undertaker under paragraph 83(2), the undertaker must submit to Anglian Water a plan of the works to be executed.

(2) Those works must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Anglian Water is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Anglian Water under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If Anglian Water in accordance with sub-paragraph (3) 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 77 to 79 and 82 to 84 apply as if the removal of the apparatus had been required by the undertaker under paragraph 83(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case must give to Anglian Water notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances, using its reasonable endeavours to keep the impact of those emergency works on Anglian Water's apparatus, on the operation of its water and sewerage network and on end-users of the services Anglian Water provides to a minimum.

(7) For the purposes of sub-paragraph (1) and without prejudice to the generality of the principles set out in that sub-paragraph, works are deemed to be in land near Anglian Water's apparatus (where it is a pipe) if those works fall within the following distances measured from the medial line of such apparatus—

- (a) 4 metres where the diameter of the pipe is less than 250 millimetres;
- (b) 5 metres where the diameter of the pipe is between 250 and 400 millimetres, and
- (c) a distance to be agreed on a case by case basis and before the submission of the Plan under sub-paragraph (1) is submitted where the diameter of the pipe exceeds 400 millimetres.

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(a) S.I. 2010/675.

## **Expenses and costs**

**86.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Anglian Water all expenses reasonably incurred by Anglian Water in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in this Part of this Schedule.

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

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

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 42 (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 Anglian Water by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to 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 is to be treated as if it also had been agreed or had been so determined.

**87.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 81 or 83(2), or by reason of any subsidence resulting from such development or 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 those works) or property of Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Anglian Water in making good such damage or restoring the supply; and
- (b) make reasonable compensation to Anglian Water for any other expenses, loss, damages, penalty or costs incurred by Anglian Water,

by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by Anglian Water on behalf of the undertaker or in accordance with a plan approved by Anglian Water or in accordance with any requirement of Anglian Water or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless Anglian Water fails to carry out and execute the works properly with due care and attention and in a skilful and professional 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 with respect to any damage or interruption to the extent that it is attributable to the unlawful or unreasonable act, neglect or default of Anglian Water, its officers, servants, contractors or agents.

(4) Anglian Water must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made, without the consent of the undertaker (such consent not

to be unreasonably withheld or delayed) who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(5) Anglian Water must use its reasonable endeavours to mitigate in whole or in part and to minimise any claims, demands, proceedings, costs, damages, expenses or loss to which this paragraph applies.

### **Cooperation**

**88.** Where in consequence of the proposed construction of any of the authorised development, the undertaker or Anglian Water requires the removal of apparatus under paragraph 83(2) or Anglian Water makes requirements for the protection or alteration of apparatus under paragraph 85, the undertaker must use all reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Anglian Water's undertaking, using existing processes where requested by Anglian Water, provided it is appropriate to do so, and Anglian Water must use all reasonable endeavours to co-operate with the undertaker for that purpose.

**89.** Where the undertaker identifies any apparatus which may belong to or be maintainable by Anglian Water but which does not appear on any statutory map kept for the purpose by Anglian Water, it shall inform Anglian Water of the existence and location of the apparatus as soon as reasonably practicable.

**90.** Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Anglian Water in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

**91.** The undertaker and Anglian Water may by written agreement substitute any period of time for those periods set out in this Part of this Schedule.

## **PART 8**

### **FOR THE PROTECTION OF INTERNAL DRAINAGE BOARDS**

**92.** The provisions of this Part have effect for the protection of the Board unless otherwise agreed in writing between the undertaker and the Board.

**93.** In this Part—

“construction” includes execution, placing, altering, replacing, relaying and removal; and “construct” and “constructed” must be construed accordingly.

“the Board” means Scunthorpe and Gainsborough Internal Drainage Board, Upper Witham Internal Drainage Board or Trent Valley Internal Drainage Board (as applicable);

“drainage work” means any ordinary watercourse and includes any land that provides or is expected to provide flood storage capacity for any ordinary watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage or flood defence;

“Internal Drainage District” has the meaning given in the Land Drainage Act 1991(a);

“ordinary watercourse” has the meaning given in section 72 (Interpretation) of the Land Drainage Act 1991;

“plans” includes sections, drawings, specifications and method statements;

“evidence” includes hydraulic modelling, infiltration test results and geotechnical evaluations; and

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(a) 1991 c. 59.

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within 9 metres of a drainage work within the Board’s Internal Drainage District or is otherwise likely to—

- (a) affect any drainage work within the Board’s Internal Drainage District;
- (b) affect the total volume or volumetric rate of flow of water in or flowing to or from any drainage work within the Board’s Internal Drainage District;
- (c) affect the flow of water in any drainage work within the Board’s Internal Drainage District;  
or
- (d) affect the conservation, distribution or use of water resources.

**94.**—(1) Before beginning to construct any specified work, the undertaker must submit to the Board plans of the specified work, evidence to support said plans and any such further particulars available to it as the Board may within 28 days of the submission of the plans reasonably require (or submission of further particulars if required by the Board).

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Board or determined under paragraph 101.

(3) Any approval of the Board required under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) is deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans for approval (or the submission of further particulars if applicable) or, in the case of a refusal, if it is not accompanied by a statement of the grounds of refusal; and
- (c) may be given subject to such reasonable requirements and conditions as the Board may consider appropriate.

(4) The Board must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3).

**95.** Without limiting paragraph 94, the requirements which the Board may make under that paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified work (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage; or
- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased, by reason of any specified work.

**96.**—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Board under paragraph 94, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Part; and
- (b) to the reasonable satisfaction of the Board, and an officer of the Board is entitled to give such notice as may be reasonably required in the circumstances to watch and inspect the construction of such works.

(2) The undertaker must give to the Board—

- (a) not less than 14 days’ notice in writing of its intention to commence construction of any specified work; and
- (b) notice in writing of its completion not later than 7 days after the date on which it is brought into use.

(3) If the Board reasonably requires, the undertaker must construct all or part of the protective works so that they are in place before the construction of the specified work.



(4) If any part of a specified work or any protective work required by the Board is constructed otherwise than in accordance with the requirements of this Part, the Board may by notice in writing require the undertaker at the undertaker's expense to comply with the requirements of this Part or (if the undertaker so elects and the Board in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Board reasonably requires.

(5) Subject to sub-paragraph (6), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (4) is served on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the Board may execute the works specified in the notice, and any expenditure reasonably incurred by it in so doing is recoverable from the undertaker.

(6) In the event of any dispute as to whether sub-paragraph (4) 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, the Board must not except in emergency exercise the powers conferred by sub-paragraph (4) until the dispute has been finally resolved by agreement or determined under paragraph 101.

**97.** If by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or the drainage work is otherwise damaged, the impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Board and, if the undertaker fails to do so, the Board may make good the impairment or damage and recover from the undertaker the expense reasonably incurred by it in doing so.

**98.** The undertaker must compensate the Board in respect of all costs, charges and expenses that the Board may reasonably incur, have to pay or may sustain—

- (a) in the examination or approval of plans and evidence under this Part;
- (b) in inspecting the proposed site for and construction of any specified work or any protective works required by the Board under this Part; and
- (c) in carrying out of any surveys or tests by the Board that are reasonably required in connection with the construction of the specified work.

**99.—(1)** Without limiting the other provisions of this Part, the undertaker must compensate the Board in respect of all claims, demands, proceedings, costs, damages, expenses or loss that may be made or taken against, reasonably recovered from or incurred by the Board by reason of—

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;
- (b) any flooding or increased flooding of any such land which is caused by, or results from, the construction of the specified work or any act or omission of the undertaker, its contractors, agents or employees whilst engaged upon the work.

(2) The Board must give to the undertaker reasonable notice of any such claim or demand, and no settlement or compromise may be made without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.

(3) The Board must use its reasonable endeavours to mitigate in whole or in part and to minimise any claims, demands, proceedings, costs, damages, expenses or loss to which this paragraph applies. If requested to do so by the undertaker, the Board must provide an explanation of how the claim has been minimised. The undertaker is only liable under this paragraph for claims reasonably incurred by the Board.

**100.** The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by the Board, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the undertaker from any liability under this Part.

101. Any dispute between the undertaker and the Board under this Part, unless otherwise agreed, must be determined by arbitration under article 42 ([arbitration](#)), but must be determined by the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Business, Energy and Industrial Strategy acting jointly on a reference to them by the undertaker or the Board, after notice in writing by one to the other.

## PART 9

### FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

102. The following provisions apply for the protection of the Agency unless otherwise agreed in writing between the undertaker and the Agency.

103. In this Part of this Schedule—

“the Agency” means the Environment Agency;

“construction” includes execution, placing, altering, replacing, relaying and removal and excavation and “construct” and “constructed” must be construed accordingly;

“drainage work” means any main river and includes any land which provides flood storage capacity for any main river and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

“fishery” means any waters containing fish and fish in, or migrating to or from, such waters and the spawn, spawning ground, habitat or food of such fish;

“main river” has the same meaning given in section 113 of the Water Resources Act 1991;

“plans” includes sections, drawings, specifications, calculations and method statements;

“remote defence” means any berm, wall or embankment that is constructed for the purposes of preventing or alleviating flooding from, or in connection with, any main river; and

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within—

(a) 8 metres of the base of a remote defence which is likely to—

(i) endanger the stability of, cause damage or reduce the effectiveness of that remote defence; or

(ii) interfere with the Agency’s access to or along that remote defence;

(b) 16 metres of a drainage work involving a tidal main river or 8 metres of a drainage work involving a non-tidal main river; or

(c) any distance of a drainage work and is otherwise likely to—

(i) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;

(ii) affect the flow, purity or quality of water in any main river or other surface waters;

(iii) cause obstruction to the free passage of fish or damage to any fishery;

(iv) affect the conservation, distribution or use of water resources; or

(v) affect the conservation value of the main river and habitats in its immediate vicinity;

or which involves—

(d) an activity that includes dredging, raising or taking of any sand, silt, ballast, clay, gravel or other materials from or off the bed or banks of a drainage work (or causing such materials to be dredged, raised or taken), including hydrodynamic dredging or desilting; and

(e) any quarrying or excavation within 16 metres of a drainage work which is likely to cause damage to or endanger the stability of the banks or structure of that drainage work.

### **Submission and approval of plans**

**104.**—(1) Before beginning to construct any specified work, the undertaker must submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within 28 days of the receipt of the plans reasonably request.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 114.

(3) Any approval of the Agency required under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) is deemed to have been refused if it is neither given nor refused within 2 months of the submission of the plans or receipt of further particulars if such particulars have been requested by the Agency for approval; and
- (c) may be given subject to such reasonable requirements as the Agency may have for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or for nature conservation in the discharge of its environmental duties.

(4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

(5) In the case of a refusal, if requested to do so, the Agency must provide reasons for the grounds of that refusal.

### **Construction of protective works**

**105.** Without limiting paragraph 104, the requirements which the Agency may have under that paragraph include conditions requiring the undertaker, at its own expense, to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage; or
- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

### **Timing of works and service of notices**

**106.**—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 105, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved under this Part of this Schedule; and
- (b) to the reasonable satisfaction of the Agency,

and the Agency is entitled by its officer to watch and inspect the construction of such works.

(2) The undertaker must give to the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If the Agency reasonably requires, the undertaker must construct all or part of the protective works so that they are in place prior to the construction of any specified work to which the protective works relate.

## **Works not in accordance with this Part of this Schedule**

**107.**—(1) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the Agency may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(2) Subject to sub-paragraph (3), if, within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph 107(1) 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, the Agency may execute the works specified in the notice and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(3) In the event of any dispute as to whether sub-paragraph 107(1) 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, the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (2) until the dispute has been finally determined in accordance with sub-paragraph 107(1)

## **Maintenance of works**

**108.**—(1) Subject to sub-paragraph (6) the undertaker must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the Order limits and on Order land, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to sub-paragraph (5), if, within a reasonable period, being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on 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, the Agency may do what is necessary for such compliance and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) If there is any failure by the undertaker to obtain consent or comply with conditions imposed by the Agency in accordance with these protective provisions the Agency may serve written notice requiring the undertaker to cease all or part of the specified works and the undertaker must cease the specified works or part thereof until it has obtained the consent or complied with the condition unless the cessation of the specified works or part thereof would cause greater damage than compliance with the written notice.

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency must 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 114.

(6) This paragraph does not apply to—

- (a) drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not proscribed by the powers of the Order from doing so; and
- (b) any obstruction of a drainage work expressly authorised in the approval of specified works plan and carried out in accordance with the provisions of this Part of this Schedule provided that any obstruction is removed as soon as reasonably practicable.

## **Remediating impaired drainage work**

**109.** If by reason of the construction of any specified work or of the failure of any such work, the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make good the impairment or damage and recover any expenditure incurred by the Agency in so doing from the undertaker.

## **Agency access**

**110.** If by reason of construction of the specified work the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the undertaker must provide such alternative means of access that will allow the Agency to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction within 24 hours of or as soon as reasonably practicable after the undertaker becoming aware of such obstruction.

## **Free passage of fish**

**111.—**(1) The undertaker must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work; or
- (b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the undertaker requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) If within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the undertaker fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and any expenditure incurred by the Agency in doing so is recoverable from the undertaker.

(4) In any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the undertaker any expenditure incurred in so doing provided that notice specifying those steps is served on the undertaker as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

## **Indemnity**

**112.** The undertaker indemnifies the Agency in respect of all costs, charges and expenses which the Agency may reasonably incur—

- (a) in the examination or approval of plans under this Part of this Schedule;
- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule; and
- (c) in the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

**113.—**(1) The undertaker is responsible for and indemnifies the Agency against all costs and losses, liabilities, claims and demands not otherwise provided for in this Schedule which may be reasonably incurred or suffered by the Agency by reason of, or arising out of—

- (a) the construction, operation or maintenance of any specified works comprised within the authorised development or the failure of any such works comprised within them; or

- (b) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction, operation or maintenance of the authorised development or dealing with any failure of the authorised development.
- (2) For the avoidance of doubt, in sub-paragraph (1)—
- “costs” includes—
    - (a) expenses and charges;
    - (b) staff costs and overheads; and
    - (c) legal costs;
  - “losses” includes physical damage;
  - “claims” and “demands” include as applicable—
    - (d) costs (within the meaning of this sub-paragraph) incurred in connection with any claim or demand; and
    - (e) any interest element of sums claimed or demanded; and
  - “liabilities” includes—
    - (f) contractual liabilities;
    - (g) tortious liabilities (including liabilities for negligence or nuisance);
    - (h) liabilities to pay statutory compensation or for breach of statutory duty; and
    - (i) liabilities to pay statutory penalties imposed on the basis of strict liability (but does not include liabilities to pay other statutory penalties).
- (3) The Agency must give to the undertaker reasonable notice of any such claim or demand and must not settle or compromise a claim without the agreement of the undertaker and that agreement must not be unreasonably withheld or delayed.
- (4) The Agency must at all times take reasonable steps to prevent and mitigate any such claims, demands, proceedings, costs, damages, expenses or loss.
- (5) The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, must not relieve the undertaker from any liability under the provisions of this Part of this Schedule.
- (6) Nothing in this paragraph imposes any liability on the undertaker with respect to any costs, charges, expenses, damages, claims, demands or losses to the extent that they are attributable to the neglect or default of the Agency, its officers, servants, contractors or agents.

## **Disputes**

**114.** Any dispute arising between the undertaker and the Agency under this Part of this Schedule must, if the parties agree, be determined by arbitration under article 42 ([arbitration](#)), but failing agreement be determined by the Secretary of State for Environment, Food and Rural Affairs or its successor and the Secretary of State for the department of Energy, Security and Net Zero or its successor acting jointly on a reference to them by the undertaker or the Agency, after notice in writing by one to the other.

## **PART 10**

### **FOR THE PROTECTION OF RAILWAY INTERESTS**

**115.** 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 129 of this Part of this Schedule any other person on whom rights or obligations are conferred by that paragraph.

**116.** In this Part of this Schedule—

“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<sup>(a)</sup>;

“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<sup>(b)</sup>) 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 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 for the purposes of such railway or works, apparatus or equipment;

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

- (c) the Railways Act 1993;
- (d) the network licence; and/or
- (e) 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; and

“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 adversely affect, railway property and, for the avoidance of doubt, includes the maintenance of such works under the powers conferred by article 5 (power to maintain the authorised development) in respect of such works.

**117.—**(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent 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) 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

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(a) 1993 c. 43.  
(b) ~~2006 c. 46.~~

- (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.

**118.**—(1) The undertaker must not exercise the powers conferred by—

- (a) article 3 (development consent granted by the Order);
- (b) article 5 (power to maintain the authorised development);
- (c) article 16 (discharge of water);
- (d) article 19 (authority to survey and investigate the land);
- (e) article 20 (compulsory acquisition of land);
- (f) article 22 (compulsory acquisition of rights);
- (g) article 23 (private rights);
- (h) article 25 (acquisition of subsoil only);
- (i) article 26 (power to override easements and other rights);
- (j) article 29 (temporary use of land for carrying out the authorised development);
- (k) article 30 (temporary use of land for maintaining the authorised development);
- (l) article 31 statutory undertakers);
- (m) article 38 (felling or lopping of trees and removal of hedgerows);
- (n) article 39 (trees subject to tree preservation orders);
- (o) the powers conferred by section 11(3) (power of entry) of the 1965 Act;
- (p) the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016;
- (q) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016;

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 31 (statutory undertakers), article 26 (power to override easements and other rights) or article 23 (private rights), 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).

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

**119.**—(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.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, 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 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 approval or disapproval, the engineer shall be deemed to have approved the plans as submitted.

(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 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, Network Rail must construct it without unnecessary 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) When signifying their approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's 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 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 expense of the undertaker in either case without unnecessary 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 reasonable satisfaction.

**120.**—(1) Any specified work and any protective works to be constructed by virtue of paragraph 119(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 119;
- (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 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 to which Network Rail may be put and compensation for any 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 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.

**121.** 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 may reasonably require with regard to a specified work or the method of constructing it.

**122.** Network Rail must at all times afford reasonable facilities to the undertaker and its 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.

**123.**—(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 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' 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 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 incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(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 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 119(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 124(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(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.

**124.** The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 119(3) or in constructing any protective works under the provisions of paragraph 119(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 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 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 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.

**125.**—(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) 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 119(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) 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) 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 119(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 paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail’s apparatus identified pursuant to paragraph (a).

(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 119(1) has effect subject to the sub-paragraph.

(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) 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) 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.

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

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; [and](#)
- (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 120.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 129(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 119 applies.

(10) For the purpose of paragraph 124(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

**126.** 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 not adversely to affect railway property.

**127.** 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 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.

**128.** Any additional expenses which Network Rail may reasonably 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.

**129.—(1)** The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule (subject to article 41 (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;
- (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: 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 supervision shall not (if it was done without

negligence on the part of Network Rail or of any person in its employ or of its 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;
- (b) not make any settlement or compromise of such a claim or demand without the prior consent of the undertaker; and
- (c) take such steps as are within its control and are reasonable in the circumstances to mitigate any liabilities relating to such claims or demands.

(3) The sums payable by the undertaker under sub-paragraph (1) shall 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, 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 (4).

(6) In this paragraph—

“the relevant costs” means the costs, losses and expenses (including loss of revenue) 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 railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (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.

**130.** 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 129) 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).

**131.** 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.

**132.** 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 land plan 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.

**133.** 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.

**134.** 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 consent, under article 35 (consent to transfer the benefit of the Order) of this Order and any such notice must be given no later than 28 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.

**135.** 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 40 (certification of plans and documents, etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in a format specified by Network Rail.

**136.** Any dispute arising under this Part of this Schedule, unless otherwise provided for, must be referred to and settled by arbitration in accordance with article 42 ([arbitration](#)) and the Rules at Schedule 15 (arbitration rules).

## PART 11

### FOR THE PROTECTION OF GATE BURTON ENERGY PARK LIMITED

**137.** The provisions of this Part apply for the protection of Gate Burton unless otherwise agreed in writing between the undertaker and Gate Burton.

**138.** In this Part—

“apparatus” means the cables, structures or other infrastructure owned, occupied or maintained by Gate Burton or its successor in title within the Gate Burton Work No. 4B Area;

“construction” includes execution, placing, altering, replacing, reconstruction, relaying, maintenance, extensions, enlargement and removal; and “construct” and “constructed” must be construed accordingly;

“Gate Burton” means an undertaker with the benefit of all or part of the Gate Burton Energy Park Order for the time being;

“Gate Burton Work No. 4B Area” means the area for Work No. 4B authorised in the Gate Burton Energy Park Order;

“plans” includes sections, drawings, specifications, designs, design data, software, 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 the Gate Burton Work No. 4B Area; and

“specified works” means so much of any works of operations authorised by this Order (or authorised by any planning permission intended to operate in conjunction with this Order) as is—

- (a) within the Gate Burton Work No. 4B Area;
- (b) in, on, under, over or within 25 metres of the proposed Gate Burton Work No. 4B Area or any apparatus; or
- (c) may in any way adversely affect any apparatus.

**139.** The consent of Gate Burton under this Part is not required where the Gate Burton Energy Park Order has expired without the authorised development having been commenced pursuant to the Gate Burton Energy Park Order.

**140.** Where conditions are included in any consent granted by Gate Burton pursuant to this Part, the undertaker must comply with the conditions if it chooses to implement or rely on the consent, unless the conditions are waived or varied in writing by Gate Burton.

**141.** The undertaker must not under the powers of this Order acquire, extinguish, suspend, override or interfere with any rights that Gate Burton has in respect of any apparatus or has in respect of the Gate Burton Work No. 4B Area without the consent of Gate Burton, which must not be unreasonably withheld or delayed but which may be made subject to reasonable conditions.

**142.**—(1) The undertaker must not under the powers of this Order carry out any specified works without the consent of Gate Burton, which must not be unreasonably withheld or delayed but which may be made subject to reasonable conditions and if Gate Burton does not respond within 28 days of the undertaker's request for consent, then consent is deemed to be given.

(2) Subject to obtaining consent pursuant to sub-paragraph (1) and before beginning to construct any specified works, the undertaker must submit plans of the specified works to Gate Burton and must submit any such further particulars available to it that Gate Burton may reasonably require.

(3) Any specified works must be constructed without unreasonable delay in accordance with the plans approved in writing by Gate Burton.

(4) Any approval of Gate Burton required under this paragraph may be made subject to such reasonable conditions as may be required for the protection or alteration of any apparatus (including proposed apparatus) in the Gate Burton Work No. 4B Area or for securing access to such apparatus or the Gate Burton Work No. 4B Area.

(5) Where Gate Burton requires any protective works to be carried out either by themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to Gate Burton's reasonable satisfaction.

(6) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any specified works, new plans instead of the plans previously submitted, and the provisions of this paragraph shall apply to and in respect of the new plans.

**143.**—(1) The undertaker must give to Gate Burton not less than 28 days' written notice of its intention to commence the construction of the specified works and, not more than 14 days after completion of their construction, must give Gate Burton written notice of the completion.

(2) The undertaker is not required to comply with paragraph 142 or sub-paragraph (1) in a case of emergency, but in that case it must give to Gate Burton notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with paragraph 142 in so far as is reasonably practicable in the circumstances.

**144.** The undertaker must at all reasonable times during construction of the specified works allow Gate Burton and its servants and agents access to the specified works and all reasonable facilities for inspection of the specified works.

**145.**—(1) After the purpose of any temporary works has been accomplished, the undertaker must with all reasonable dispatch, or after a reasonable period of notice in writing from Gate Burton requiring the undertaker to do so, remove the temporary works in, on, under, over or within the Gate Burton Work No. 4B Area.

(2) If the undertaker fails to remove the temporary works within a reasonable period of receipt of a notice pursuant to sub-paragraph (1), Gate Burton may remove the temporary works and may recover the reasonable costs of doing so from the undertaker.

**146.** If in consequence of the exercise of the powers conferred by 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 Gate Burton to maintain or use the apparatus no less effectively than was possible before the obstruction.

**147.** The undertaker must not exercise the powers conferred by this Order to prevent or interfere with the access by Gate Burton to the proposed Gate Burton Work No. 4B Area.

**148.** To ensure its compliance with this Part, the undertaker must before carrying out any works or operations pursuant to this Order within Gate Burton Work No. 4B Area request up-to-date written confirmation from Gate Burton of the location of any apparatus or proposed apparatus.

**149.** The undertaker and Gate Burton must each act in good faith and use reasonable endeavours to co-operate with and provide assistance to each other as may be required to give effect to the provisions of this Part.

**150.** The undertaker must pay to Gate Burton the reasonable expenses incurred by Gate Burton in connection with the approval of plans, inspection of any specified works or the alteration or protection of any apparatus or the proposed Gate Burton Work No. 4B Area.

**151.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any specified works, any damage is caused to any apparatus or there is any interruption in any service provided, or in the supply of any goods, by Gate Burton, or Gate Burton becomes liable to pay any amount to any third party, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Gate Burton in making good such damage or restoring the service or supply; and
- (b) compensate Gate Burton for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Gate Burton, by reason or in consequence of any such damage or interruption or Gate Burton becoming liable to any third party as aforesaid.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of Gate Burton, its officers, servants, contractors or agents.

(3) Gate Burton must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made, unless payment is required in connection with a statutory compensation scheme without first consulting the undertaker and considering its representations.

(4) Gate Burton must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies. If requested to do so by the undertaker, Gate Burton shall provide an explanation of how the claim has been minimised. The undertaker shall only be liable under this paragraph for claims reasonably incurred by Gate Burton.

(5) The fact that any work or thing has been executed or done with the consent of Gate Burton and in accordance with any conditions or restrictions prescribed by Gate Burton or in accordance with any plans approved by Gate Burton or to its satisfaction or in accordance with any directions or award of any arbitrator does not relieve the undertaker from any liability under this Part.

**152.** Any dispute arising between the undertaker and Gate Burton under this Part must be determined by arbitration under article [42](#) (arbitration).

## PART 12

### FOR THE PROTECTION OF WEST BURTON SOLAR PROJECT LIMITED

**153.** The provisions of this Part apply for the protection of West Burton unless otherwise agreed in writing between the undertaker and West Burton.

**154.** In this Part—

“apparatus” means the cables, structures or other infrastructure owned, occupied or maintained by West Burton or its successor in title within the West Burton Work No. 5B Area;

“construction” includes execution, placing, altering, replacing, reconstruction, relaying, maintenance, extensions, enlargement and removal; and “construct” and “constructed” must be construed accordingly;

~~“West Burton” means an undertaker with the benefit of all or part of the West Burton Solar Project Order for the time being;~~

~~“West Burton Work No. 5B Area” means the area for Work No. 5B authorised in the West Burton Solar Project Order;~~

“plans” includes sections, drawings, specifications, designs, design data, software, 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 the West Burton Work No. 5B Area; ~~and~~



“specified works” means so much of any works of operations authorised by this Order (or authorised by any planning permission intended to operate in conjunction with this Order) as is—

- (a) within the West Burton Work No. 5B Area;
- (b) in, on, under, over or within 25 metres of the proposed West Burton Work No. 5B Area or any apparatus; or
- (c) may in any way adversely affect any apparatus.

“West Burton” means an undertaker with the benefit of all or part of the West Burton Solar Project Order for the time being; and

“West Burton Work No. 5B Area” means the area for Work No. 5B authorised in the West Burton Solar Project Order.

**155.** The consent of West Burton under this Part is not required where the West Burton Solar Project Order has expired without the authorised development having been commenced pursuant to ~~requirement 1 of Schedule 2 to~~ the West Burton Solar Project Order.

**156.** Where conditions are included in any consent granted by West Burton pursuant to this Part, the undertaker must comply with the conditions if it chooses to implement or rely on the consent, unless the conditions are waived or varied in writing by West Burton.

**157.** The undertaker must not under the powers of this Order acquire, extinguish, suspend, override or interfere with any rights that West Burton has in respect of any apparatus or has in respect of the West Burton Work No. 5B Area without the consent of West Burton, which must not be unreasonably withheld or delayed but which may be made subject to reasonable conditions.

**158.**—(1) The undertaker must not under the powers of this Order carry out any specified works without the consent of West Burton, which must not be unreasonably withheld or delayed but which may be made subject to reasonable conditions and if West Burton does not respond within 28 days of the undertaker’s request for consent, then consent is deemed to be given.

(2) Subject to obtaining consent pursuant to sub-paragraph (1) and before beginning to construct any specified works, the undertaker must submit plans of the specified works to West Burton and must submit any such further particulars available to it that West Burton may reasonably require.

(3) Any specified works must be constructed without unreasonable delay in accordance with the plans approved in writing by West Burton.

(4) Any approval of West Burton required under this paragraph may be made subject to such reasonable conditions as may be required for the protection or alteration of any apparatus (including proposed apparatus) in the West Burton Work No. 5B Area or for securing access to such apparatus or the West Burton Work No. 5B Area.

(5) Where West Burton requires any protective works to be carried out either by themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to West Burton’s reasonable satisfaction.

(6) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any specified works, new plans instead of the plans previously submitted, and the provisions of this paragraph shall apply to and in respect of the new plans.

**159.**—(1) The undertaker must give to West Burton not less than 28 days’ written notice of its intention to commence the construction of the specified works and, not more than 14 days after completion of their construction, must give West Burton written notice of the completion.

(2) The undertaker is not required to comply with paragraph 158 or sub-paragraph (1) in a case of emergency, but in that case it must give to West Burton notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with paragraph 158 in so far as is reasonably practicable in the circumstances.

**160.** The undertaker must at all reasonable times during construction of the specified works allow West Burton and its servants and agents access to the specified works and all reasonable facilities for inspection of the specified works.

**161.**—(1) After the purpose of any temporary works has been accomplished, the undertaker must with all reasonable dispatch, or after a reasonable period of notice in writing from West Burton requiring the undertaker to do so, remove the temporary works in, on, under, over or within the West Burton Work No. 5B Area.

(2) If the undertaker fails to remove the temporary works within a reasonable period of receipt of a notice pursuant to sub-paragraph (1), West Burton may remove the temporary works and may recover the reasonable costs of doing so from the undertaker.

**162.** If in consequence of the exercise of the powers conferred by 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 West Burton to maintain or use the apparatus no less effectively than was possible before the obstruction.

**163.** The undertaker must not exercise the powers conferred by this Order to prevent or interfere with the access by West Burton to the proposed West Burton Work No. 5B Area.

**164.** To ensure its compliance with this Part, the undertaker must before carrying out any works or operations pursuant to this Order within West Burton Work No. 5B Area request up-to-date written confirmation from West Burton of the location of any apparatus or proposed apparatus.

**165.** The undertaker and West Burton must each act in good faith and use reasonable endeavours to co-operate with and provide assistance to each other as may be required to give effect to the provisions of this Part.

**166.** The undertaker must pay to West Burton the reasonable expenses incurred by West Burton in connection with the approval of plans, inspection of any specified works or the alteration or protection of any apparatus or the proposed West Burton Work No. 5B Area.

**167.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any specified works, any damage is caused to any apparatus or there is any interruption in any service provided, or in the supply of any goods, by West Burton, or West Burton becomes liable to pay any amount to any third party, the undertaker must—

- (a) bear and pay the cost reasonably incurred by West Burton in making good such damage or restoring the service or supply; and
- (b) compensate West Burton for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from West Burton, by reason or in consequence of any such damage or interruption or West Burton becoming liable to any third party as aforesaid.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of West Burton, its officers, servants, contractors or agents.

(3) West Burton must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made, unless payment is required in connection with a statutory compensation scheme without first consulting the undertaker and considering its representations.

(4) West Burton must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies. If requested to do so by the undertaker, West Burton shall provide an explanation of how the claim has been minimised. The undertaker shall only be liable under this paragraph for claims reasonably incurred by West Burton.

(5) The fact that any work or thing has been executed or done with the consent of West Burton and in accordance with any conditions or restrictions prescribed by West Burton or in accordance with any plans approved by West Burton or to its satisfaction or in accordance with any directions or award of any arbitrator does not relieve the undertaker from any liability under this Part.

**168.** Any dispute arising between the undertaker and West Burton under this Part must be determined by arbitration under article 42 (arbitration).

## PART 13

### FOR THE PROTECTION OF THE CANAL & RIVER TRUST

#### Interpretation

**169.**—(1) For the protection of the Canal & River Trust the following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and the Canal & River Trust.

(2) In this Part of this Schedule—

“code of practice” means the Code of Practice for Works Affecting the Canal & River Trust (April 2023) or any updates or amendments thereto;

“construction”, in relation to any specified work or protective work, includes—

- (a) the execution and placing of that work; and
- (b) any relaying, renewal or maintenance of that work, and “construct” and “constructed” have corresponding meanings;

“Canal & River Trust’s network” means the Canal & River Trust’s network of waterways;

“detriment” means any damage to the waterway or any other property of the Canal & River Trust caused by the presence of the authorised development and, without prejudice to the generality of that meaning, includes—

- (c) any obstruction of, or interference with, or hindrance or danger to, navigation or to any use of the waterway (including towing paths);
- (d) the erosion of the bed or banks of the waterway, or the impairment of the stability of any works, lands or premises forming part of the waterway;
- (e) the deposit of materials or the siltation of the waterway so as to damage the waterway;
- (f) the pollution of the waterway;
- (g) any significant alteration in the water level of the waterway, or significant interference with the supply of water thereto, or drainage of water therefrom;
- (h) any harm to the ecology of the waterway; and
- (i) any interference with the exercise by any person of any lawful rights over Canal & River Trust’s network;

“the engineer” means an engineer appointed by the Canal & River Trust for the purpose in question;

“plans” includes navigational risk assessments, sections, designs, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction) and programmes;

“practical completion” means practical completion of all of the specified work notwithstanding that items which would ordinarily be considered snagging items remain outstanding, and the expressions “practically complete” and “practically completed” are to be construed accordingly;

“protective work” means a work constructed under paragraph 173(4)(a) (approval of plans, protective works, etc.);

“specified work” means so much of the authorised development as is, may be, or takes place in, on, under or over the surface of land below the water level forming part of the waterway; or may affect the waterway or any function of the Canal & River Trust, including any projection over the waterway by any authorised work or any plant or machinery; and

“the waterway” means each and every part of the river Trent within the Order limits and includes any works, lands or premises belonging to the Canal & River Trust, or under its management or control, and held or used by the Canal & River Trust in connection with its statutory functions.

(3) Where the code of practice applies to any works or matter that are part of the authorised development or that form part of the protective works and there is an inconsistency between these protective provisions and the code of practice, the part of the code of practice that is inconsistent with these protective provisions will not apply and these protective provisions will apply. The undertaker will identify and agree with the Canal & River Trust those parts of the code of practice which are not applicable to the construction of the specified works and for the avoidance of doubt the undertaker will not be required to comply with those agreed parts of the code of practice.

### **Powers requiring the Canal & River Trust’s consent**

**170.**—(1) The undertaker must not in the exercise of the powers conferred by this Order obstruct or interfere with pedestrian or vehicular access to the waterway unless such obstruction or interference with such access is with the consent of the Canal & River Trust.

(2) The undertaker must not exercise any power conferred by this Order to discharge water into the waterway under article 16 (discharge of water) or in any way interfere with the supply of water to or the drainage of water from the waterway unless such exercise is with the consent of the Canal & River Trust, save as to surface water discharge which will not require the consent of the Canal & River Trust.

(3) The undertaker must not exercise the powers conferred by article 19 (authority to survey and investigate the land) or section 11(3) of the 1965 Act, in relation to the waterway unless such exercise is with the consent of the Canal & River Trust.

(4) The undertaker must not exercise any power conferred by article 29 (temporary use of land for constructing the authorised development) or article 30 (temporary use of land for maintaining the authorised development) in respect of the waterway unless such exercise is with the consent of the Canal & River Trust.

(5) The undertaker must not exercise any power conferred by article 20 (compulsory acquisition of land), article 22 (compulsory acquisition of rights), article 25 (acquisition of subsoil) or article 31 (statutory undertakers) in respect of the Canal & River Trust’s interests in the waterway unless such exercise is with the consent of the Canal & River Trust.

(6) The consent of the Canal & River Trust pursuant to sub-paragraphs (1) to (5) must not be unreasonably withheld or delayed but may be given subject to reasonable terms and conditions provided that it will not be reasonable for the Canal & River Trust to withhold or delay consent or impose terms and conditions that would prevent the undertaker from complying with the protective provisions in this Part of this Schedule or any condition contained in Schedule 2 (requirements) or Part 2 of Schedule 9 (Deemed marine licence under the 2009 Act).

### **Fencing**

**171.** Where so required by the engineer acting reasonably the undertaker must, to the reasonable satisfaction of the engineer, fence off a specified work or a protective work or take such other steps as the engineer may require to be taken for the purpose of separating a specified work or a protective work from the waterway, whether on a temporary or permanent basis or both.

### **Survey of waterway**

**172.**—(1) Before the commencement of the initial construction of any part of the specified works and again following practical completion of the specified works the undertaker must bear the reasonable and proper cost of the carrying out by a qualified engineer (“the surveyor”), to be approved by the Canal & River Trust and the undertaker, of a survey to measure the navigational depth of the waterway and profile of the riverbed (“the survey”) of so much of the waterway and of any land which may provide support for the waterway as will or may be affected by the specified works.

(2) The design of and methods proposed to be used for the survey are to be approved by the Canal & River Trust and the undertaker.

(3) For the purposes of the survey the undertaker must—

- (a) on being given reasonable notice (save in case of emergency, when immediate access must be afforded) afford reasonable facilities to the surveyor for access to the site of the specified works and to any land of the undertaker which may provide support for the waterway as will or may be affected by the specified works; and
- (b) supply the surveyor as soon as reasonably practicable with all such information as they may reasonably require and which the undertaker holds with regard to the specified works or the method of their construction.

(4) Copies of the survey results must be provided to both the Canal & River Trust and the undertaker at no cost to the Canal & River Trust.

### **Approval of plans, protective works, etc.**

**173.**—(1) The undertaker must before commencing construction of any specified work including any temporary works supply to the Canal & River Trust proper and sufficient plans of that work, on the Canal & River Trust forms, having regard to the code of practice and such further particulars available to it as the Canal & River Trust may within 14 working days of the submission of the plans reasonably require for the approval of the engineer and must not commence such construction of a specified work until plans of that work have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld or delayed, and if within 25 working days after such plans (including any other particulars reasonably required under sub-paragraph (1)) have been received by the Canal & River Trust the engineer has not intimated disapproval of those plans and the grounds of disapproval, the engineer is deemed to have approved the plans as submitted.

(3) An approval of the engineer under this paragraph is not deemed to have been unreasonably withheld if approval within the time limited by sub-paragraph (2) has not been given pending the outcome of any consultation on the approval in question that the Canal & River Trust is obliged to carry out in the proper exercise of its functions, provided prior written notice of such consultation has been provided by the Canal & River Trust to the undertaker.

(4) When signifying approval of the plans the engineer may specify on land held or controlled by the Canal & River Trust or the undertaker and subject to such works being authorised by this Order or being development permitted by an Act of Parliament or general development order made under the 1990 Act—

- (a) any protective work (whether temporary or permanent) which in the reasonable opinion of the engineer should be carried out before the commencement of a specified work to prevent detriment; and
- (b) such other requirements as may be reasonably necessary to prevent detriment,

and such protective works must be constructed by the undertaker or by the Canal & River Trust at the undertaker's request with all reasonable dispatch and the undertaker must not commence the construction of a specified work until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction such consent not to be unreasonably withheld or delayed.

(5) The withholding of an approval of the engineer under this paragraph will be deemed to be unreasonable if it would prevent the undertaker from complying with any condition contained in Schedule 2 (requirements) or Part 2 of Schedule 9 (Deemed marine licence under the 2009 Act).

(6) The undertaker must pay to the Canal & River Trust a capitalised sum representing any reasonably increased and additional cost of maintaining and, when necessary, renewing any works, including any permanent protective works provided under sub-paragraph (4), and of carrying out any additional dredging of the waterway reasonably necessitated by the exercise of any of the powers under this Order but if the cost of maintaining the waterway, or of works of renewal of the

waterway, is reduced in consequence of any such works, a capitalised sum representing such reasonable saving is to be set off against any sum payable by the undertaker to the Canal & River Trust under this paragraph.

(7) In the event that the undertaker fails to complete the construction of, or part of, the specified works the Canal & River Trust may, if it is reasonably required in order to avoid detriment, serve on the undertaker a notice in writing requesting that construction be completed. Any notice served under this sub-paragraph must state the works that are to be completed by the undertaker and lay out a reasonable timetable for the completion of the works. If the undertaker fails to comply with this notice within 35 working days, the Canal & River Trust may construct any of the specified works, or part of such works, (together with any adjoining works) in order to complete the construction of, or part of, the specified works or make such works and the undertaker must reimburse the Canal & River Trust all costs, fees, charges and expenses it has reasonably incurred in carrying out such works.

### **Design of works**

**174.** Without prejudice to its obligations under the foregoing provisions of this Part of this Schedule the undertaker must consult, collaborate and respond constructively to any reasonable approach, suggestion, proposal or initiative made by the Canal & River Trust on—

- (a) the design of the specified works;
- (b) the environmental effects of those works;

and must have regard to such views as may be expressed by the Canal & River Trust in response to such consultation pursuant in particular to the requirements imposed on the Canal & River Trust by section 22 (general environmental and recreational duties) of the British Waterways Act 1995 and to the interest of the Canal & River Trust in preserving and enhancing the environment of its waterways; and

- (c) amendments or alterations to the construction environmental management plan, landscape and ecological management plan, operational environmental management plan, decommissioning plan (as may be approved pursuant to Schedule 2) in respect of a specified work or a protective work or otherwise in connection with the waterway.

### **Notice of works**

**175.** The undertaker must give to the engineer 30 days notice of its intention to commence the construction of any of the specified works or protective works, or, in the case of repair carried out in an emergency, such notice as may be reasonably practicable so that, in particular, the Canal & River Trust may where appropriate arrange for the publication of notices bringing those works to the attention of users of the Canal & River Trust's network.

### **Construction of specified works**

**176.—**(1) Any specified works or protective works must, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled as aforesaid and with any specifications made under paragraph 173 (approval of plans, protective works, etc.) and paragraph 174 (design of works);
- (b) under the supervision (if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little detriment to the waterway as is reasonably practicable;
- (d) in such manner as to cause as little inconvenience as is reasonably practicable to the Canal & River Trust, its officers and agents and all other persons lawfully using the waterways, except to the extent that temporary obstruction has otherwise been agreed by the Canal & River Trust;
- (e) in such a manner as to ensure that no materials are discharged or deposited into the waterway otherwise than in accordance with article 16 (discharge of water); and

- (f) in compliance with the code of practice (where appropriate and where consistent with the exercise of powers pursuant to this Order and for the timely, safe, economic and efficient delivery of the authorised works);

(2) Nothing in this Order authorises the undertaker to make or maintain any permanent works in or over the waterway so as to impede or prevent (whether by reducing the width of the waterway or otherwise) the passage of any vessel which is of a kind (as to its dimensions) for which the Canal & River Trust is required by section 105(1)(b) and (2) of the Transport Act 1968 to maintain the waterway.

(3) Following the completion of the construction of the specified works the undertaker must restore the waterway to a condition no less satisfactory than its condition immediately prior to the commencement of those works unless otherwise agreed between the undertaker and the Canal & River Trust and save to the extent that any deterioration to the condition of the waterway is not caused by the construction of the specified works.

(4) In assessing whether the condition of the waterway is no less satisfactory than immediately prior to the works pursuant to sub-paragraph (3), the Canal & River Trust and the undertaker must take account of any survey issued pursuant to paragraph 172 (survey of waterway) and any other information agreed between them pursuant to this Part.

### **Prevention of pollution**

**177.** The undertaker must not in the course of constructing a specified work or a protective work or otherwise in connection therewith do or permit anything which may result in the pollution of the waterway or the deposit of materials therein (unless otherwise permitted by the Order or the protective provisions in this Part of this Schedule) and must take such steps as the engineer may reasonably require to avoid or make good any breach of its obligations under this paragraph.

### **Access to work – provision of information**

**178.—**(1) The undertaker on being given reasonable notice must—

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

(2) The Canal & River Trust on being given reasonable notice must—

- (a) at all reasonable times afford reasonable facilities to the undertaker and its agents for access to any works carried out by the Canal & River Trust under this Part during their construction; and
- (b) supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them and the undertaker must reimburse the Canal & River Trust's reasonable costs in relation to the supply of such information.

### **Alterations to the waterway**

**179.—**(1) If during the construction of a specified work or a protective work or during a period of 24 months after the completion of those works any alterations or additions, either permanent or temporary, to the waterway are reasonably necessary in consequence of the construction of the specified work or the protective work in order to avoid detriment, and the Canal & River Trust gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to the Canal & River Trust the reasonable costs of those alterations or additions including, in respect of any such alterations or additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by the Canal & River Trust in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If the cost of maintaining, working or renewing the waterway is reduced in consequence of any such alterations or additions a capitalised sum representing such saving is to be set off against any sum payable by the undertaker to the Canal & River Trust under this paragraph.

#### **Repayment of the Canal & River Trust's fees, etc.**

**180.**—(1) The undertaker must repay to the Canal & River Trust in accordance with the code of practice all fees, costs, charges and expenses reasonably incurred by the Canal & River Trust—

- (a) in constructing any protective works under the provisions of paragraph 173(4)(a); (approval of plans, protective provisions, etc.);
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction or repair of a specified work and any protective works;
- (c) in respect of the employment during the construction of the specified works or any protective works of any inspectors, watchmen and other persons whom it is reasonably necessary to appoint for inspecting, watching and lighting any waterway and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works or any protective works;
- (d) in bringing the specified works or any protective works to the notice of users of the Canal & River Trust's network; and
- (e) in constructing and/or carrying out any measures related to any specified works or protective works which are reasonably required by the Canal & River Trust to ensure the safe navigation of the waterway save that nothing is to require the Canal & River Trust to construct and/or carry out any measures.

(2) If the Canal & River Trust considers that a fee, charge, cost or expense will be payable by the undertaker pursuant to sub-paragraph (1), the Canal & River Trust will first provide an estimate of that fee, charge, cost or expense and supporting information in relation to the estimate to the undertaker along with a proposed timescale for payment for consideration and the undertaker may, within a period of 14 working days—

- (a) provide confirmation to the Canal & River Trust that the estimate is agreed and pay to the Canal & River Trust, by the date stipulated, that fee, charge, cost or expense; or
- (b) provide confirmation to the Canal & River Trust that the estimate is not accepted along with a revised estimate and a proposal as to how or why the undertaker considers that the estimate can be reduced and/or paid at a later date.

(3) The Canal & River Trust must take into account any representations made by the undertaker in accordance with this paragraph and must, within 15 working days of receipt of the information pursuant to sub-paragraph (1), confirm the amount of the fee, charge, cost or expense to be paid by the undertaker (if any) and the date by which this is to be paid.

(4) The Canal & River Trust must, when estimating and incurring any charge, cost or expense pursuant to this paragraph, do so with a view to being reasonably economic and acting as if the Canal & River Trust were itself to fund the relevant fee, charge, cost or expense.

#### **Making good of detriment; compensation and indemnity, etc.**

**181.**—(1) If any detriment is caused by the construction or failure of the specified works or the protective works if carried out by the undertaker, the undertaker (if so required by the Canal & River Trust) must make good such detriment and must pay to the Canal & River Trust all reasonable expenses incurred by the Canal & River Trust, and compensation for any loss sustained by the Canal & River Trust in making good or otherwise by reason of the detriment.

(2) The undertaker must be responsible for and make good to the Canal & River Trust all costs, charges, damages, expenses and losses not otherwise provided for in this Part which may be occasioned to and reasonably incurred by the Canal & River Trust—



- (a) by reason of the construction of a specified work or a protective work or the failure of such a work; 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 the construction of a specified work or protective work and subject to sub-paragraph (4), the undertaker must effectively indemnify and hold harmless the Canal & River Trust from and against all claims and demands arising out of or in connection with any of the matters referred to in paragraphs (a) and (b) (provided that the Canal & River Trust is not entitled to recover from the undertaker any consequential losses which are not reasonably foreseeable).

(3) The fact that any act or thing may have been done by the Canal & River Trust 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 supervision or in accordance with any directions or awards of an arbitrator is not to (if it was done without negligence on the part of the Canal & River Trust or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this paragraph.

(4) Nothing in sub-paragraph (2) imposes any liability on the undertaker with respect to any detriment, loss or interruption to the extent that it is attributable to the act, neglect or default of the Canal & River Trust, its officers, servants, contractors or agents.

(5) The Canal & River Trust must give the undertaker reasonable notice of any such claim or demand as aforesaid and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

(6) The Canal & River Trust must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies. If requested to do so by the undertaker, the Canal & River Trust must provide an explanation of how the claim has been minimised.

### **Arbitration**

**182.** Any difference arising between the undertaker and the Canal & River Trust under this Part (other than a difference as to the meaning or construction of this Part) must be referred to and settled by arbitration in accordance with article 42 [\(arbitration\)](#).

### **Capitalised sums**

**183.**—(1) Any capitalised sum which is required to be paid under this Part must be calculated by multiplying the cost of the maintenance or renewal works to the waterway necessitated as a result of the operation of the authorised development by the number of times that the maintenance or renewal works will be required during the operation of the authorised development.

(2) The aggregate cap of the undertaker's gross liability to pay capitalised sums and any other payments or liabilities under the terms of this Part of this Schedule shall be limited to £5,000,000 (five million pounds) for any one occurrence or all occurrences of a series arising out of the one original cause.

### **As built drawings**

**184.** As soon as reasonably practicable following the completion of the construction of the authorised development, the undertaker must provide to the Canal & River Trust as built drawings of any specified works in a form and scale to be agreed between the undertaker and the Canal & River Trust to show the position of those works in relation to the waterway.

### **Decommissioning**

**185.** Where the decommissioning plan identifies activities which may impact the waterway, the protective provisions in this Part of this Schedule will, so far as appropriate, apply to those activities as if they were a specified work.

## PART 14

### FOR THE PROTECTION OF UNIPER UK LIMITED

186. For the protection of Uniper as referred to in this Part of this Schedule the following provisions will, unless otherwise agreed in writing between the undertaker and Uniper, have effect.

187. In this Part of this Schedule—

“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than—

(a) “A-” if the rating is assigned by Standard & Poor’s Ratings Group or Fitch Ratings; and

(b) “A3” if the rating is assigned by Moody’s Investors Services Inc.;

“acceptable insurance” means a third party liability insurance effected and maintained by the undertaker or its contractor with a limit of indemnity of not less than £50,000,000 (fifty million pounds) per occurrence or series of occurrences arising out of one event or such lower amount as approved by Uniper, whether arising pursuant to the undertaker or any person on its behalf, arranged with an internationally recognised insurer of repute operating in the London and worldwide insurance market underwriters whose security/credit rating meets the same requirements as an “acceptable credit provider” (including any replacement insurance pursuant to paragraph 195(6)), such insurance to be maintained for the construction of that part or parts of the authorised development which constitute specified works and such policy must include (but without limitation)—

(c) a waiver of subrogation and an indemnity to principal clause in favour of Uniper; and

(d) contractors’ pollution liability for third party property damage and third party bodily damage arising from pollution, contamination or environmental harm with cover of £[TBC] per event of £[TBC] in aggregate;

“acceptable security” means either—

(e) a parent company guarantee from a parent company in favour of Uniper to cover the undertaker’s liability to Uniper to a total liability cap of £50,000,000 (fifty million pounds) (in a form reasonably satisfactory to Uniper and where required by Uniper, accompanied by 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) including any replacement parent company pursuant to paragraph 195(6); or

(f) a bank bond or letter of credit from an acceptable credit provider in favour of Uniper to cover the undertaker’s liability to Uniper up to a total liability cap of £50,000,000 (fifty million pounds) (in a form reasonably satisfactory to Uniper) which includes any replacement bank bond or letter of credit pursuant to paragraph 195(6);

“alternative apparatus” means alternative apparatus to the satisfaction of Uniper to enable Uniper to fulfil its functions in a manner no less efficient than previously;

“apparatus” means—

~~(a)~~ (g) any fixed and moveable items, which forms, or may form, part of Uniper’s system, including cavities, chambers, pipelines, valves, ventilators, pumps, compressors, pumping or compression systems, control systems and any associated cables (including high voltage, low voltage and datacoms) and any equipment in which electrical conductors are used, supported, or otherwise form, or may form, part of the system, cathodic protection systems, roads, compounds and equipment owned by Uniper;

~~(b)~~ (h) any other equipment or apparatus belonging to or maintained by Uniper or apparatus and such other equipment or apparatus constructed that becomes operational for the purposes of Uniper’s functions including any structure in which equipment or apparatus is, or will be, lodged or which gives, or will give, access to apparatus;

~~(c)~~ (i) any replacement equipment or apparatus as required or determined by Uniper; and

~~(d)~~ (j) paragraphs (g) to (i) ~~includes~~ include any of Uniper’s future apparatus;

“applicable law” means any applicable legislation, statutes, directives, regulations (including safety regulations), judgments, decisions, decrees, orders and other legislative measures or decisions having the force of law, treaties, conventions and other agreements between states, or between states and the European Union or other supranational bodies, rules of common law, customary law and equity and all civil or other codes and all other laws of, or having effect in, any jurisdiction from time to time in each case to the extent the same is legally binding upon the relevant person;

“as-built records” means each as-built record or document prepared by the undertaker or delivered to the undertaker by its subcontractors or any other person carrying out the specified works;

“authorised development” has the same meaning as in article 2 of this 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 Part of this Schedule;

“commence” has the same meaning as in article 2 of this Order and “commencement” will be construed to have the same meaning save that for the purposes of this Part of this Schedule the terms “commence” and “commencement” include operations consisting of ecological or archaeological investigations, investigations for the purpose of assessing and monitoring ground conditions and levels (including drilling and making trial or bore holes), remedial work in respect of any pollution, contamination or other adverse ground conditions, erection of any temporary means of enclosure, receipt and erection of construction plant and equipment, diversion and laying of underground apparatus (including cables) and site clearance (including removal of vegetation) or any other activities being undertaken under, over, across, along or upon the apparatus or alternative apparatus in land;

“deed of consent” means a deed of consent, crossing or proximity agreement, deed of easement, deed of variation or new deed of grant agreed between the parties;

“emergency works” has the meaning given to it in section 52 of the 1991 Act;

“good industry practice” means exercising the degree of skill, diligence, prudence, foresight and care reasonably expected of a skilled and experienced solar developer, which includes obtaining all necessary permits and compliance with any safety rules;

“functions” includes powers and duties;

“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;

“including” or “include” are to be construed without limitation, and such general words are not to be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words and references to “such as” or “for example” must be construed accordingly;

“insolvency related event” means, in respect of any person, any step, process, application, filing in court, order, proceeding, notice or appointment is taken or made by or in respect of such person in relation to the Banking Act 2009 special resolution regime or for a moratorium, composition, compromise or arrangement with creditors, administration, liquidation (other than for the purposes of amalgamation or reconstruction), dissolution, receivership (administrative or otherwise), distress (or the taking control of goods procedure set out in the Tribunals, Courts and Enforcement Act 2007) or execution in any jurisdiction or such person becomes insolvent or is unable or is deemed unable to pay its debts, suspends making payments on its debts, as they fall due in accordance with the law of any application jurisdiction;

“maintain” and “maintenance” include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of Uniper including retain, lay, construct, use, maintain, repair, protect, access, alter, inspect, renew, replace, enlarge, decommission or remove the apparatus or alternative apparatus;

“parent company” means—

(k) a parent company of the undertaker acceptable to and approved by Uniper acting reasonably; or

(l) where a parent company is subject to an insolvency related event, a replacement parent company approved by Uniper acting reasonably;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and mitigation measures (including but not limited to integrity reports), earthing philosophies, proposed land and road crossings and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“representative” means Uniper’s directors, officers, employees, agents, consultants and advisers;

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

~~(e)(m)~~ will or may be situated over, under, across, along, upon or within 15 metres measured in any direction of any apparatus, excluding any high pressure pipelines to which paragraph (n)~~(b)~~ below shall apply;

~~(f)(n)~~ will or may be situated over, under, across, along, upon or within 50 metres measured in any direction of any high pressure pipeline; or

~~(g)(o)~~ may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 192(2)~~7(2)~~ or otherwise; and

“Uniper” means Uniper UK Limited incorporated in England with company number 2796628 and whose registered office is at Compton House 2300 The Crescent, Birmingham Business Park, Birmingham, England, B37 7YE and for the purposes of this Part of this Schedule is a “statutory undertaker”.

**188.** Except for paragraphs 189 (apparatus of Uniper in streets subject to temporary prohibition or restriction of use and public rights of way), 192 (retained apparatus), 193 (removal of apparatus), 194 (expenses) and 195 (indemnity) of this [Part 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 Uniper, the other provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and Uniper are regulated by the provisions of Part 3 of the 1991 Act.

### **Apparatus of Uniper in streets subject to temporary prohibition or restriction of use and public rights of way**

**189.** Notwithstanding the temporary prohibition or restriction of use or diversion of any street or public right of way under the powers of article 11 (temporary prohibition or restriction of use of streets and public rights of way), Uniper will be at liberty at all times to take all necessary access across any such street or public right of way and to execute and do all such works and things in, upon or under any such street or public right of way as it would have been entitled to do immediately before such temporary prohibition or restriction of use or diversion in respect of any apparatus which at the time of the prohibition or restriction of use or diversion was in that street or public right of way.

### **Protective works to buildings**

**190.** The undertaker, in the case of the powers conferred by article 18 (protective works to buildings), must exercise those powers in accordance with paragraph 192 so as not to obstruct or render less convenient the access to any apparatus or alternative apparatus without the written consent of Uniper.

### **Acquisition of land**

**191.**—(1) Regardless of any provision in this Order or anything shown on the land ~~plans~~[plan](#) or contained in the book of reference to the Order, the undertaker may not appropriate or acquire any land interest of Uniper or appropriate, acquire, extinguish, interfere with or override any easement or other interest or right or apparatus of Uniper otherwise than by agreement.

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

(3) Any agreement or consent granted by Uniper under ~~paragraphs~~ paragraph 192 or any other paragraph of this Part of this Schedule will not be taken to constitute agreement under this paragraph.

(4) Where an undertaker acquires land which is subject to a right or interest of Uniper (including, without limitation, easements and agreements relating to rights or other interests), Uniper must—

- (a) retain any notice of the existing easement, right or other interest of Uniper on the title to the relevant land when registering the undertaker's title to such acquired land; and
- (b) where no such notice of the existing easement, right or other interest of Uniper exists in relation to such acquired land or any such notice is registered only on the Land Charges Register) include (with its application to register title to the undertaker's interest in such acquired land at the Land Registry) a notice of Uniper's easement, right or other interest in relation to such acquired land.

### **Retained apparatus**

**192.**—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to Uniper at the address stated in paragraph 199, a plan in respect of those works.

(2) The plan to be submitted to Uniper under sub-paragraph (1) must include all comprehensive risk assessments (including any quantitative risk assessments) and any method statement describing—

- (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;
- (f) any changes to the land drainage systems, temporary crossing designs, traffic management plans, health and safety management plans, emergency response plans, planned changes or rerouting of any assets and their corresponding design codes, earth schedules and earthing risk assessments;
- (g) submission of any method statement, risk assessment, plan, document, drawing, methodology or similar;
- (h) any recommendations and/or mitigation measures to avoid interference with, or loss or damage to the apparatus (including damage caused by passing over the apparatus by heavy construction machinery) and related remedies should such mitigation measures fail;
- (i) any intended maintenance regimes; and
- (j) a programme of the works, including any start dates and the duration of the works.

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

(4) Any approval of Uniper required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and
- (b) must not be unreasonably withheld or delayed.

(5) In relation to any work to which sub-paragraphs (1) or (2) apply, the undertaker will provide any additional information or documentation as requested by Uniper and Uniper may require 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 or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) and (2) or as relevant sub-paragraph (4) and (5), as approved or as amended from time to time by agreement between the undertaker and Uniper and in accordance with all conditions imposed under sub-paragraph (4)(a) by Uniper for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Uniper (or its representative) will be entitled to attend any meetings related to the specified works and watch, monitor and inspect the execution of those works.

(7) Where Uniper 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 Uniper's satisfaction prior to the commencement.

(8) 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 development, 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;

(9) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works, provided that—

- (a) in respect of danger to persons it must give to Uniper notice as soon as is reasonably practicable by calling Uniper's emergency telephone line on 0800 389 4795 or such other telephone number notified by Uniper to the undertaker in writing; and
- (b) in respect of danger to property it shall notify Uniper in accordance with paragraph (a), before any emergency works are commenced by or on behalf of the undertaker,

and, in each case, as soon as is reasonably practicable give to Uniper a plan of those works and must—

- (c) comply with sub-paragraphs (5) to (7) insofar as is reasonably practicable in the circumstances; and
- (d) comply with sub-paragraph (10) at all times.

(10) At all times when carrying out any works authorised under the Order the undertaker must comply with, and procure compliance by any party acting on its behalf with, [all applicable law and](#) good industry practice. The undertaker must procure that any party carrying out any works on the land on its behalf has knowledge of the apparatus, its location (including as illustrated by a site map) and procure that the obligations contained in this Part of this Schedule are adhered to by such parties working on the land on its behalf.

[\(11\) The undertaker must prepare and keep up to date a complete set of red-lined as-built records of the execution of the specified works, showing the exact as-built locations, sizes and details of such works as executed and the undertaker must submit the as-built records to Uniper no later than five working days after the completion of the specified works and Uniper may specify the number of copies of any as-built records acting reasonably.](#)

### **Removal or replacement of apparatus**

**193.**—(1) The undertaker is not permitted to remove, move or replace any apparatus in land without the prior written consent of Uniper.

(2) If, in the exercise of the powers conferred by the Order, the undertaker has exercised its compulsory purchase powers to acquire any interest in or possesses temporarily any Order land in



which any apparatus is placed and has the power to move, replace or remove that apparatus, it must not do so under this Part of this Schedule and any right of Uniper 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 Uniper in accordance with sub-paragraphs (3) to (7) inclusive.

(3) If, for the purpose of executing any specified works in, on, under or over any land held, appropriated or used under this Order pursuant to exercising its compulsory purchase powers the undertaker requires the replacement or removal of any apparatus placed in that land it must give to Uniper no less than 56 days advance written notice of that requirement, together with a plan of the work proposed, and where applicable, the proposed replacement apparatus or the position of any alternative apparatus to be provided or constructed and in that case provided that where—

- (a) the undertaker requires the replacement of any apparatus placed in that land, it must be replaced with identical apparatus, provided that if identical apparatus is not available, it must not be replaced with any apparatus that is less advanced than the apparatus being replaced and must either be—
  - (i) replaced with apparatus on a similar or equivalent basis (i.e. like-for-like basis); or
  - (ii) where it cannot be replaced on a similar or equivalent basis, then it must be replaced with more enhanced apparatus; and
- (b) the undertaker requires the removal of any apparatus placed in that land (or if in consequence of the exercise of any of the powers conferred by this Order Uniper reasonably needs to remove any of its apparatus), Uniper must, subject to sub-paragraph (5), secure any necessary consents for the alternative apparatus and afford to Uniper to its satisfaction the necessary facilities and rights for the construction of alternative apparatus in other land of or land secured by Uniper and subsequently for the maintenance of that apparatus.

(4) Prior to any removal or any replacement of the apparatus pursuant to this paragraph, the parties must agree the value attributable to such apparatus or alternative apparatus and, prior to any replacement or removal, if such value cannot be agreed between the parties, such value will be determined in accordance with paragraph 198 (arbitration).

(5) 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 (3), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the undertaker must take all steps required in the circumstances to assist Uniper to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(6) 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 the undertaker and Uniper.

(7) Uniper must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written agreement having been entered into between the parties and the grant to Uniper of any such facilities and rights as are referred to in sub-paragraph (3) or (5), 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.

## **Expenses**

**194.**—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Uniper within 30 days of receipt of an invoice, all charges, costs and expenses incurred, or reasonably anticipated to be incurred, by Uniper in, or in connection with, the inspection, removal, relaying or replacing, alteration, repair, remediation or restoration of or protection of any apparatus or alternative apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any powers conferred on the undertaker, pursuant to the Order (including in the execution of any authorised development as is referred to in this Part of this Schedule) including without limitation—

- (a) in connection with the cost of the carrying out of any assessment of Uniper's apparatus under P.S.R 1996 and G.S.M.R reasonably necessary as a consequence of the authorised development;
- (b) implementing any mitigation measures required as a result of any assessment referred to in sub-paragraph (a) reasonably necessary as a consequence of the authorised development;
- (c) the approval of plans;
- (d) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and
- (e) 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) For the purposes of calculating the sums payable pursuant to sub-paragraph (1) above, in the case of the replacement or removal of apparatus, the following applies—

- (a) where apparatus is removed under the provisions of this Part of this Schedule and which will not re-used as part of the apparatus or alternative apparatus, there will be excluded from any sum payable under sub-paragraph (1) the value of the apparatus being removed; and
- (b) subject to ~~sub~~-paragraph 193(3)(a), when replacing existing apparatus, there will be deducted from any sum payable under sub-paragraph (1) the value of that apparatus being removed under the provisions of this Part of this Schedule and which is not re-used as part of the apparatus or alternative apparatus, except that the value of any apparatus or alternative apparatus used to replace the apparatus being removed will be included in the sum payable under sub-paragraph (1), such value being agreed between the parties (or as determined in accordance with paragraph 198 (arbitration)) prior to any removal or replacement of the apparatus,

provided that, in each case, all charges, costs and expenses incurred, or reasonably anticipated to be incurred, by Uniper in, or in connection with the works required for the removal or replacement of such apparatus will be included in the sum payable under sub-paragraph (1).

(3) If, in accordance with sub-paragraph (2) ~~of this Part of this Schedule,~~ any existing apparatus is replaced with enhanced apparatus where the undertaker's consent has not been obtained by Uniper (or where disputed in accordance with paragraph 198 (arbitration), decided not to be necessary), then, if the construction expenses for this replacement surpass the construction expenses that would have been paid for similar or equivalent apparatus then any excess costs will be borne by Uniper, except that where it is not possible in the circumstances to obtain similar or equivalent apparatus, full costs will be payable by the undertaker.

(4) Any amount which apart from this sub-paragraph would be payable to Uniper 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 Uniper 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

**195.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the authorised development, any loss or damage is caused to any apparatus, alternative apparatus or property of Uniper, or there is any interruption in any services provided, or in the supply of any goods, or in the use of the apparatus or alternative apparatus (as applicable) by Uniper, the undertaker must—

- (a) bear and pay the costs incurred by Uniper in making good such loss or damage or in restoring the supply or its use;
- (b) make compensation to Uniper for any other expenses, loss, damages, penalty or costs incurred by Uniper, by reason or in consequence of any such loss, damage or interruption; and



- (c) indemnify and hold harmless Uniper against all claims, liabilities, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by Uniper (an “indemnity claim”).
- (2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to—
  - (a) any damage or interruption to the extent that it is attributable to the act, neglect or default of Uniper or its representatives; or
  - (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.
- (3) Uniper must give the undertaker reasonable notice of an indemnity claim and no settlement or compromise is to be made that is prejudicial to the undertaker without the consent of the undertaker (not to be unreasonably withheld) which, if it withholds such consent, it will assume the sole conduct of the indemnity claim, provided that if the undertaker does not assume the sole conduct of the indemnity claim within 30 days of the indemnified claim being notified to it, Uniper, or a person designated by Uniper, may conduct the indemnity claim in such manner as it may deem appropriate and the undertaker will indemnify Uniper for any costs and expenses incurred in connection with defending any such indemnity claim.
- (4) The undertaker will give assistance to Uniper, as requested, in connection with an indemnity claim (including circumstances where Uniper reasonably believes may give rise to an action, claim or demand by a third party).

(5) The undertaker undertakes not to commence construction (and not to permit the commencement of such construction) of the authorised development on any land owned by Uniper or in respect of which Uniper has an easement, wayleave or lease for its apparatus or any other interest or to carry out any works within 15 metres of Uniper’s apparatus (except in respect of any high pressure pipelines) or within 50 metres of Uniper’s high pressure pipelines until the following conditions are satisfied—

- (a) unless and until Uniper is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and unless otherwise agreed with Uniper acting reasonably provided evidence that it will maintain such acceptable security for the construction period of the authorised development from the proposed date of commencement of construction the authorised development) and Uniper has confirmed the same to the undertaker in writing; and
- (b) unless and until Uniper is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and unless otherwise agreed with Uniper acting reasonably provided evidence to Uniper that it will maintain such acceptable insurance for the construction period of the authorised development from the proposed date of commencement of construction of the authorised development) and Uniper has confirmed the same in writing to the undertaker.

(6) The undertaker agrees that if, at any time, the acceptable security or acceptable insurance expires or terminates, ceases to fulfil the criteria of acceptable security or acceptable insurance, ceases to be in full force and effect or becomes invalid or unenforceable for the purpose of this Part of this Schedule or an insolvency-related event occurs in respect of the undertaker or the parent company, then the relevant security or insurance will no longer constitute acceptable security or acceptable insurance (as applicable) and will promptly be replaced by the undertaker with alternative acceptable security or acceptable insurance as approved by the undertaker.

~~(5)~~(7) In the event that the undertaker fails to comply with sub-~~section~~paragraph (4) nothing in this Part of this Schedule will prevent Uniper from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

(8) Uniper must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within Uniper’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 Uniper’s control and if reasonably

requested to do so by the undertaker Uniper must provide an explanation of how the claim has been minimised, where relevant.

### **Co-operation**

**196.**—(1) Where, in consequence of the proposed construction of any of the authorised development, Uniper makes requirements for the protection or alteration of apparatus under ~~paragraphs~~ paragraph 192(5), the undertaker must use its ~~reasonable~~ best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe, efficient and economic operation of Uniper's apparatus and Uniper must use its best endeavours to co-operate with the undertaker for that purpose.

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

### **Access**

**197.** If in consequence of the agreement reached in accordance with paragraph 191(1) of this Part of this Schedule or otherwise as granted by this Order the access to any apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Uniper (or representative) in respect of the apparatus) is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable Uniper (or its representative) to maintain or use the apparatus no less effectively than was possible before such obstruction. For the avoidance of doubt, Uniper (or its representative) will be entitled to access its apparatus in the land at all times.

### **Arbitration**

**198.** Any difference or dispute arising between the undertaker and Uniper under this Part of this Schedule must be determined by arbitration in accordance with article 42 (arbitration).

### **Notices**

**199.** Any notice, statement, request, plan or any other written communication (including the plan to be provided at paragraph 192) to be given or made in respect of this Part of this Schedule by the undertaker must be given or made in writing to: **FAO Lead Pipeline Engineer, Uniper Pipelines Team, Pipelines Office, Uniper Killingholme Power Station, Chase Hill Road, Killingholme, North Lincolnshire, DN40 3LU and pipelinesuk@uniper.energy or such other address as Uniper may have notified to the undertaker from time to time.**

## **PART 15**

### **FOR THE PROTECTION OF EXOLUM PIPELINE SYSTEM LIMITED**

### **Application**

**200.**—(1) For the protection of Exolum the following provisions, unless otherwise agreed in writing at any time between the undertaker and Exolum, have effect.

(2) In this Part of this Schedule, the following terms have the following meanings—

“additional rights” means rights for the construction and for access to and for the use, protection, inspection, maintenance, repair and renewal of retained apparatus including any restrictions on the landowner and occupiers for the protection of the retained apparatus and to allow Exolum to perform its functions;

“alternative apparatus” means alternative apparatus adequate to enable Exolum to fulfil its functions as a pipeline operator in a manner not less efficient than previously;

“alternative rights” means rights for the construction and for access to and for the use, protection, inspection, maintenance, repair and renewal of alternative apparatus including any restrictions on the landowner and occupiers for the protection of the alternative apparatus and to allow Exolum to perform its functions;

“apparatus” means the pipeline and storage system and any ancillary apparatus owned or operated by Exolum and includes—

- (a) any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;
- (b) any ancillary works, all protective wrappings, valves, sleeves and slabs, cathodic protection units, together with ancillary cables and markers;
- (c) such legal interest, and benefit of property rights and covenants as are vested in respect of these items;

and, where the context requires, includes alternative apparatus;

“Exolum” means Exolum Pipeline System Ltd (company registration number 09497223 whose registered office is 1st Floor 55 King William Street, London, England, EC4R 9AD) and for the purpose of enforcing the benefit of any provisions in this [Part of this](#) Schedule, any group company of Exolum Pipeline System Ltd and in all cases any successor in title;

“functions” includes powers, duties and commercial undertaking;

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

“plan” includes all designs, drawings, sections, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary to allow Exolum to assess the restrictive works to be executed properly and sufficiently and in particular must describe—

- (d) the position of the works as proposed to be constructed or renewed;
- (e) the level at which the works are proposed to be constructed or renewed;
- (f) the manner of the works’ construction or renewal including details of excavation, positioning of plant etc.;
- (g) the position of the affected apparatus and/or premises and any other apparatus belonging to another undertaker that may also be affected by the ~~Restrictive Works~~ [restrictive works](#);
- (h) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (i) any intended maintenance regime;
- (j) details of the proposed method of working and timing of execution of works; and
- (k) details of vehicle access routes for construction and operational traffic;

“premises” means land that Exolum owns, occupies or otherwise has rights to use including but not limited to storage facilities, administrative buildings and jetties;

“protective works” means works for the inspection and protection of apparatus; [and](#)

“restrictive works” means any works that are near to, or will or may affect any apparatus or premises including—

- (l) all works within 15 metres measured in any direction of any apparatus including embankment works and those that involve a physical connection or attachment to any apparatus;
- (m) the crossing of apparatus by other utilities;
- (n) the use of explosives within 400 metres of any apparatus;
- (o) piling, undertaking of a 3D seismic survey or the sinking boreholes within 30 metres of any apparatus; [and](#)

- (p) all works that impose a load directly upon the apparatus, wherever situated, whether carried out by the undertaker or any third party in connection with the authorised development.

### Acquisition of apparatus

**201.**—(1) Regardless of any other provision in the Order or anything shown on the land plans~~plan~~—

- (a) the undertaker must not, otherwise than by agreement with Exolum, acquire any apparatus, Exolum's rights in respect of apparatus or any of Exolum's interests in the Order land;
- (b) where the undertaker acquires the freehold of any land in which Exolum holds an interest, the undertaker must afford to or secure for Exolum such rights in land in substitution for any right which would be extinguished by that acquisition (the replacement rights). These replacement rights must be granted upon substantially the same terms and conditions as the right to be extinguished, unless otherwise agreed between the undertaker and Exolum, and must be granted or put in place contemporaneously with the extinguishment of the right which they replace;
- (c) the undertaker must not, otherwise than in accordance with this Part of this Schedule—
  - (i) obstruct or render less convenient the access to any apparatus;
  - (ii) interfere with or affect Exolum's ability to carry out its functions as an oil pipeline operator;
  - (iii) require that apparatus is relocated or diverted; or
  - (iv) remove or required to be removed any apparatus;
- (d) any right of Exolum to maintain, repair, renew, adjust, alter or inspect apparatus must not be extinguished by the undertaker until any necessary alternative apparatus has been constructed and it is in operation and the alternative rights have been granted, all to the reasonable satisfaction of Exolum; and
- (e) any right of Exolum to access the Exolum operations must not be extinguished until necessary alternative access has been provided to Exolum's reasonable satisfaction.

(2) Prior to the carrying out of any restrictive works or any works authorised by this Order that will affect the apparatus, and if required by Exolum, the parties must use their reasonable endeavours to negotiate and enter into such deeds of consent (crossing consent) and (if considered necessary) variations to the existing rights upon such terms and conditions as may be agreed between Exolum and the undertaker acting reasonably and which must be no less favourable on the whole to Exolum than this Part of this Schedule, and the undertaker will use reasonable endeavours to procure and 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 works.

(3) Where the undertaker acquires land which is subject to any existing rights and the provisions of paragraph 202(4) do not apply, the undertaker must~~;~~==

- (a) retain any notice of the existing rights of Exolum on the title to the relevant land when registering the undertaker's title to such acquired land;
- (b) (where no such notice of the existing rights or other interest exists in relation to such acquired land or any such notice is registered only on the Land Charges Register) include (with an application to register title to the undertaker's interest in such acquired land at the Land Registry) a notice of the existing rights or other interest in relation to such acquired land; and
- (c) provide up to date official entry copies to Exolum within 20 working days of receipt of such up to date official entry copies.

(4) Where the undertaker takes temporary possession of any land or carries out survey works on land in respect of which Exolum has apparatus—

- (a) where reasonably necessary, Exolum may exercise its rights to access such land;

- (i) in an emergency, without notice; and
- (ii) in non-emergency circumstances, having first given not less than 14 days' written notice to the undertaker in order to allow the parties to agree the timing of their respective works during the period of temporary possession; and
- (b) the undertaker must not remove or in any way alter Exolum's rights in such land, unless in accordance with the provisions of this Order.

### **Removal of apparatus and ~~Rights~~[rights](#) for alternative apparatus**

**202.**—(1) If, having used all reasonable endeavours to implement the authorised development without the removal of any apparatus—

- (a) the undertaker reasonably requires the removal of any apparatus; or
- (b) Exolum reasonably requires the removal of any apparatus~~;~~[.](#)

then the relevant party must give written notice of that requirement to the other.

(2) The parties must use their reasonable endeavours to produce a plan of the work proposed and a plan of the proposed position of the alternative apparatus to be provided or constructed.

(3) The undertaker must afford to Exolum the necessary facilities and rights for the construction of alternative apparatus and subsequently the grant of alternative rights in accordance with paragraph 203.

(4) Any alternative apparatus is to be constructed in land owned by the undertaker or in land in respect of which alternative rights have been or are guaranteed to be granted to Exolum. The alternative apparatus must be constructed in such manner and in such line or situation as may be agreed between Exolum and the undertaker or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(5) After the details for the works for alternative apparatus to be provided or constructed have been agreed or settled in accordance with article 42 (arbitration), and after the grant to Exolum of any such facilities and rights as are referred to in sub-paragraph (4), Exolum must proceed as soon as reasonably practicable using reasonable endeavours to construct and bring into operation the alternative apparatus and subsequently to remove (or if agreed between the parties to allow the undertaker to remove) any redundant apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) The following sub-paragraphs (7) and (8) only apply if—

- (a) Exolum fails to comply with its obligations under sub-paragraph (5) to remove any redundant apparatus; and
- (b) the undertaker has served notice on Exolum specifying the default; and
- (c) Exolum has failed to remedy the default within 28 days.

(7) In the circumstances set out in sub-paragraph (6), if the undertaker then gives notice in writing to Exolum that it desires itself to remove the redundant apparatus, that work, instead of being executed by Exolum, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Exolum.

(8) Nothing in sub-paragraph (7) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 3000 millimetres of the apparatus unless that apparatus is redundant and disconnected from Exolum's remaining system.

### **Facilities and Rights for alternative apparatus**

**203.**—(1) Where, in accordance with the provisions of this [Part of this](#) Schedule, the undertaker affords to Exolum facilities and rights for the construction of alternative apparatus and the grant of alternative rights, 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 Exolum and must be materially no less favourable on the whole to Exolum than the facilities and rights enjoyed

by it in respect of the apparatus to be removed unless otherwise agreed by Exolum, in accordance with this [Part of this](#) Schedule or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(2) Alternative rights must be granted before any alternative apparatus is brought into use.

(3) The parties agree that the undertaker must use reasonable endeavours to procure the grant of the alternative rights by way of a 999 year sub-soil lease, substantially in the form of Exolum's precedent from time to time as amended by written agreement between the parties acting reasonably, or such other form of agreement as the parties otherwise agree acting reasonably.

(4) Nothing in this [Part of this](#) Schedule or contained in the alternative rights ~~require~~[requires](#) Exolum to divert or remove any alternative apparatus.

(5) 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 Exolum less favourable on the whole to Exolum 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, Exolum may refer the matter to arbitration in accordance with article 42 (arbitration).

### **Retained apparatus and alternative apparatus: protection**

**204.**—(1) Before commencing the execution of any restrictive works, the undertaker must submit to Exolum a plan of the works to be executed and any other information that Exolum may reasonably require to allow Exolum to assess the works.

(2) No restrictive works are to be commenced until the plan to be submitted to Exolum under sub-paragraph (1) has been approved by Exolum in writing (acting reasonably) and are to be carried out only in accordance with the details submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be notified to the undertaker in writing in accordance with sub-paragraph (3) by Exolum.

(3) Any approval of Exolum in respect of restrictive works may be given subject to such reasonable requirements as Exolum may require to be made for—

- (a) the continuing safety and operational viability of any apparatus;
- (b) the requirement for Exolum to have reasonable access with or without vehicles to inspect, repair, replace, maintain and ensure the continuing safety and operation or viability of any apparatus; and
- (c) the requirement for Exolum to be entitled to watch and inspect the execution of restrictive works to ensure the continuing safety and operational viability of any apparatus and ensure compliance with the agreed plan~~;~~[.](#)

providing such reasonable requirements will be notified to the undertaker in writing.

(4) Where reasonably required by either party, in view of the complexity of any proposed works, timescales, phasing or costs, the parties must with due diligence and good faith negotiate a works agreement for the carrying out of protective works or the installation of alternative apparatus.

(5) If in consequence of the works notified to Exolum by the undertaker under sub-paragraph (1), the circumstances in paragraph 202 apply, then the parties must follow the procedure in paragraph 202 onwards.

(6) Nothing in sub-paragraphs (1) to (5) precludes the undertaker from submitting prior to the commencement of works to protect retained apparatus or to construct alternative apparatus (unless otherwise agreed in writing between the undertaker and Exolum) a new plan, instead of the plan previously submitted, in which case the parties must re-run the procedure from sub-paragraph (1) onwards.

(7) Where Exolum reasonably requires protective works, the parties must use their reasonable endeavours to produce a plan of the work proposed and a plan of the proposed position of any physical features to be provided or constructed.



(8) The undertaker must afford to Exolum the necessary facilities and rights for the construction of protective works and subsequently the grant of additional rights in accordance with paragraph 203.

(9) Any protective works are to be constructed in land owned by the undertaker or in land in respect of which additional rights have been or are guaranteed to be granted to Exolum. The protective works must be constructed in such manner and in such line or situation as may be agreed between Exolum and the undertaker or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(10) After the details for the protective works to be provided or constructed have been agreed or settled in accordance with article 42 (arbitration), and after the grant to Exolum of any such facilities and rights as are referred to in paragraph 202(3), Exolum must proceed as soon as reasonably practicable using reasonable endeavours to construct and bring into operation the protective works.

### **Cathodic protection testing**

**205.**—(1) Where in the reasonable opinion of Exolum or the undertaker ~~;~~ ==

- (a) the authorised development might interfere with the cathodic protection forming part of apparatus; or
- (b) any apparatus might interfere with the proposed or existing cathodic protection forming part of the authorised development ~~;~~ .

Exolum and the undertaker must co-operate in undertaking the tests which they consider reasonably necessary for ascertaining the nature and extent of such interference and measures for providing or preserving cathodic protection.

(2) The Parties must carry out the works and enter into such agreements as are necessary to implement the measures for providing or preserving cathodic protection.

### **Expenses**

**206.**—(1) Subject to the following provisions of this paragraph 206, the undertaker must pay to Exolum the reasonable and properly incurred costs and expenses (including reasonable staffing costs if work is carried out in-house) incurred by Exolum in, or in connection with—

- (a) undertaking its obligations under this Part of this Schedule including ~~;~~ ==
  - (i) the installation, inspection, removal, alteration, testing or protection of any apparatus, alternative apparatus and protective works;
  - (ii) the execution of any other works under this Part of this Schedule; and
  - (iii) the review and assessment of plans;
- (b) the watching of and inspecting the execution of the authorised development, any restrictive works and any works undertaken by third parties as a result of authorised development (including the assessment of plans); and
- (c) imposing reasonable requirements for the protection or alteration of apparatus affected by the authorised development or works as a consequence of the authorised development in accordance with paragraph 204(3) ~~;~~ .

together with any administrative costs properly and reasonably incurred by Exolum.

(2) There will be no deduction from any sum payable under sub-paragraph (1) as a result of ~~;~~ ==

- (i) the placing of apparatus of a better type, greater capacity or of greater dimensions, or at a greater depth than the existing apparatus, to the extent Exolum has acted reasonably in procuring such apparatus;
- (ii) the placing of apparatus in substitution of the existing apparatus that may defer the time for renewal of the existing apparatus in the ordinary course; or
- (iii) the scrap value (if any) of any apparatus removed.

(3) Upon the submission of proper and reasonable estimates of costs and expenses to be incurred by Exolum, the undertaker shall pay Exolum sufficiently in advance to enable Exolum to undertake its obligations under this [Part of this](#) Schedule in a manner that is neutral to its cash flow provided that in the event that the costs incurred by Exolum are less than the amount paid by the undertaker pursuant to this sub-paragraph (3) then Exolum shall within 35 days of payment being made by Exolum for the costs anticipated in the costs and expenses estimates, repay any overpayment to the undertaker.

#### **Damage to property and other losses**

**207.**—(1) Subject to sub-paragraphs (2) to (7), the undertaker shall—

- (a) indemnify Exolum for all reasonably incurred loss, damage, liability, costs and expenses suffered or reasonably incurred by Exolum arising out of—
  - (i) the carrying out of works under this [Part of this](#) Schedule;
  - (ii) the carrying out of the authorised development;
  - (iii) the use or occupation of land over or in the vicinity of any apparatus or in the vicinity of any premises in connection with the carrying out of the authorised development;
  - (iv) any injury or damage whatsoever to any property, real or personal, including the property of Exolum; and
  - (v) any matters arising out of or in connection with this Order;
- (b) indemnify Exolum against any claim made against, or loss suffered by, Exolum as a result of any act or omission committed by the undertaker's officers, employees, contractors or agents whilst on or in the vicinity of any apparatus or premises for the purposes of carrying out any activity authorised by this Order;
- (c) pay to Exolum, in accordance with the terms of the provisions of this Part of this Schedule, the cost reasonably incurred by Exolum in making good any damage to the apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) arising out of the carrying out of works under this [Part of this](#) Schedule and arising out of the carrying out of the authorised development; and
- (d) pay to Exolum the cost reasonably incurred by Exolum in stopping, suspending and restoring the supply through its apparatus in consequence of the carrying out of works under this [Part of this](#) Schedule or the carrying out of the authorised development;

and make reasonable compensation to Exolum for any other expenses, losses, damages, penalty or costs incurred by Exolum by reason or in consequence of any such damage or interruption including all claims by third parties.

(2) Nothing in sub-paragraph (1) imposes any liability on the ~~Undertaker~~[undertaker](#) with respect to 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.

(3) The fact that any act or thing may have been done by Exolum on behalf of the undertaker or in accordance with a plan approved by Exolum or in accordance with any requirement of Exolum or under its supervision shall not, subject to sub-paragraph (4), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(4) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the negligent act, neglect or default of Exolum, its officers, servants, contractors or agents.

(5) The undertaker and Exolum shall at all times take reasonable steps to prevent and mitigate any loss, damage, liability, claim, cost or expense (whether indemnified or not) which either suffers in connection with this [Part of this](#) Schedule.

(6) The undertaker warrants that it will use reasonable endeavours to ensure—



- (a) the information it or any of its employees, agents or contractors provide to Exolum about the plans or the authorised development and on which Exolum relies in the design of and carrying out of any works is accurate; and
- (b) the undertaker or any of its employees, agents or contractors have exercised all the reasonable skill, care and diligence to be expected of a qualified and experienced member of their respective profession.

(7) Exolum must give the undertaker reasonable notice of any such claim or demand to which sub-paragraph (2) applies.

### **Insurance**

**208.**—(1) The undertaker must not carry out any restrictive works unless and until Exolum has confirmed to the undertaker in writing that it is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker (or its contractor) has procured acceptable professional indemnity insurance and public liability insurance with minimum cover of £25 million per event, with respect to the carrying out of the works.

(2) The undertaker shall maintain such insurance for the construction period of the authorised development from the proposed date of commencement of the authorised development unless otherwise agreed in writing with Exolum.

### **Co-operation and reasonableness**

**209.**—(1) Where apparatus is required to be protected, altered, diverted or removed under this [Part of this](#) Schedule, the undertaker must use all reasonable endeavours to co-ordinate the execution of any works under this Part of this Schedule—

- (a) in the interests of safety;
- (b) in the interest of the efficient and economic execution of both Exolum’s works and the authorised development; and
- (c) taking into account the need to ensure the safe and efficient operation of the apparatus and carrying out of Exolum’s functions.

(2) Exolum must use its reasonable endeavours to co-operate with the undertaker for the purposes outlined in sub-paragraph (1).

(3) The undertaker and Exolum will act reasonably in respect of any given term of this [Part of this](#) Schedule and, in particular, (without prejudice to generality), where any approval, consent or expression of satisfaction is required by this Part of this Schedule it must not be unreasonably withheld or delayed.

### **Emergency circumstances**

**210.**—(1) The undertaker acknowledges that Exolum provides services to His Majesty’s Government, using the apparatus, which may affect any works to be carried under this [Part of this](#) Schedule and the authorised development.

(2) In the following circumstances, Exolum may on written notice to the undertaker immediately suspend all works that necessitate the stopping or suspending of the supply of product through any apparatus under this [Part of this](#) Schedule and Exolum shall not be in breach of its obligations under [this Part of](#) this Schedule—

- (a) circumstances in which, in the determination of ~~the~~[His Majesty’s](#) Government, there subsists a material threat to national security, or a threat or state of hostility or war or other crisis or national emergency (whether or not involving hostility or war); or
- (b) circumstances in which a request has been received, and a decision to act upon such request has been taken, by ~~the~~[His Majesty’s](#) Government for assistance in relation to the occurrence or anticipated occurrence of a major accident, crisis or natural disaster; or

- (c) circumstances in which a request has been received from or on behalf of NATO, the EU, the UN, the International Energy Agency (or any successor agency thereof) or the government of any other state for support or assistance pursuant to the United Kingdom's international obligations and a decision to act upon such request has been taken by ~~the~~[His Majesty's](#) Government; or
- (d) any circumstances identified as such by the COBRA committee of ~~the~~[His Majesty's](#) Government (or any successor committee thereof); or
- (e) any situation in connection with which ~~the~~[His Majesty's](#) Government requires fuel capacity, including where the United Kingdom is engaged in any planned or unplanned military operations within the United Kingdom or overseas.

(3) The parties agree to act in good faith and in all reasonableness to agree any revisions to any schedule, programme or costs estimate (which shall include costs of demobilising and remobilising any workforce, and any costs to protect the apparatus "mid-works") to account for the suspension.

(4) Exolum shall not be liable for any costs, expenses, losses or liabilities the undertaker incurs as a result of the suspension of any activities under paragraphs to or delays caused by it.

### **Dispute Resolution**

**211.**—(1) The undertaker and Exolum must use their reasonable endeavours to secure the amicable resolution of any dispute or difference arising between them out of or in connection with this Part of this Schedule in accordance with the following provisions.

(2) The undertaker and Exolum must each nominate a representative who will meet to try to resolve the matter. If the matter is not resolved at that level within ten working days of either the undertaker or Exolum requesting such a meeting (or such longer period as may be agreed between the undertaker and Exolum) the matter may at the request of either the undertaker or Exolum be referred for discussion at a meeting to be attended by a senior executive from each party.

(3) If the meeting between senior executives fails to result in a settlement within 20 working days of the date of the request for such a meeting (or if it is not possible to convene a meeting within this period) then, unless otherwise agreed in writing between the undertaker and Exolum, the dispute or difference will be determined by arbitration in accordance with article [42](#) (arbitration).

### **Miscellaneous**

**212.** No failure or delay by a party to exercise any right or remedy provided under this Part of this Schedule or by law will constitute a waiver of that or any other right or remedy, nor will it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy will prevent or restrict the further exercise of that or any other right or remedy.

## **PART 16**

### **FOR THE PROTECTION OF LINCOLNSHIRE FIRE & RESCUE SERVICE**

**213.** For the protection of Lincolnshire Fire and Rescue as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and Lincolnshire Fire and Rescue.

### **Interpretation**

**214.** In this Part of this Schedule—

"Index" means the Consumer Price Index;

"Index Linked" means an increase in the sums payable on an annual basis or pro rata per diem from the first day following the first year of operation of the authorised development, to the date

of payment, based upon the relevant Index last published before the first day following the first year of operation of the authorised development; and

“Lincolnshire Fire and Rescue” means Lincolnshire County Council in its capacity as a fire and rescue authority pursuant to section 1(2)(a) of the Fire and Rescue Services Act 2004.

### **Site visits**

**215.**—(1) The undertaker must, prior to the date of final commissioning of Work No. 2 or Work No. 3, use reasonable endeavours to facilitate a site familiarisation exercise in connection with Work No. 2 or Work No. 3 of the authorised development for Lincolnshire Fire and Rescue for the purposes of providing the necessary assurance to Lincolnshire Fire and Rescue that all the required systems and measures are in place in accordance with the battery storage safety management plan.

(2) Following the anniversary of the date of final commissioning of Work No. 2 or Work No. 3 of the authorised development, the undertaker must use reasonable endeavours to facilitate an annual review of the site by Lincolnshire Fire and Rescue at the reasonable request of Lincolnshire Fire and Rescue, up until the date of decommissioning of Work No. 2 or Work No. 3 of the authorised development.

### **Costs**

**216.**—(1) Pursuant to the provisions set out at paragraph 215, the undertaker must pay to Lincolnshire Fire and Rescue—

- (a) £16,665 in the first year of operation of the authorised development for, or in connection with Lincolnshire Fire and Rescue’s attendance at the site familiarisation exercise facilitated by the undertaker pursuant to paragraph 215(1), such sum to be paid on a date mutually agreed between the parties (the “Payment Date”); and
- (b) £1,530 in each subsequent year of operation of the authorised development until the later of the date of decommissioning of Work No. 2 and the date of decommissioning of Work No. 3, payable on the anniversary of the Payment Date, if in that year an annual review has taken place pursuant to paragraph 215(2).

(2) The costs payable under sub-paragraph (1)(b) are to be Index Linked.

### **Arbitration**

**217.** Any difference or dispute arising between the undertaker and Lincolnshire Fire and Rescue under this Part of this Schedule must be determined by arbitration in accordance with article 42 ([arbitration](#)).

## **PART 17**

### **FOR THE PROTECTION OF TILLBRIDGE SOLAR PROJECT LIMITED**

**218.** The provisions of this Part apply for the protection of Tillbridge unless otherwise agreed in writing between the undertaker and Tillbridge.

**219.** In this Part—

“apparatus” means the cables, structures or other infrastructure owned, occupied or maintained by Tillbridge or its successor in title within the Tillbridge Work No. [ ] Area;

“construction” includes execution, placing, altering, replacing, reconstruction, relaying, maintenance, extensions, enlargement and removal; and “construct” and “constructed” must be construed accordingly;

“plans” includes sections, drawings, specifications, designs, design data, software, 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 the Tillbridge Work No. [ ] Area; and

“specified works” means so much of any works of operations authorised by this Order (or authorised by any planning permission intended to operate in conjunction with this Order) as is—

- (a) within the Tillbridge Work No. [ ] Area;
- (b) in, on, under, over or within 25 metres of the Tillbridge Work No. [ ] Area or any apparatus; or
- (c) may in any way adversely affect any apparatus.

“Tillbridge” means an undertaker with the benefit of all or part of the Tillbridge Solar Order for the time being;

“Tillbridge Work No. [ ] Area” means the area for Work No. [ ] authorised in the Tillbridge Solar Order;

**220.** The consent of Tillbridge under this Part is not required where the Tillbridge Solar Order has expired without the authorised development having been commenced pursuant to the Tillbridge Solar Order.

**221.** Where conditions are included in any consent granted by Tillbridge pursuant to this Part, the undertaker must comply with the conditions if it chooses to implement or rely on the consent, unless the conditions are waived or varied in writing by Tillbridge.

**222.** The undertaker must not under the powers of this Order acquire, extinguish, suspend, override or interfere with any rights that Tillbridge has in respect of any apparatus or has in respect of the Tillbridge Work No. [ ] Area without the consent of Tillbridge, which must not be unreasonably withheld or delayed but which may be made subject to reasonable conditions.

**223.—(1)** The undertaker must not under the powers of this Order carry out any specified works without the consent of Tillbridge, which must not be unreasonably withheld or delayed but which may be made subject to reasonable conditions and if Tillbridge does not respond within 28 days of the undertaker’s request for consent, then consent is deemed to be given.

(2) Subject to obtaining consent pursuant to sub-paragraph (1) and before beginning to construct any specified works, the undertaker must submit plans of the specified works to Tillbridge and must submit any such further particulars available to it that Tillbridge may reasonably require.

(3) Any specified works must be constructed without unreasonable delay in accordance with the plans approved in writing by Tillbridge.

(4) Any approval of Tillbridge required under this paragraph may be made subject to such reasonable conditions as may be required for the protection or alteration of any apparatus (including proposed apparatus) in the Tillbridge Work No. [ ] Area or for securing access to such apparatus or the Tillbridge Work No. [ ] Area.

(5) Where Tillbridge requires any protective works to be carried out either by themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to Tillbridge’s reasonable satisfaction.

(6) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any specified works, new plans instead of the plans previously submitted, and the provisions of this paragraph shall apply to and in respect of the new plans.

**224.—(1)** The undertaker must give to Tillbridge not less than 28 days’ written notice of its intention to commence the construction of the specified works and, not more than 14 days after completion of their construction, must give Tillbridge written notice of the completion.

(2) The undertaker is not required to comply with paragraph 223 or sub-paragraph (1) in a case of emergency, but in that case it must give to Tillbridge notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with paragraph 223 in so far as is reasonably practicable in the circumstances.

**225.** The undertaker must at all reasonable times during construction of the specified works allow Tillbridge and its servants and agents access to the specified works and all reasonable facilities for inspection of the specified works.

**226.**—(1) After the purpose of any temporary works has been accomplished, the undertaker must with all reasonable dispatch, or after a reasonable period of notice in writing from Tillbridge requiring the undertaker to do so, remove the temporary works in, on, under, over or within the Tillbridge Work No. [ ] Area.

(2) If the undertaker fails to remove the temporary works within a reasonable period of receipt of a notice pursuant to sub-paragraph (1), Tillbridge may remove the temporary works and may recover the reasonable costs of doing so from the undertaker.

**227.** If in consequence of the exercise of the powers conferred by 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 Tillbridge to maintain or use the apparatus no less effectively than was possible before the obstruction.

**228.** The undertaker must not exercise the powers conferred by this Order to prevent or interfere with the access by Tillbridge to the Tillbridge Work No. [ ] Area.

**229.** To ensure its compliance with this Part, the undertaker must before carrying out any works or operations pursuant to this Order within Tillbridge Work No. [ ] Area request up-to-date written confirmation from Tillbridge of the location of any apparatus or proposed apparatus.

**230.** The undertaker and Tillbridge must each act in good faith and use reasonable endeavours to co-operate with and provide assistance to each other as may be required to give effect to the provisions of this Part.

**231.** The undertaker must pay to Tillbridge the reasonable expenses incurred by Tillbridge in connection with the approval of plans, inspection of any specified works or the alteration or protection of any apparatus or the Tillbridge Work No. [ ] Area.

**232.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any specified works, any damage is caused to any apparatus or there is any interruption in any service provided, or in the supply of any goods, by Tillbridge, or Tillbridge becomes liable to pay any amount to any third party, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Tillbridge in making good such damage or restoring the service or supply; and
- (b) compensate Tillbridge for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Tillbridge, by reason or in consequence of any such damage or interruption or Tillbridge becoming liable to any third party as aforesaid.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of Tillbridge, its officers, servants, contractors or agents.

(3) Tillbridge must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made, unless payment is required in connection with a statutory compensation scheme without first consulting the undertaker and considering its representations.

(4) Tillbridge must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies. If requested to do so by the undertaker, Tillbridge shall provide an explanation of how the claim has been minimised. The undertaker shall only be liable under this paragraph for claims reasonably incurred by Tillbridge.

(5) The fact that any work or thing has been executed or done with the consent of Tillbridge and in accordance with any conditions or restrictions prescribed by Tillbridge or in accordance with any plans approved by Tillbridge or to its satisfaction or in accordance with any directions or award of any arbitrator does not relieve the undertaker from any liability under this Part.

233. Any dispute arising between the undertaker and Tillbridge under this Part must be determined by arbitration under article 42 ([arbitration](#)).

## PART 18

### FOR THE PROTECTION OF EDF ENERGY (THERMAL GENERATION) LIMITED

#### Application

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

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and EDF, where the benefit of this Order is transferred or granted to another person under article 35 (consent to transfer the benefit of the Order)—

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

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to EDF (but without prejudice to 244(3)(b)).

#### Interpretation

235. In this Part of this Schedule—

“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than—

- (a) “A-” if the rating is assigned by Standard & Poor’s Ratings Group or Fitch Ratings; and
- (b) “A3” if the rating is assigned by Moody’s Investors Services Inc;

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

“acceptable insurance” means a third party liability insurance policy effected and maintained by the undertaker or its contractor with a combined property damage and bodily injury limit of indemnity of not less than £50,000,000 (fifty million pounds) per occurrence or series of occurrences arising out of one event or such lower amount as may be approved by EDF. Such insurance shall be maintained (a) during the construction period of the authorised development and (b) after the construction period of the authorised development in respect of any maintenance works to 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 must include (without limitation)—

- (c) a waiver of subrogation and an indemnity to principal clause in favour of EDF; and
- (d) 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 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000 (twenty million pounds) in aggregate;

“acceptable security” means either—

- (e) a parent company guarantee from a parent company in favour of EDF to cover the undertaker’s liability to EDF to a total liability cap of £50,000,000 (fifty million pounds) or such lower amount as may be approved by EDF (granted by an entity and in a form reasonably satisfactory to EDF and where required by EDF, 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

(f) a bank bond or letter of credit from an acceptable credit provider in favour of EDF to cover the undertaker's liability to EDF for an amount of not less than £10,000,000 (ten million pounds) per asset per event up to a total liability cap of £50,000,000 (fifty million pounds) or such lower amount as may be approved by EDF (in a form reasonably satisfactory to EDF);

“apparatus” means any electric lines or electrical plant as defined in the 1989 Act, or other apparatus as defined in article 2 of this Order, belonging to or maintained by EDF together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of EDF and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised development” has the same meaning in article 2(1) of this Order and for the purposes of this Part of this Schedule includes the use, maintenance and decommissioning of the authorised development and construction of any works authorised by this Schedule;

“commence” and “commencement” has the same meaning as in article 2(1) of this Order, except in this Part of this Schedule it includes any below ground surveys, below ground monitoring, ground work operations or the receipt and erection of construction plant and equipment ~~within 15 metres in any direction of EDF's apparatus;~~

“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;

“EDF” means EDF Energy (Thermal Generation) Limited (company number 04267569) whose registered office is at 90 Whitfield Street, London, England, W1T 4EZ or any successor as a licence holder within the meaning of Part 1 of the 1989 Act;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by EDF (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, is to require the undertaker to submit for EDF'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” include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of EDF: construct, use, repair, alter, inspect, renew or remove (including decommission) the apparatus;

“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 EDF acting reasonably; and

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



~~(e)~~(g) 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 240(2) or otherwise; or

~~(b)~~(h) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 240(2) or otherwise.

### **On street apparatus**

**236.** Except for paragraphs 237 (apparatus of EDF in stopped up streets), 242 (retained apparatus: protection), 243 (expenses) and 244 (indemnity) of this Part 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 EDF, the other provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and EDF are regulated by the provisions of Part 3 of the 1991 Act.

### **Apparatus of EDF in stopped up streets**

**237.** Notwithstanding the temporary prohibition or restriction of any street or public right of way under the powers of article 11 (temporary prohibition or restriction of use of streets and public rights of way), EDF is at liberty at all times to take all necessary access across any such street or public right of way and to execute and do all such works and things in, upon or under any such street or public right of way as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the temporary prohibition or restriction was in that street or public right of way.

### **Protective works to buildings**

**238.** The undertaker, in the case of the powers conferred by article 18 (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 EDF.

### **Acquisition of land**

239.—(1)- [Not used]

(2) [Not used]

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

(4) [Not used]

~~(2)~~(5) [Not used]

### **Removal of apparatus**

~~239, 240.~~—(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 EDF 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 EDF in accordance with sub-paragraphs (2) to (5) inclusive.

(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 EDF 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 EDF 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 EDF to its satisfaction (taking into account paragraph 241(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, operation and decommissioning of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by 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, EDF may in its sole discretion, 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 EDF to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by 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 EDF and the undertaker.

(5) EDF must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to EDF 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**

~~240.~~241.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for EDF 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 EDF and must be no less favourable on the whole to EDF than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by EDF.

(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 less favourable on the whole to EDF 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 248 (arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to EDF as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

#### **Retained apparatus: protection**

~~241.~~242.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to EDF a plan of the works to be executed and request from EDF details of the underground extent of their assets which EDF must provide to the undertaker as soon as reasonably practicable and within ~~28~~36 days of ~~the~~ submission of such request.

(2) In relation to specified works the plan to be submitted to EDF 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) a ground monitoring scheme, where required.

(3) The undertaker must not commence any works to which sub-paragraph (2) applies until EDF has given written approval of the plan so submitted.

(4) Any approval of EDF required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and
- (b) must not be unreasonably withheld and ~~EDF must meaningfully engage with the undertaker~~ be provided within ~~28~~42 days of the date of submission of the plan under sub-paragraph (1).

(5) In relation to any work to which sub-paragraph (2) applies, EDF 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.

(6) Works executed under sub-paragraph (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 EDF and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by EDF for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and EDF will be entitled to watch and inspect the execution of those works.

(7) Where EDF 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 EDF's satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required and EDF 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) If EDF 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 within 42 days of the date of submission of a plan pursuant to this paragraph, paragraphs 234 to 236 and 239 to 241 apply as if the removal of the apparatus had been required by the undertaker under paragraph 240(2) ~~provided that such written notice must be given by EDF to the undertaker within 28 days of submission of a plan pursuant to sub-paragraph~~.

(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 shall apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to EDF notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order, the undertaker must comply with EDF's HSEQ Requirement for Contractors (document reference DD\_STND\_HAS\_001) and any document that replaces or supersedes it.

## Expenses

~~242~~243—(1) Save where otherwise agreed in writing between EDF and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to EDF within 30 days of receipt of an itemised invoice or claim from EDF all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by EDF 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 development including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by EDF in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by EDF as a consequence of EDF;
- (b) using its own compulsory purchase powers to acquire any necessary rights under paragraph 240(3); or
- (c) exercising any compulsory purchase powers in the Order transferred to or benefitting EDF;
- (d) 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;
- (e) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (f) the approval of plans;
- (g) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (h) 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 248 (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 EDF 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 EDF 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 EDF 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.

(6) Any sums paid by the undertaker to EDF under sub-paragraph (1) relating to anticipated costs and expenses will be returned on demand (in whole or in part as applicable) by EDF to the undertaker if not incurred.

## **Indemnity**

~~243.~~244.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by them) 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 development) or property of EDF, or there is any interruption in any service provided, or in the supply of any goods, by EDF, or EDF 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 EDF the cost reasonably and properly incurred by EDF in making good such damage or restoring the supply; and
- (b) indemnify EDF for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from EDF, by reason or in consequence of any such damage or interruption or EDF becoming liable to any third party other than arising from any default or negligence of EDF.

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

(3) Nothing in sub-paragraph (1) is to impose 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 EDF, its officers, servants, contractors or agents; or
- (b) any authorised development or any other works authorised by this Part of this Schedule carried out by EDF as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or article 35 (consent to transfer the benefit of the Order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised development yet to be executed and not falling within this paragraph (b) will be subject to the full terms of this Part of this Schedule including this paragraph 244; or
- (c) any 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) EDF must give the undertaker reasonable notice of any such third party claim or demand 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 undertaker and considering their representations.

(5) EDF 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) EDF must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within EDF'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 EDF's control and if reasonably requested to do so by the undertaker EDF must provide an explanation of how the claim has been minimised, where relevant.

(7) Not to commence construction (and not to permit the commencement of such construction) of the authorised development on any land owned by EDF or in respect of which EDF has an easement or wayleave for its apparatus or any other interest or to carry out any works within 20 metres of EDF's apparatus until the following conditions are satisfied provided that the following conditions do not apply in relation to any specified works that are undertaken by EDF—

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

(b) unless and until EDF is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and unless otherwise agreed with EDF (acting reasonably) provided evidence to EDF that it shall maintain such acceptable insurance for the construction period of the authorised development from the proposed date of commencement of construction of the authorised development) and EDF has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with sub-paragraph (7), nothing in this Part of this Schedule will prevent EDF from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

## **Enactments and agreements**

~~244.~~245. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between EDF 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 EDF 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**

~~245.~~246.—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or EDF requires the removal of apparatus under paragraph 240(2) or EDF makes requirements for the protection or alteration of apparatus under paragraph 242, the undertaker shall 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 development and taking into account the need to ensure the safe and efficient operation of EDF's undertaking and EDF shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever EDF'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**

~~246.~~247. If in consequence of an agreement 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 EDF to maintain or use the apparatus no less effectively than was possible before such obstruction.

## Arbitration

~~247.~~248. Any difference or dispute arising between the undertaker and EDF under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and EDF, be determined by arbitration in accordance with article 42 (arbitration).

## Notices

~~248.~~249. Notwithstanding article 45 (service of notices), any plans submitted to EDF by the undertaker pursuant to paragraph 242 must be submitted to EDF addressed to the company secretary and copied to the land and estates team and sent to 90 Whitfield Street, London, England, W1T 4EZ or to such other address as EDF may from time to time appoint instead for that purpose and notify to the undertaker in writing.

## PART 19

### FOR THE PROTECTION OF BLYTON PARK DRIVING CENTRE

~~249.~~250. The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and the Company, and subject to the Company having registered and enforceable property interests in the restricted land permitting the use of that land in accordance with the Blyton Park Driving Centre operations and the Automotive Research and Development Centre planning permission.

~~250.~~251. In this Part of this Schedule—

“approval” means approval given by the Company in writing, or such approval as shall be deemed to have been given by the Company in the event it fails to comply with the relevant deadlines set out in this Schedule, or as determined by arbitration;

“Automotive Research and Development Centre planning permission” means the planning permission granted under the 1990 Act by West Lindsey District Council and given reference number 145015;

“Automotive Research and Development Centre planning permission site location plan” means the plan with reference BLY-01A which forms part of the Automotive Research and Development Centre planning permission;

“Blyton Park Driving Centre” means the driving circuit and associated infrastructure located ~~on~~adjacent to Kirton Road, Blyton, Gainsborough, DN21 3PE;

“Blyton Park Driving Centre operations” means the recreational use of the driving circuit at Blyton Park Driving Centre by drivers of motor cars;

“the Company” means LNT Aviation Limited, a company incorporated and registered in England and Wales with company number 08323165, having its registered office at Helios 47, Isabella Road, Garforth, Leeds, West Yorkshire, LS25 2DY, which is the owner and operator of Blyton Park Driving Centre;

“restricted land” means only that land included in plots 01-003, 01-006, 01-007 and the northern half of plot 01-017 located between plots 01-013 and 01-015, shown on the land plan;

“restricted works” means any works forming any part of Work No. 1C of the authorised development that are within the restricted land; and

“works details” means plans, section drawings and a method statement demonstrating the measures proposed by the undertaker to ensure the use of the restricted land by—

(a) the authorised development; and

(b) the Blyton Park Driving Centre operations,

can coexist without significant detriment to either of those two uses.

~~251.~~252.—(1) The undertaker must not submit for approval by the relevant planning authorities written details for that part of Work No. 1C in the restricted land in accordance with requirement



5(1) (detailed design approval) without first confirming to the Company whether the undertaker intends to carry out the restricted works.

(2) If the undertaker confirms to the Company that it will carry out the restricted works, and unless a shorter period is otherwise agreed in writing between the undertaker and the Company, not less than 8 weeks before commencing any restricted works, the undertaker must submit to the Company the works details.

(3) No restricted works are to be commenced until the works details in respect of those works submitted under sub-paragraph (2) have been approved by the Company.

(4) Any approval of the Company required under this sub-paragraph (3) must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as the Company may require to be made for the safe use of the Blyton Park Driving Centre operations and in accordance with the Automotive Research and Development Centre planning permission.

(5) Any approval of the Company required under sub-paragraph (3) including any reasonable requirements required by the Company under sub-paragraph (4), must be made in writing within a period of 4 weeks (unless a shorter period is otherwise agreed in writing between the undertaker and the Company) beginning with the date on which the works details were submitted to the Company under sub-paragraph (2).

(6) Work No. 1C must be executed on the restricted land only in accordance with the works details approved by the Company under sub-paragraph (3) including any reasonable requirements notified to the undertaker in accordance with sub-paragraph (4) and the Company shall be entitled to watch and inspect the execution of those works, subject to it having the necessary property interests in the restricted land to do so.

(7) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but (unless otherwise agreed in writing between the undertaker and the Company) in no case less than 8 weeks before commencing the execution of any restricted works, new works details, instead of the works details previously submitted, and having done so the provisions of this Part of this Schedule apply to and in respect of the new works details.

~~252-253.~~ If the Company notifies the undertaker that it intends to carry out the development permitted by the Automotive Research and Development Centre planning permission, the undertaker will not carry out the authorised development in the area shown edged red on the Automotive Research and Development Centre planning permission site location plan, insofar as this area overlaps with the Order limits, and will communicate such commitment to the Company in writing.

~~253-254.~~ Any difference or dispute arising between the undertaker and the Company under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and the Company, be determined by arbitration in accordance with article 42 (arbitration).

255.—(1) Subject to sub-paragraph (2), the undertaker must pay to the Company any professional fees, costs, charges and expenses which are reasonably and properly incurred by the Company in connection with reviewing and approving the works details in accordance with the provisions of this Part of this Schedule.

(2) Prior to incurring any professional fees, costs, charges and expenses to be paid by the undertaker in accordance with sub-paragraph (1), the Company must provide an estimate of the anticipated professional fees, costs, charges and expenses to the undertaker for approval, such approval not to be unreasonably withheld or delayed.

(3) The Company must, when estimating and incurring any professional fees, costs, charges and expenses pursuant to this paragraph do so with a view to being reasonably economic and acting as if the Company were itself to fund the relevant professional fees, costs, charges and expenses.